

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

WRIT PETITION NO. 1940 OF 2013.

with

Writ Petition No. 6974 of 2013.

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Morsalin Khan and others

(in Writ petition No. 1940 of 2013)

Khawaja Md. Halim

(in Writ Petition No. 6974 of 2013)

.....Petitioner-Applicant.

-Versus-

Bangladesh and others.

.....Respondents-Opposite parties.

Mr. A. Y. Moshuazzaman, Advocate with
Mr. Md. Mahfuzur Rahman (Milon),

Advocate with

Mr. Ancek R. Haque, Advocate

.....for the petitioner.

(in Writ Petition No. 6974 of 2013)

Mr. Manzil Murshid, Advocate.

.....for added petitioner No.5.

(in Writ petition No. 1940 of 2013)

Mr. S. M. Moonir, Advocate.

....for respondent Nos. 15 and 17.

Mr. Fida M. Kamal, Advocate with
Mr. M. A. Hannan, Advocate with
Mr. Abdus Samad Azad, Advocate

.....for respondent No. 16.

Mr. Mahbubay Alam, Attorney General

.....for respondent No. 7.

(in Writ petition No. 1940 of 2013)

Mr. Al Amin Sarker, D.A.G. with
Mr. K. M. Masud Rummy, A. A. G. with
Mr. Jakir Hossain Ripon, A.A.G.

....for respondents No.1, 2 and 8.

(in Writ petition No. 1940 of 2013)

Heard on: 20.08.2015, 23.08.2015,
24.08.2015, 25.08.2015, 31.08.2015
and

Judgment on 17.09.2015.

Present:

Mr. Justice Mirza Hussain Haider.

And

Mr. Justice A.K.M. Zahirul Hoque.

A.K.M. Zahirul Hoque, J:

Since similar facts and law are involved in both the Rules in the above writ petitions as such both the Rules have been taken up together for hearing and are disposed of by this single judgment.

In Writ Petition No. 1940 of 2013 a Rule Nisi was issued calling upon the respondents to show cause as to why failure of the respondents to protect the property of Sir Salimuallah Muslim Orphanage and illegal transfer of the land in question to a Real State Company (respondent No. 16) under the influence of the committee members should not be declared to be of without lawful authority and is of no legal effect and further to show cause as to why the respondents should not be directed to protect and maintain the property of Sir Salimuallah Muslim Orphanage in accordance with the purpose of the lease agreement signed by the then Government vide Annexure A, A-1, A-2, A-3 and/or

pass such other or further order or orders as to this Court may seem fit and proper along with an ad-interim order of direction upon respondents No. 13-17 to maintain status-quo in respect of position of the entire land covered within the area of Sir Salimuallah Muslim Orphanage.

-And-

In Writ Petition No. 6974 of 2013, a Rule Nisi was issued calling upon the respondents to show cause as to why failure of the respondents in implementing the recommendation of the investigation committee dated 10.04.2013 should not be declared to be of without lawful authority and is of no legal effect and, accordingly, why respondents No. 1 and 2 should not be directed to implement the recommendation made under Memo No. 41.00.0000.005.003.2012 dated 10.04.2013 and/or pass such other or further order or orders as to this Court may seem fit and proper.

Petitioners Case of Writ Petition No. 1940 of 2013.

That the petitioners have grown up as Orphans in Sir Salimuallah Muslim Orphanage and are studying in different colleges. From their childhood the petitioners are directly involved with the interest of the Orphans. Even they tried to stop the illegal transfer the property of the Sir Salimuallah Muslim Orphanage by raising their voice. They were waiting to get result but due to interference of the influential people of the executive committee it was not possible to protect the property of the Orphanage. Though several times initiative was taken and committee was formed but finally nothing could be to recover the land. Even no investigation could be proceeded with due to interference of the influential group of people; that the petitioners were regular students of the Sir Salimuallah Muslim Orphanage. They are being conscious citizens to challenge the illegal acts of influential persons, who upon violating the provisions of law transferred the land of the Orphanage for their personal gain and as such for the interest of the orphans as well as of the petitioners and for the benefit of the helpless citizens of the country and in order to establish the rule of law, the petitioners moved this Public Interest Litigation (PIL) before this Hon'ble Court under article 102 of the Constitution along with the prayer for direction upon the respondents to take necessary measures as per Article 31 of the Constitution of the Peoples Republic of Bangladesh to protect the property of Sir Salimuallah Muslim Orphanage. It is stated that late Nawab Sir Salimullah established the Orphanage namely Sir Salimullah Muslim Orphanage in 1909 within an area of 17 acres of land at Azimpur. A constitution was adopted and an Executive Committee was constituted for the said organization and subsequently the constitution was amended. The purpose of setting up

the said Orphanage was to look after the Orphans of the society and to give the education to lead their life properly with the financial support of the said organization. Subsequently, the then Government of India decided to patronage the said orphanage and accordingly on 27.07.1915, 29.10.1929, 14.05.1931, 18.05.1934 and 07.09.1934 the then collect of Dacca, M. O.M. Martin ICS, on behalf of the State of India, granted year to year lease of total 22 Bighas of land from different plots including plot No. 1014 of sheet No. 20 of ward No. 7 under Police Station-Azimpur, Dhaka to the Sir Solimullah Muslim Orphanage Committee (here after shortly Orphanage) for its foundation and extensions respectively by five indentures (Annexure-A to A3). The said indentures, amongst other conditions contained a condition that the said leased out lands can not be used in any other purpose save and except for the purpose of the Orphanage.

The constitution of Sir Salimuallah Muslim Orphanage also contains a condition, like the terms and conditions of the lease deeds, in respect of not to transfer any land of the orphanage by any of the members of the executive committee without the approval of the 2/3 of the numbers of the general committee.

But by violating all the conditions of the lease deeds of the Government as well as the constitution some members of the Executive committee signed an agreement, on 22.07.2003 with the Concord Real Estate Company (respondent No. 16) for construction of a Multi-storied Commercial-cum-Residential Building on 40 (forty) Kathas of the Orphanage. According to the terms of the said agreement the respondent No.16 would get 65% of the said multistoried building and rest 35% would get the rest 35% company. Subsequently, on 13.04.2004 some amendments were made in the said agreement which allowed the respondent No. 16 to own and sell 70 % of the said building. Thereafter, the President and honorary Secretary (respondents No. 15 and 17) executed a Power of Attorney nominating the respondent No. 16 to do the needfull for the works to that effect with regard to the irregularities and illegalities about the property of the Sir Salimuallah Muslim Orphanage some news items were published in different media. On the basis of such media report, the Director General, Department of Social Welfare, formed an inquiry committee to enquire, about the matter and submit a report. That on 29.11.2007, after completion of the enquiry, the committee submitted a report to the authority stating that some members of the committee of the Orphanage by violating the terms, condition, rules and regulation have entered into an agreement by which they transferred the lands of the Orphanage in favour of respondent No. 16 although there was no scope to transfer the property of the Orphanage by anybody. Despite the said specific report no step has been taken by the authority to protect the property of the

said Sir Salimuallah Muslim Orphanage. Rather, the influential and vested/interested group managed to stop the authority from taking further action against the illegal transfer of the property. Some influential members, including respondent Nos. 15 and 17, of the committee of the Orphanage, who were responsible to protect the interest of the Orphanage, by way of taking some financial benefit acted against the interest of the Orphanage by executing the said deed for construction of the said multistoried commercial cum-residential building on the land measuring 40 katas in favour of respondent No. 16.

Thereafter on the basis of the application submitted by the students of the Orphanage dated 21.11.2012, the Director General, Social Welfare Department formed another enquiry committee who fixed 28.11.2012 for holding enquiry and accordingly notified all concord. Similarly the Ministry of Social Welfare also formed an inquiry committee on 13.12.2012 to hold inquiry about the property and management of the Executive Committee of the Orphanage. Thereafter, on 03.01.2013 the committee issued a letter to the Superintendent of Sir Salimuallah Muslim Orphanage and requested him to be present on 09.01.2013 but subsequently no effective step was taken by the authority concerned.

It is also stated that several news were published in the daily Newspapers on different dates under different headlines. The petitioners upon going through the said news items felt aggrieved about the inaction of the respondents in protecting the properties of the Orphanage along with some other allegations therewith, issued a notice demanding justice upon the respondents through their Advocate but in vain. Thus thereafter finding no other alternative, filed the instant writ petition and obtained the present Rule.

The petitioners filed a supplementary affidavit by annexing some relevant papers and documents which are also vital for disposal of the instant Rule. The papers and document's contains the 1st lease deed No. 1919 dated 27.07.2015 by which the Orphanage was set up and presently situated; The 68th Annual Report of the Orphanage, published in 1978 which contains the history of the Orphanage including when and how the land belonging to the Orphanage were granted. It is stated that in the Government records as the land in question has always been marked as belonging to the Government and this statement have been admitted by respondent No. 7 in his affidavit-in-opposition that on 22.06.2015 while the order of status-quo was granted by this Hon'ble Court, one Mr. Sameer Kanti Datta, Deputy Project Manager of Respondent No. 16 (The Developer Company) led about 40 persons, who claimed to be the flat purchasers from respondent No. 16, to forcefully entering into the disputed land, for which The police had to be called who dispersed the unruly mob. A General Diary No. 1295

dated 22.06.2015 was lodged with the Lalbag Police Station. The said incident was also published in the Daily Prothom Alo on 23.06.2015.

The petitioners filed another supplementary affidavit annexing the combined Zarip Map with the government regarding the land of S.A. Plot No. 9, 1004, 1013, R.S. Plot No. 615, 1241, 1242 and City Zarip Plot No. 1002. From the said combined Zarip Map it is clear that respondents No. 15 and 17 illegally transferred the land to the respondent No. 16, which is situated in the main part of the Orphanage which has been obtained by the second lease deed (1st extension) being Deed No. 1560 dated 29.10.1929 from the Khas Mohal land, sanctioned by the Government vide letter No. 2713 dated 07.11.1927.

When the Rule was ready for hearing Mr. Asaduzzaman Siddique, on behalf of Human Rights and Peace for Bangladesh (HRPB), filed an application for impleading his organization as petitioner No. 5 in the rule. After considering the application and for the effective assistants to the Court for disposal of the Rule his application for addition of party was allowed vide order dated 16.06.2015. Accordingly, he was made co-petitioner No. 5 who relied upon the facts and circumstances of other petitioners of Writ Petition No. 1940 of 2013 and made submissions accordingly.

This Rule was contested by four sets of respondents, namely respondent Nos. 1, 2 and 8 in one set; respondent No. 7 in another set respondent No.15 and 17 as the 3rd set and respondent No. 16 as the 4th set by filing their respective affidavits-in-opposition. Case of the respondent No. 1, 2 and 8 in short is that after publication of the news items in different newspapers about the illegal transfer of land of Sir Salimuallah Muslim Orphanage by the then Executive Committee, to respondent No. 16, a meeting was held on 01.11.2007 in the Ministry of Social Welfare, Bangladesh Secretariat, Dhaka whereupon it was decided that the matter should be investigated. Accordingly a high investigating committee comprising of three members was constituted under section 9 of The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. After conclusion of the investigation the said committee submitted a report holding that the allegations are correct and the Executive Committee has violated the constitution of the orphanage, the provisions of the Voluntary Social Welfare Agencies (Registration and control) Ordinance, 1961 and order of 1962 and accordingly made some recommendations. Pursuant to which the then Executive Committee of the Sir Salimuallah Muslim Orphanage was suspended and a five member Managing Committee was constituted to run the orphanage and to hold election to elect the new Executive Committee and to operate the Institution on 02.12.2007. It was further decided that the elected Executive Committee would take necessary steps against all the illegal acts of the suspended executive

committee. But the elected committee did not take any step against the illegalities of the suspended executive committee nor took any step to recover the illegally transferred land of the Sir Salimuallah Muslim Orphanage. According to the decision of the Ministry of Social Welfare, and letter No. পল্জ/ফেঁফাখ্ন;খ/হেঁস্জ-27/07-177 dated 20.05.2009 and the recommendation of the Anti-corruption Commission vide Memo No. c§cL/27-2008/(Aeαx J ac;¹-1/Y;L;6202 dated 22.04.2008 Md. Abu Siddik Bhuiyan, District Social Welfare Officer, Dhaka; filed a criminal case against the suspended executive committee before the Court of the Chief Metropolitan Magistrate, Dhaka. It is further stated that according to the constitution of the Sir Salimuallah Muslim Orphanage, the elected committee with the help of the general members of the organization directly controlled the supervisory power about all the moveable and immoveable properties of Sir Salimuallah Muslim Orphanage. On 28.02.2013 the Deputy Director, District Social Welfare office issued letter No. 41.01.26000.000.28.192(09).13.386 to the General Secretary of the Sir Salimuallah Muslim Orphanage, (respondent No. 15) requesting to take appropriate and effective steps about the demand of justice notice issued by the learned Advocate for the petitioners. By letter dated 11.03.2013 the Secretary of the Sir Salimuallah Muslim Orphanage (respondent No.15) informed the Deputy Director, District Social Welfare office that they have taken necessary steps about the Demand Justice Notice issued by the learned Advocate for the petitioners.

It is stated that, the present elected Executive Committee is responsible to maintain, run and protect the orphanage including protecting the movable and immovable properties of Sir Salimullah Muslim Orphanage. As such since the previous Executive Committee illegally transferred the land of the Orphanage. The present committee is bound to explain and recover the same. It is not the responsibility of the Department of the Social Welfare Ministry.

That on 04.06.2013 a letter was issued by the Ministry of Social Welfare to the Deputy Commissioner, Dhaka vide letter No. 41.01.000.046.24.043.13-259 directed to take a necessary steps according to the investigation report and recommendations dated 10.04.2013 against the corruptions and mismanagement related to the movable and immovable property of the Orphanage. Accordingly with a view to take necessary steps a letter was issued by the Ministry of Social Welfare to the Deputy Commissioner, Dhaka vide letter No.41.01.0000.046.24.043.13-259 to that effect and constituted a committee comprising of five members and the working of that committee is still running. So the article 21 of the Constitution of the People's Republic of Bangladesh was followed properly along with other statements therewith.

Respondent No. 7's Case

The Deputy Commissioner, Dhaka, (respondent No.7) filed affidavit-in-opposition stating that the property of Sir Salimuallah Muslim Orphanage situated on S.A. Plot No. 9, 1004, 1013 and 1014 measuring an area of 3.3288 acres of land under the 'Khashmal' Touzi. The land in question was leased out to the Sir Salimuallah Muslim Orphanage by the then Deputy Commissioner of Dhaka, on a nominal Salami of Taka 1 (one) only and the possession of the land was delivered to the Orphanage authority. In the R.S. record the land has been recorded as "Khas" land. City Zarip has also been prepared in the name of the Deputy Commissioner, Dhaka as "Khas land". Thus the orphanage authority had no power to transfer a portion of the land to the Developer. Thus the transfer is illegal as the land of S.A. Plot No. 9, 1004, 1013 and 1014 has been recorded in the name of Deputy Commissioner, Dhaka as khas land and the orphanage is simply a lease. The respondent No. 7 also filed an affidavit-in-reply to the affidavit-in-opposition of respondent No. 16. Wherein the respondent No. 7 stated that on 01.10.2013 respondent No. 16 Concord Condominium Limited filed a supplementary affidavit-in-opposition annexing a letter of the office of the respondent No. 7 dated 05.01.2004 as (Annexure-"1") which on examination and on consultation of the office records found to be not genuine. It is stated that the office of this respondent No. 7 did not issue any such letter rather Annexure "1" has been created by respondent No.16 which for its own interest. Rather the said Annexure is fake and managed with a view to grab the land of the Orphanage. The relevant portion of the opinion regarding the said letter Annexure-1 is as under,

“উলে খিত পত্রটি কার্যালয় হতে প্রেরণ করা হয়নি। অধিকন্ড পত্রটি জাল ও প্রতারনামূলকভাবে মর্মে প্রতীয়মান হয়”।

Case of Respondents No. 15 and 17.

The case of the respondents No. 15 and 17, as stated in their affidavit-in-opposition is that the allegations of the petitioners are not true and they have no locus standi to file this writ petition. It is stated that though the writ petitioners were students of the said Orphanage but now they are no more students as they have passed out and left the Orphanage. They are more than 18 years, thus writ petitioners No.1-4 are not connected with the said Orphanage anymore. As such, they have no *locus standi* to file the instant writ petition. It is further stated that the executive committee of the Orphanage is entitled to take decision for betterment of the orphans as well as the Orphanage. Since the Orphanage has no permanent source of income the respondents No. 15 and 17 took necessary steps to arrange a permanent source of

income of the Orphanage. Accordingly for the betterment of the orphans of the said Orphanage the agreement was executed on 22.07.2003 for the benefit of Sir Salimuallah Muslim Orphanage. The Orphanage had no money of its own to construct the building which could permanently provide huge income every months upon lifting out the same to different persons. It is further stated that on the execution of the argument with respondent No. 16 the orphanage initially earned Tk. 30,00000/- apart from owning a portion of the building after construction is complete. Respondents No. 15 and 17 along with other members of the executive committee, first took over the charge of the Orphanage vide Memo No. 2706(6)/09 dated 05.11.2009 issued by the registering authority of the Department of Social Welfare. After taking over the charge, the Executive Committee of Respondents No. 15 and 17 created pressure upon the developer (Respondent No. 16) to enhance the share of the Orphanage. Accordingly another supplementary deed of agreement was executed by respondent Nos. 15 and 17 and the Developer, Concord Limited where the share of the Orphanage was enhanced to additional 03% of the commercial space and 08% of the total residential spaces and also realized Tk. 50,00,000/-(Fifty Lac) only in cash in addition to earlier amount of Tk. 30,00,000/- (Taka thirty lac) only and also added the saving clauses to its agreement. The supplementary agreement is annexed as Annexure-1. The respondents did not transfer any land to the developer. It is further stated that on the basis of some incorrect news published in some of the daily newspapers the writ petitioners filed the instant writ petitions falsely.

It is further stated that in 2007, during the Caretaker Government, a high power committee was constitution, headed by Ms. Giti Ara Sufia Chowdhury, the then Advisor in charge of Ministry of Social Welfare wherein the respondent No. 7 was a member. In a meeting of the said committee the then Additional Deputy Commissioner (Revenue) Dhaka representing the respondent No.7 stated that the land in question has already vested upon the orphanage by way of permanent settlement as such the authority of the orphanage has all power to own and manage the land which has been vested upon the Orphanage. Accordingly, the authority of the orphanage concerned, in pursuance of the rules, entered into such deeds of agreement and power of attorney with respondent No. 16. It is further stated that a letter dated 05.01.2004 (Annexure-1) issued by the office of the Respondent No. 7 and the resolution dated 01.11.2007 (Annexure-7) if read together then it will be easily construed that the statements made in paragraph No.4 of the writ petition are false and the investigation report in question is concocted and the same has been prepared purposefully.

Case of Respondent No. 16

Respondent No. 16 (Managing Director of the Developer Company) also filed an affidavit-in-opposition which runs as follows;

The respondent No. 16 is not personally liable for any act done in the capacity of Managing Director of the Concord Condominium Limited, a company registered under Companies Act, 1994. It is stated that the Sir Salimullah Muslim Orphanage (the Orphanage) which has not been made a party in this Writ Petition, is neither a statutory body nor it can be said to be a government authority against whom judicial review would be maintainable; that the petitioners purport to challenge the legality of the contract dated 22.07.2003 entered into between two private parties, the Orphanage and the Concord Condominium Limited to develop a private property belonging to the Orphanage which is not amenable to writ jurisdiction and as such the writ petition is not maintainable; that the subject matter of the writ petition involving a private contract entered into between two private parties the respondents No. 1-10 and 12 have no connection with the said private contract dated 22.07.2003. The petitioners made them parties just to invoke the writ jurisdiction with a malafide intention to bypass the civil jurisdiction as they knew that they have no factual as well as legal basis in support of their contentions; that the Orphanage being the perpetual leaseholder of the contractual property it requires no permission from any authority to sell or change the nature and character of the property, specially when the steps are taken to enhance the income of the orphanage smoothly; that the Executive Committee of the Orphanage being empowered under Part 'Tha' Clause 2 Ka of its Constitution took resolution to deploy respondent No. 16 as the developer for developing its property to enhance the funds of the Orphanage. Subsequently, the General Body of the Orphanage proposed to enhance the share of the Orphanage in the developed property which has been accepted by respondent No.16. The Orphanage offered for an amendment of the agreement dated 22.07.2003 vide letters dated 20.10.2011 and 22.09.2011, thereafter both parties entered into the amendment agreement on 27.10.2011; that respondent No. 16 has been carrying on the construction work for the last 10 (ten) years within this long 10 (ten) years nobody has ever raised any question as to the legality of the project or the contract dated 22.07.2003. The structural construction work has already been completed. The interior decoration work is in progress now. Being empowered vide the aforesaid development contracts and the power of attorney executed thereunder most of the spaces/shops/ flats of the developed property has already been transferred to third parties; that the contract dated 22.07.2003 is not in any way an illegal or void/voidable, contract, the contract is legal and valid; that the petitioners have no *locus standi* to file this writ petition; since by now long time has been elapsed after entering into the contract

dated 22.07.2003 the respondent No.16 and other third party transferees have acquired legal and vested rights over the contractual property; that part 'Tha' of Clause 2 Ka of its Constitution is as follows:

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২(ক) অত্র গঠনতন্ত্রের নিয়মাবলি অনুসারে তহবিল উন্নয়নের স্বার্থে বিভিন্ন প্রকল্প হাতে নেওয়া যাইবে।

Thus the petitioners have failed to make out a prima facie case in their favour and thus the Rule is liable to be discharged. Furthermore, the petitioners have sought for protection of private property against the private individuals, which is not a remedy to be sought for or allowed in writ jurisdiction. The instant writ petition has been inappropriately filed as a public interest litigation. The invocation of Article 31 of the Constitution is also not appropriate; that the petitioners concealed the fact that the lease has been upgraded to a perpetual lease, which has been confirmed by the relevant authorities, including, the Deputy Commissioner, Dhaka, Ministry of Land, RAJUK and Ministry of Social Welfare; the Orphanage has every right to use the land in the capacity of an owner; that Social Welfare Department, or Social Service Department, has no authority to control private property belonging to the Orphanage; the Orphanage is managed and administered according to its own Constitution through its Executive Committee, who has lawfully entered into the contract dated 22.07.2003 for development of its unused private property. As such, the Rule is liable to be discharged.

Affidavit-in-reply by the petitioners

The petitioners filed affidavit-in-reply to the supplementary affidavit of Respondent No.16 wherein they stated that Sir Salimuallah Muslim Orphanage is registered under The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 which is under the control and supervision of the Ministry of Social Welfare and Social Welfare Department. Again as the land has been leased out to the Orphanage by the Government, the owner of the land of said Orphanage is still the Government. The respondents No. 1, 2, 7 and 8 being the Government functionaries, admitted the said fact in their statements made in their respective affidavits-in-opposition. It is stated that nevertheless, respondent No. 16, with a view to mislead the Hon'ble Court, stated that the Orphanage is a private organization and the disputed contract dated 22.07.2003 was entered between two private parties and the Government has no concern with the same. It is stated that the statements made in paragraph No.4 (e) of the supplementary affidavit

by respondent No. 16 are not true. The petitioners repeatedly claimed that the land of the said Orphanage has been leased out by the government through the respondent No. 7 vide lease deed No. 1919 dated 27.07.1915, lease deed No. 1560 dated 29.10.1929, lease deed No. 1507 dated 14.05.1931, lease deed No.1590 dated 18.05.1934 and lease deed No. 2413 dated 07.09.1934. In all those five lease deeds there is clear condition that, 'if the land is used for other purpose than the specific purpose for which it is granted, the said land shall be liable to be resumed by the Government'. From the recitals of these lease deeds it can never be construed that the lease were perpetual lease, which is admitted by the respondent No. 7, (Deputy Commissioner, Dhaka) in his affidavit-in-opposition. Moreover, the said respondent No. 7 specifically asserted that even in the latest Mohanogor Jarip the entire property of the orphanage have been recorded in the name of the government as Khas land. The said respondent has also specifically denied the genuinely of Annexure-1 filed by respondent No. 16, saying that the same is fake and managed with a view to mislead the Hon'ble Court. Moreover, the Ministry of Land has canceled the perpetual/permanent lease system of any uncultivated khas land by its circular dated 07.06.2005. Regarding the statements made in paragraph No, 4(f) of the supplementary affidavit filed by respondent No. 16 it is stated that part "Tha" clause 2 ka of the Constitution of the Sir Salimullah Muslim Orphanage has not empowered the Executive Committee to sell any land of the Orphanage upon violating the terms and conditions of the lease deeds and as such the agreement dated 22.07.2003 and 27.10.2011, executed between respondent Nos. 15, 17 and 16 in respect of the land of the Orphanage is illegal. Moreover, the investigation committee constituted by the Social Welfare Department, of the Government of Bangladesh stated in their investigation reports dated 29.10.2007 and 10.04.2013 that the agreement between the Orphanage Executive Committee and Concord Limited is actually a sale deed as the developer would get a portion of the developed building which will obviously be said to third parties. As such the executive committee meet illegally made those agreements and transferred the land of Orphanage to respondent No. 16.

In respect of the statements made in paragraph No. 4(g) of the supplementary affidavit filed by Respondent No.16 the petitioners stated that these are also not true. The petitioners were regular students and inhabitants of Sir Salimullah Muslim Orphanage and they were minors at that time. But after the illegal agreement was executed on 22.07.2003 Mr. Nasir Uddin Ahmed Pintu (Ex. Local MP) resisted the illegal development work of respondent No. 16 for long days. Thereafter when serial news were published in various newspapers about the illegal transfer of the land of Sir Salimullah Muslim

Orphanage by the then Executive Committee, a meeting was held on 01.11.2007 in the Ministry of Social Welfare with a view to investigate the allegation and according to that meeting a high level investigation committee was constituted comprising of three members under Section 9 of The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and after conclusion of the investigation the investigation committee submitted a report holding that the allegations are correct and accordingly made some recommendations. Thereafter, again a further investigation was held by the government and on 10.04.2013 the second Investigation Committee of the Ministry of Social Welfare submitted an investigation report with seven recommendations. The petitioners further stated that actually the Respondent No. 16 started their construction work in 2009 with the help of the local Member of Parliament (M.P). So, the statement of respondent No. 16 that construction work has been completed and within this long 10 (ten) years, nobody has ever raised any question as to the legality of the project is totally false.

On the other hand the facts of Writ Petition No. 6974 of 2013 are as follows:

In addition to the similar facts and circumstances as stated in writ petition No. 1940 of 2013 the petitioner of this writ petition stated that for the purpose of establishment and running of Sir Salimullah Muslim Orphanage, the then Government of India granted five lease deeds wherein the orphanage is being set up and run uninterruptedly. Recently when the Executive committee entered into such agreement with respondent No. 16 the students of the Orphanage submitted several applications to the respondents to take steps against the illegality and requested to protect the property of the Orphanage. On the basis of the application dated 21.11.2012 the Director, Social Welfare Department, of the government of Bangladesh formed an inquiry committee. The date of the inquiry was fixed on 28.11.2012. Similarly the Ministry of Social Welfare also formed an investigation Committee on 13.12.2012 to investigate about the property and management of the Orphanage. Thereafter, on 03.01.2013 the committee issued a letter to the Superintendent of the Orphanage and requested him to be present on 09.01.2013.

Thereafter, on 10th April, 2013 the said Investigation Committee comprising of (i) Deputy Director (Current Charge), District Welfare Office, (II) Deputy Director Institution-2, Department of Social Welfare and (III) Deputy Director (Institution) Ministry of Social Welfare submitted the Investigation report.

The said investigation report pointed out the following problems;

- (a) “20 to 25 over aged boys are living in the Orphanage area and these over aged students are involved in unsocial and immoral activities.
- (b) As per S.A Survey it was recorded that the Orphanage owns Plot No. 48 Azimpur Road, Mouja Lalbagh, Khatian No. 15, Dag Nos. 9, 10, 15, 146, 147 and 148 measuring up to 8.14 acres. But during the Metropolitan Survey no record has been made in the name of the Orphanage, rather all the properties of the Orphanage are shown under the name of D. C, Dhaka (Khatian No.1, land measuring 3.416 acres) and under the C & B Bangladesh Government in Khatian No. 1, Dag No. 431 measuring up to 2.5640 acres.
- (c) The agreement entered into between the Governing Body of the Orphanage and Concord Limited is against the interest of the Orphanage.

That the said investigation report also made certain recommendations for the purpose of protecting the land of the Orphanage which are as follows;

- (a) To recover the landed properties of the Orphanage file civil cases to rectify the records.
- (b) To evict the over aged students who are living in the Orphanage.
- (c) To take steps to recover the properties which have been done away by the Governing Body illegally.
- (d) To cancel the agreement with Concord Limited and recover its lost properties.
- (e) As a long term development plan transform the Orphanage into children village.
- (f) As the Governing Body has failed to carry out its duty properly, to suspend the current Governing Body and appoint an Administrator.
- (g) To appoint an experienced lawyer to conduct the Writ Petition No. 1940 of 2013 pending before the Hon’ble High Court Division of the Supreme Court of Bangladesh.

In the meantime, several news items were published in the Daily Newspapers on different dates under different headlines in respect of the illegalities encircling the orphanage. The petitioner read the news items of the newspapers and felt very much aggrieved about the inaction of the Respondents to protect the lease hold property of the orphanage illegally transferred upon violating the provisions of lease

deeds and the law. It was reported in the newspaper that some of the influential persons are behind the scene.

After about two months have elapsed no step when it was found that no step has been taken by the respondents to protect the properties of the orphanage the petitioner, on 03.06.2013, wrote a letter to the respondent No.1 and requested to take steps according to the investigation report. But no step having been taken the petitioners filed this writ petition and obtained Rule for direction for implementation of the aforesaid recommendation.

Case of the Respondents No. 1,2, and 4

Respondents No. 1, 2 and 4 Secretary, Ministry of Social Welfare, Director General (DG) Department of Social Welfare, Director (Institution) Ministry of Social Welfare also contested the Rule by filing a joint supplementary affidavit-in-opposition wherein they supported the Memo dated 10.04.2013 of respondent No.1 (Annexure-4) and pursuant to the recommendation of the investigation committee the respondent No. 2, the Director General, Department of Social Welfare issued a show cause notice on 09.09.2013 upon respondent No. 8, Nawabzada Khawaja Zaki Ahsanullah, President, Executive Committee, Sir Salimullah Muslim Orphanage asking him to show cause, within seven days, as to why the Executive Committee would not be suspended under section 9(1) and 9(2) of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961. But on receipt of the said show cause notice, the respondent No.8 instead of replying to the same sent an application for time, on 22.09.2013 which was rejected. Thereafter the respondent No. 2, considering the investigation report and the recommendations dated 10.04.2013 (Annexure-4) temporarily suspended the Executive Committee of the Sir Salimullah Muslim Orphanage and appointed the Additional Deputy Commissioner (General) Dhaka, as the Administrator of the said orphanage vide order No. 41.01.0000.046.24.036.13-88 dated 19.02.2014. It further stated that the Additional Deputy Commissioner (General) Dhaka, Md. Jasim Uddin has already taken over the charge of the office of the Sir Salimullah Muslim Orphanage as an Administrator and issued three letters dated 03.03.2014, 13.03.2014 and 23.03.2014 to the Ex-President of the Executive Committee, Nawabzada Khawaja Zaki Ahsanullah for making an inventory of the assets and liabilities of the orphanage.

Case of the Respondent No. 7

The respondent No.7 namely, The Deputy Commissioner, Dhaka contested the Rule by filing an affidavit-in-opposition categorically

stating that more or less 17 acres of land was granted by lease in favour of purpose “Sir Salimullah Muslim Orphanage” with a condition not to use the said land other than the purpose for which it was leased out. Respondent No. 7 has come to know that some office bearers of the Sir Salimullah Muslim Orphanage by violating the terms and conditions of those lease deeds illegally handed over more or less 40 katas of land to the Concord Real Estate Company for construction of Multi-storied Commercial and Residential Building. It was further stated that the case land is the Government Khas land, the District Magistrate, Dhaka has got the right to investigate the matter for such transaction between the office bearers and the developer company accordingly appropriate steps are being taken in accordance with law.

Case of the Respondents No. 8 and 9

The respondents No. 8 and 9 namely Nawabzada Khawaja Zaki Ahsanuallah, the then President, and Md. Anisur Rahman, the then Secretary, of the Executive Committee of the Sir Salimullah Muslim Orphanage filed a joint affidavit-in-opposition denying all material allegations of the petitioner. But they did not appear at the time of hearing of the Rule.

It is stated that if all the recommendations made by the investigation committee are not implement by Respondent Nos. 1-7, the assets of the Orphanage can never be recovered and the rest assets of the reputed and the largest Orphanage will go in the hands of the members of the land grabbers in collaboration of the corrupt Executive Committee and as such the orphanage will be ruined as well as the government will loss the huge property.

In course of hearing of both the Rules Mr. A. Y. Moshuazzaman, and Mr. Aneck-R-Hoque, the learned Advocates appearing on behalf of the petitioners of both the Rules, respectively submits that Nawab Sir Salimuallah the then Nawab of Dhaka, in 1909, established “Islamiyah Orphanage” in his own home for the purpose of interest, betterment and education of the orphans. Until his death, in the 1915, he ran the said organization from his own funds. Thereafter, upon his death the organization was moved to a rented premise at Lalbagh, Dhaka. At that point the orphanage was run by a management committee. In 1918 the said orphanage was moved to its current place and until 1923 it was known as “Islamiyah Orphanage”. In May 1923, Nawab Habibullah Bahadur became President and Khan Bahadur Farid Uddin Siddique became Secretary and renamed the organization as “Sir Salimuallah Muslim Orphanage”.

So, Nawab Sir Salimuallah and subsequently, his successors had been patronizing the orphanage and due to Nawab Habibullah's effective role the then government of India leased out the huge land by five registered lease deeds from time to time for establishing the said organization in its current location only for the said purpose and interest of the orphans. The object and purpose of such lease are also categorically reflected in the body of those deeds along with some terms and condition incorporated therein. The learned advocates after drawing our attention to the contents of the said deeds submit that the lands under lease in favour of the Orphanage can not be used for other purpose and the same can not be transferred in any manner to anyone and any violation of these terms shall make the lease liable to be cancelled and the Government will resume the property. As such, the lease deeds itself prevented respondents No. 15 and 17 to transfer the case property to any person/authority to use the same for any other purpose other than the Orphanage. Therefore, the impugned agreement/contract dated 22.07.2003 and subsequent amendment dated 13.04.2004 of the said agreement allowing the developers to sell their portion of the building to 3rd parties as well as power of attorney executed by respondents No. 15 and 17 in respect of 40 Kathas of land in question in favour of the developer company (respondent No.16) are totally beyond their authority and jurisdiction and as such the same are illegal and void.

It is further submitted that at the time of executing the said illegal deeds to the respondent No.16 whereby the said respondent No. 16 was allowed to over 65% of the building and to set the same to the 3rd party buyers. The respondents No. 15 and 17, admittedly, received Tk. 30,00000/- which till today remains unaccounted for. On such illegal transfer of the property of the Orphanage a series of reports were extensively published in the media resulting formation of investigation committees by the government who submitted its initial report on 29.10.2007 opining that the allegations against respondents No. 15, 17 and 16 about the violation of the constitution of the orphanage, the terms and conditions of the lease as well as of the provisions of The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 and Regulations, 1962 framed thereunder are correct and thereby made contain recommendations including to dismiss the said committee of the orphanage. Subsequently, another inquiry committee was formed on 21.11.2012 comprised of respondents No. 4, 5 and 6 which submitted its report on 10.04.2013 specifically holding that the executive committee has transferred the property illegally by violating the terms of the lease deeds. On the basis of the aforesaid recommendations the executive committee, involved in such illegal activities has been suspended. Thus the impugned contract and the

power of attorney of the respondents are well proved to be illegal and void. As such those documents are nothing but paper transactions only, which are liable to be knocked down by this Hon'ble Court.

The learned Advocates upon drawing our attention to the provisions 167, 170, 174 and 175 of the Estates Manual, 1958 submitted that the Manual, which governs the manner of lease by the government clearly spelt out that all settlements of non-agricultural land must be in the form of lease which should be registered. The long term lease should ordinarily be for a period of 30 years, with rights of renewal upto 90 years. The short term lease shall not ordinarily be for longer period than 5 years. Short term leases are not transferable if any such transfer is made, the collector may settle the land with the transferee on such terms as he thinks fit or he may take action for ejectment. Then referring to the lease deeds submitted that under the aforesaid provisions the five lease deeds were made in favour of the Orphanage, which are clearly short terms leases with right of renewal and the land of short terms lease is not transferable. As such the transfer of land in question by respondents Nos. 15 and 17 are totally illegal. In this regards, it is further submitted that apart from the lease deeds being short term lease it is also clearly stated in the lease deeds that if the lease hold land is transferred or used for other than the specific purpose for which it is granted the said land shall be liable to be resumed by the Government. Therefore, the impugned deeds of contract as well as the power of attorney have no basis in the eye of law and as such those are liable to be declared as void. Moreover, in the case of M. H. Khandoker Vs. Bangladesh (Formally Province of East Pakistan and another) reported in 30 DLR 1 it has been held that "even a lease for 90 years is not a lease in perpetuity." So no lease hold property can be transferred or used in any other manner by the lease, other than for the purpose for which lease is granted.

The learned Advocates further submitted that the land in question were granted lease by the Government in favour of the Orphanage on year to year basis which is not a lease of more than 30 years. That is why in pursuance of said deeds the latest R.S. record of rights and city Zarip have correctly been prepared in the name of the Government and the orphanage is merely a peonior for and on behalf of the Government. Thus neither respondents No. 15 and 17 nor any private individual even the orphanage had acquired any authority to enter into any contract of sell of the land with the respondent 16. Thereby such acts of respondents No. 15, 17 and 16 are required to be declared without lawful authority and is of no legal effect by this Hon'ble Court.

The learned Advocates further submitted that the respondent No. 16 claimed that 'the land in question has been settled by respondent No. 7,

on behalf of the Government, as perpetual settlement to the Orphanage as evident from Annexure-1'. But such claim has categorically been denied by respondent No. 7, the Deputy Commissioner, Dhaka rather respondent No. 7 stating that the said document Annexure-1 of respondent No. 16 is concocted, fake and the same is the result of forgery on the part of respondents No. 15, 17 and 16 only to grab the property. Thus there is no existence of permanent settlement of the case land in favour of the Orphanage in any manner.

It is further submitted that the land in question is in khas Mohal Touzi. The R.S records also shows the same as khas land. In the recent City Jarip the said land is correctly recorded under the name of the Deputy Commissioner, Dhaka (Respondent No. 7) wherein it is shown that the orphanage possess the same as possessor of the respondent No. 7. So, respondent Nos. 13, 15 and 17 had no authority, under any circumstances, to enter into such agreement or to transfer the said land to respondent No. 16 by any deed or document.

The learned Advocates further submitted that after the illegal transfer of the said land some structure has been built which in the investigation report dated 10.04.2013 stated to have been illegally built covering an area of 47 Khatas. This action of the respondent No. 16 clearly proves the Developer Company's (respondent No.16) attitude of grabbing land. It is submitted that the respondent No. 16 claims that it has invested huge amount of money in constructing the building over last ten years as such if any contrary view is taken the alongwith the 3rd party buyers/ transferred should be compensated. But fact remains when the transfer is illegal any construction or investment on such illegally transferred property is also illegal. As no compensation can be granted for any illegal work. The legal maxim commodum 'Ex. Injury Sua Memo Habere Dabet bars' anyone to profit from illegality. Thus the building of respondent No.16 on the government khas land leased out infavour of the Orphanage is also liable to be confiscated in favour of the Orphanage.

In this regard, the learned Advocates for petitioners referred to the case of Rangs Bhavon, reported in 61 DLR (AD) 28 (Para-62, 63, 67 and 69); Ekushey TV, reported in 54 DLR (AD) 130 (Para-75); 54 DLR 537 and 8 MLR (AD) 65 (ETV Review) and in the case of BGMEA reported in 2 LNJ (HCD) the State Vs. The Government of Bangladesh and others.

The learned Advocates submitted that since the government's inquiry committee found clear illegality committed by the then Executive Committee in entering into such agreement with Respondent No. 16 and thereby recommended to take steps against such illegal acts

including confiscation of the illegal construction for the interest of the Orphanage and no positive step having been taken by the authority the petitioners filed these writ petitions to ensure execution of the said recommendations and thereby to protect the public property and ensure effective management of the Orphanage. Moreso when several reports were published in the media about the illegal transfer of the said land of the Orphanage but no effective steps was taken by the concerned authority though the duty and responsibility vested upon the respondents are to serve the people as well as to protect the public property and also to take lawful steps against such illegal acts of the respondents No. 15, 17 and 16 the petitioners, being conscious citizen and former students of the said institution, had no other choice let to file these two writ petition as public interest litigation, not only to protect the property of Sir Salimullah Muslim Orphanage, but also to save the institution from ruination and thereby protect the interest of the Orphans. Accordingly to them the definition of "Public Interest" has been expanded in many cases in our jurisdiction. Since the petitioners were Orphans their childhood in the said orphanage and their carrier have been started from the said institution and since one of the petitioners is a social workers who works for the interests of the common people, their hearts bled when they found that their beloved institution is being reined for such illegal acts of respondents No. 15, 17 and 16 which is directly against the interest of the Orphans. In such scenario the petitioners have come forward to represent the most backward section of the society who are not only children but also orphans who otherwise have had no chance to come before this Hon'ble Court. The petitioners have no personal interest nor they are busy bodies and as such the petitioners have *locus standi* to file the instant writ petition. Thus the instant writ petitions filed the petitioners are maintainable.

The learned Advocate lastly submits that since the deed in question made and executed by respondent Nos. 15 and 17, beyond their jurisdiction/ authority, as they had no legal right to enter into such contract or executed any power of attorney in respect of the lease hold land, therefore, no right, title or interest has passed or created in favour of respondent No. 16, rather, the same have been made/created purposefully with an intention to grab the property of the helpless Orphans.

As such those are liable to be declared void ab-initio and the question of principle of waiver, acquiescence and barred by estoppels dose not arise at all. Under the facts and circumstances, the learned Advocate for the petitioners pray that both the rules should be made absolute and pass necessary directions and orders by this Hon'ble Court.

In support of their submissions the learned Advocats referred the decisions of;

(I) Metro Makers & Developers Ltd. Vs. Bangladesh Environmental Lawyer' Association Ltd (BELA) and others, (Commonly known as Modhumoti Model Town case) reported in 65 DLR (AD) 181, para 63;

(II) Ekushey Television Ltd. and another Vs. Dr. Chowdhury Mahmood Hasan and others reported in 55 DLR (AD)26 in para 34;

(III) Begum Khaleda Zia Vs. Government of Bangladesh and others, reported in 63 DLR 385;

(IV) The State Vs. The Government of Bangladesh and others reported in 2 LNJ, 513;

Mr. Manzil Murshid, the learned Advocate appearing on behalf of Co-petitioner No.5 submits that the petitioner No.5 being the Secretary of The Human Rights and Peace for Bangladesh (shortly mentioned as HRPB) is working to protect the Human Rights of common/under privileged people as well as for strengthening the cause of public interest and succeeded in a very good number of cases, for last several years, as stated in his application for addition of party, and obtained directions (i) not to collect VAT from the patients (ii) direction to constitute civil vacation court during civil court's vacation in the month of every December III) direction not to set up any cattle haat on the streets within Dhaka City during Eid-ul-Azha and removing all slaughtering and waste materials within 24 hours in a hygienic manner and succeeded in many other public interest litigations. He submits that the petitioner No. 5 is a public spirited person as such he is also an interested rather an aggrieved person for the common case of the Orphans of the Orphanage and as such the petitioner No. 5 has no personal interest in this case. He submits that the petitioner No. 5 falls within the criterion of a person capable of filing public interest litigations, as has been set up by the Hon'ble Appellate Division of the Hon'ble Supreme Court of Bangladesh in the case of National Board of Revenue Vs. Abu Saeed Khan and others, reported in 18 BLC (AD) 116. He submits that by the illegal contracts and other acts of respondents No. 15, 17 and 16 in respect of the property in question, of the Sir Sulimullah Muslim Orphanage the property of the Government, which has been leased out to the said Orphanage has been gone with causing irreparable loss and damage to the Orphanage as well as to the orphans, who has none to look after their interest. In such circumstances the heart of petitioner No. 5 bleeds for those illegal acts of those respondents. But fact remains the minor Orphans are not

capable to come before this Court to protect their property. Therefore, the petitioner No. 5 has the *locus standi* to file the instant writ petition with an intention to protect the interests of the Orphans and support the case of the other petitioners. He submits that the submissions made by the learned Advocates for other petitioners are also his submissions. In addition to the same he submits that since the land in question is still the Government khas land possessed by the Orphanage as a lessee the Executive Committee of the Orphanage has no legal right to enter into any agreement by which the property is ultimately parted with if not wholly but part by which is beyond the scope of law as well as violative of the terms of the lease. These facts are supported by the R.S. record and the City Jarip published finally in the name of the Government. Thus all the acts including execution of the contract as well as the power of attorney executed respondents No. 15, 17 in favour of respondent No. 16 are nothing but a paper transaction only and as such the same are void and illegal. Therefore, the said deed and documents being the void ab-initio the construction of building on the said land for the benefit of respondent No.16 are totally illegal. The respondent No.16 being land grabber the illegal construction is liable to be confiscated and handed over in favour of the Orphanage for the benefit of the orphans. For that purpose necessary orders are also required to be passed for the interest of justice.

In support of his submissions the learned advocate relied on the cases of:

- (V) **National Board of Revenue Vs. Abu Saeed Khan and others**, reported in **18 BLC (AD) 116**;
- (VI) **Ekushey TV**, reported in **54 DLR (AD) 130 (Para-75)**;
- (VII) **Dr. Mohiuddin Farooque Vs. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others**, reported in **49 DLR (AD) 1**;
- (VIII) **Bandhua Mukti Morcha Vs. Union of India** reported in **AIR 1984 SC 802, para 12**;
- (IX) **Guruvayur Devaswom Managing Committee and another Vs. C. K. Rajan and others**, reported **AIR 2004 (SC) 561**;
- (X) **Ishwar Singh Vs. State of Haryana and others** reported in **AIR 1996 Punjab and Harayana 30** and may other cases.

Mr. Mahbubay Alam, the learned Attorney General appears on behalf of respondent No. 7 the Deputy Commissioner, Dhaka and submits that the land in question is all along a khas land which was leased out by the then Government through 5 registered deeds with the condition therein not to sell or transfer the property by the lessee or by their agent in any

manner for any purpose other than as mentioned in the deeds. Therefore, the said land is still under the name of the government and the Orphanage is the lessee of the government. Accordingly the same has been correctly recorded in all the records including R. S and the City Zarip in the name of respondent No. 7 as khas land. He further submits that since neither the Sir Salimullah Muslim Orphanage nor the office bearers of the said Orphanage had any right and title over the land in question the execution of power of attorney as well as deed of contract in respect of the said land in favour of respondent No. 16 are all illegal and as such void. As such all the transactions, deeds, power of attorney are as void ab-initio. He after drawing our attention to Memo dated 05.01.2004 (Anexure-1) allegedly issued in the name of the Additional Deputy Commissioner (Revenue), Dhaka relying upon which the respondent No. 16 claims that the land in question has been permanently settled with the said orphanage as such there was no requirement of taking permission to enter into such contract, submits that the said plea of respondents No. 15, 17 and 16 was totally false, fabricated and there is no basis of such claim of the said respondents. Upon referring to a letter dated 30.08.2015 issued by the office of the Attorney General to the Respondent No. 7 and reply thereto by the office of the respondent No. 7 vide memo dated 30.08.15 he submits that the document Annexure-I of respondent No. 16 is a forged one, which was never issued neither by the office of respondent No. 7 nor by the Additional Deputy Commissioner, Dhaka. As such the learned Attorney General submits that respondent No. 16 along with respondents No. 15 and 17 are also liable to be prosecuted for such criminal acts of forgery.

The learned Attorney General further submits that respondent Nos. 15, 17 and 16 fraudulently created the void and illegal instruments and in pursuance of such void documents the respondent No. 16 constructed a multi-storied commercial cum-residential building with malafide intention to grab the property of the Government which was settled for the purpose of Orphanage through five registered lease deeds for year to year. Therefore, it was the fault of respondent No. 16 as well as respondents No.15 and 17, who are party in their illegal acts. As such, the illegal construction on the land of the government is also liable to be confiscated and the same may be handed over in favour of the said Orphanage for ends of justice.

He lastly submits that under the facts and circumstances since the contract and the power of attorney of respondent No.16 executed by the office bearers of the Orphanage are void ab-initio, therefore of the petitioners claim are very much legal and genuine. And as such they are

entitled to get the proper relief or relieves from this Hon'ble Court for the interest of justice.

Mr. Al-Amin Sarker, the learned Deputy Attorney General along with Mr. K. M. Masud Romy, Mr. Jakir Hossain Ripon and Ms. Rabya Khatun appeared on behalf of respondents No. 1, 2, and 8 who adopted the submissions of the learned Attorney General.

On the other hand Mr. S. M. Moonir, the learned Advocate appearing on behalf of respondents No. 15 and 17 in writ petition No. 1940 of 2013 (The President and Secretary, respectively, of the Executive Committee of the Sir Salimullah Orphanages) submits that the writ petitioners are not at all aggrieved parties as they are neither in the Orphanage nor they are interested persons in connection with the said Orphanage as such they have no locus standi to file the writ petitions. He further submits that the said Orphanage is guided by its own constitution and in pursuance of said constitution the Managing/Executive Committee is authorized to run and manage the Orphanage and look after its property on behalf of the Orphanage. The committee has the right to take any decision in pursuance to the General Meeting of the said Organization to enter into any contract to transfer its land. Accordingly, a resolution was taken for entering into the contract with respondent No. 16 for the betterment of the orphanage and to increase the income of the Orphanage. Therefore, the impugned contract as well as all other deeds are valid contract and deeds, and pursuant to the said contract the respondent No. 16 has already constructed a multistoried building over the said land. Therefore, the said contract and deeds have duly been acted upon. In such view of the matter the rule has become infructuous and thus liable to be discharged.

He also submits that the media has published the news items at the instance of the petitioners which neither has any basis nor can be the cause of action to file the instant writ petitions. As such there is no cause of action to file the instant writ petitions. Therefore, the rules are liable to be discharged.

Mr. Fida M. Kamal, alongwith Mr. M. A. Hannan, learned Advocates appeared on behalf of Respondent No.16, submits that admittedly the writ petitioners of writ petition No. 1940 of 2013, are neither minors nor studying in the orphanage they are studying in different colleges as such they are not aggrieved persons. Similarly the petitioner of writ petition No. 6974 of 2013 is not a public spirited person rather he is a busy body as such he is also not an aggrieved person within the definition of Article 102 of the constitution. All the petitioners just to ventilate their own personal grievances filed this writ petition stating the case as Public Interest Litigation (PIL). But facts remain that the

petitioners are in no way connected with the affairs of Sir Salimullah Muslim Orphanage and the petitioners do not fall within the criteria of being aggrieved person to file public interest litigation. As such they have no locus standi to file the writ petition. Hence, the Rule are liable to be discharged.

He further submits that the added petitioner No. 5 namely Human Rights and Peace for Bangladesh, shortly, HRPB, represented by its Secretary on wrongful apprehension added itself a party instead of filing any new writ petition. Rather relying upon the existing petition HRPB, being an Organization under NGO Bureau claiming to be working for the protection of Human Rights in pleaded itself as a co petitioner having no sufficient interest on the subject matter of the instant writ petition and hence it can not be treated as a person aggrieved. Therefore, the petitioners of the writ petition can not be treated as aggrieved persons and as such the present writ petitions are not maintainable. In support of his submission the learned Advocate for respondent No. 16 referred to the case of Syeda Rizwana Hasan Vs. Bangladesh and others reported in 18 BLC (AD) 54 relevant para14;

National Board of Revenue Vs. Abu Saeed Khan and others reported and others reported in 18 BLC (AD) 116.

He further submits that there are disputed questions of fact in the writ petition and cancellation of deeds of agreement with respondent No. 16 has been sought which can not be remedied in writ jurisdiction. The remedy lies under section 92 of the Code of Civil Procedure and as such the writ petitions in the present form are not maintainable.

He further submits that the property of the Orphanage has been vested the executive committee of the orphanage, under clause 2(Fa) of Article "Cha" of its Constitution. Accordingly, respondents No. 15 and 17 being the President and Secretary of the said organization validly/legally entered into the contract and executed the power of attorney for the land in question in favour of respondent No. 16. Thereafter, the shares or the orphanage and the signing money have been increased, at the unanimous decision of the general committee of the orphanage on 11.06.2011 pursuant to which supplementary deed of agreement was made on 27.10.2011 thereby ultimately rectifying the earlier position. Since all these acts have been done in accordance with law and as such the instant Rules are is liable to be discharged.

He further submits that it is not true that the contents of the lease deeds do not permit to use the property for any other purpose than for the purpose of the Orphanage. He after referring the clause 6 of the lease deed (Annexure-A2) submits that the Collector of Dhaka retains right

to revise the quantum of the rent as the land was permanently leased out to the said Orphanage. Referring to Annexures-1 and 5 of his affidavit-in-opposition he submits that Annexure-1 was issued by respondent No. 7 admitting that the Orphanage has every right to use the land for residential or commercial purpose without obtaining any permission from respondent No. 7. As such there is no illegality in transferring the property wherein the respondent No. 16 being the developer, upon investing huge amount of money constructed the multistoried building and sold out the apartments and shops to more than two hundred bonafide purchasers on the basis of the assurance and clearance given by respondent No. 7, the lessor, to the effect that no permission is required for construction of multistoried building on the perpetual lease hold land. Under such circumstances now the respondent No. 7 can not change it's position rather the respondent No.7 is stopped by the principle of promissory estoppel. In support of his submission he relied upon an unreported decision in the case of International Oil Mills Limited Vs. Amin Agencies (1947) and other (Writ Petition No. 4310 of 2001).

He further submits that the contract was signed on 22.07.2003 between the Orphanage and Respondent No.16 which is a private contract between private parties which in no way could be termed as sovereign contract. Hence, the writ jurisdiction can not be invoked in the facts and circumstances of the case and as such the present writ petition is not maintainable. In support of his submissions he relied on the case of

- (I) Superintendent Engineer, RHD, Sylhet & others Vs. Md. Eunos and Brothers (Pvt.) Ltd. and another, reported in 16 BLC (AD) 73 (Para-69),
- (II) 16 BLC (AD) 73 (Para 1, 4, 45, 46, 52, 59 and 62)
- (III) Bangladesh Power Development Board and others Vs. Md. Asaduzzaman Sikder, reported in 9 BLC (AD) 1 (Para 1, 11, 12 and 13).

The learned Advocate lastly submits that before issuance of the Rule, the Developer Company has already sold out 107 apartments and 134 shops/commercial spaces to the prospective purchasers and the same are ready for handing over to the respective buyers. The developer company is under strict obligation under section 9(1) of the Real Estate Development & Management Act 2010, to handover the possession, and if the Developer fails to handover the apartment/spaces to the purchasers within the time specified in the contract then respondent No. 16 shall be liable under section 27 of the aforesaid Act of 2010. Thus the Rule is liable to be discharged with costs on the ground of maintainability and for not having locus standi of the petitioners and

also on other grounds as to the merit of the case. The ad-interim order is also liable to be vacated.

Heard the learned Advocates of the contending parties and the learned Attorney General, examined and perused the writ petitions, affidavit-in-oppositions of the respective respondents along with all the Annexures as appended thereto by the parties, relevant law, decisions as cited by the parties along with other materials-on-records.

Deliveration of the Court.

In the back drop of both the cases and the submissions of the learned Advocates of the parties first of all it is required to decide whether the petitioners have locus standi to file the instant writ petitions as Public Interest Litigation (PIL.)

It appears that petitioners No. 1-4 of Writ Petition No. 1940 of 2013 admittedly were former resident students of Sir Salimullah Muslim Orphanage wherein they spent their childhood and were involved with the interest of Orphans. According to the definition given in the constitution of the Sir Salimullah Muslim Orphanage, a child who has no father or mother or both poor and helpless in an orphan. Such Child/Children would get shelter, food and education in the said orphanage. The petitioners being students of the said orphanage know about the miseries of the orphans. Although they have passed out from the said orphanage, but they became concern about the orphans as well as the orphanage when they came to know, from the daily newspapers, about grabbing of the land of the said Orphanage by way of illegal contract and power of attorney wherein the management of the orphans is a party. The helpless orphans of the said orphanage have neither any means nor the capacity to vindicate their grievances and protect their interest or of the orphanage. Thus the petitioners could not sit idle rather then to take necessary steps to protect the interest of the fellow orphans and the orphanage. Their heart bled for the common cause of fellow orphans. Thus they made representations to the Government to protect the said land and the Orphanage but in vain. Thereafter, the petitioners issued notice demanding justice upon the authority including respondent No. 16 and others to stop their illegal acts and to vacate their illegal possession over the land in question. Having failed to protect and recover the property the petitioners filed Writ Petition No.1940 of 2013 before this Court. Subsequently, petitioner No. 5 got itself added as co-petitioner on the ground that the said organization is all along working and trying to protect the Rights of every citizen as well as right to property of disable person and neglected children of the society and for establishing the rule of law. It is admitted that the

petitioner No. 5 is not a busy body and the petitioner No. 5 is successfully working to protect the Rights of the common people through public interest litigation for last several years and got fruitful results. The said fact of petitioner No. 5 has not been denied by respondents.

On the other hand it appears that the petitioner of Writ Petition No. 6974 of 2013 is a life member of the said Orphanage and as such he came forward to protect the unlawful transfer of the Government property which has been leased out to the Orphanage. It further appears that a high powered investigation committee submitted a report highlighting the unlawful acts of respondents No.15, 17 and 16 and the execution of the illegal deeds and the said committee recommended some proposals which are required to be implemented with for the protecting the orphans and purpose of the Orphanage.

However, in the present case it is the orphans and the orphanage whose rights and the lease hold properties are to be protected. When the management of the orphanage is a party to some illegal acts there remains none to protect the same. As such the petitioners, being former students of the said orphanage and the local social worker as well as a life member of the said orphanage and an organization, who comes forward to protect the rights and property of less fortunate people like the children have locus standi to file such writ petition to protect the interests/rights/properties of the orphans as well as the orphanage. This view finds support in the case of Dr. Mohiuddin Faruque Vs. Bangladesh (49 DLR (AD page-1)). In the case of National Board of Revenue Vs. Abus Sayed Khan and others reported in **18 BLC (AD) 116**, the Appellate Division gave 14 point guideline as to who can file a public interest litigation case. Therein it has been spelt out in paragraph No. 13 and 14 that:

“13. A petition will be entertained if it is moved to protect basic human rights of the disadvantaged citizens who are unable to reach the Court due to illiteracy or monetary helplessness.

14. Apart from the above, some other categories of cases will also be entertained; which includes protection of the neglected children.”

In the case of Ekushey TV Reported in 54 DLR (AD) 130 (Para-75)

“The respondent also argue that the petitioners were indolent and approached the court for redress of their grievance, after a long lapse of time and therefore, the petition should

have been rejected. The rule in respect of the court's power to inquire into delayed and old claim is not a rule of law, but a practice and depends much on proper exercise of discretion. Each case must depend on its fact such as how the breach of fundamental right occurred, the nature of the injury and lastly how the delay is caused. The test in such case is not physical running of time but whether a parallel right has accrued and whether the lapse of time can be attributable to laches and negligence."

4. In the case of **Dr. Mohiuddin Farooque Vs. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others**, reported in 49 DLR (AD) 1, wherein their lordship's held that;

"The inescapable conclusion, therefore, is that the expression "person aggrieved" means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow being for a wrong done by the Government or a local authority in not fulfilling its constitutional or statutory obligations. It does not, however, extend to a person who is an interloper and interferes with things which do not concern him. This approach is in keeping with the constitutional principles that are being evolved in the recent times in different countries."

5. In the case of **Bandhua Mukti Morcha Vs. Union of India** reported in AIR 1984 SC 802, para 12, wherein their lordship's held that;

"the Supreme Court may be moved by any 'appropriate' proceeding 'appropriate' not in terms of any particular form but 'appropriate' with reference to the purpose of the proceeding. That is the reason why it was held by this court in the judges Appointment and Transfer case (Supra) that where a member of the public acting bonafide moves the court for enforcement of a fundamental right on behalf of a person or class of persons who on account of property or disability or socially or economically disadvantaged position cannot approach the court for relief, such even by just writing a letter, because it would not be right or fair to expect a person acting pro bono public to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case a letter addressed by him

can legitimately be regarded as an “appropriate” proceeding.”

6. In the case of **Guruvayur Devaswom Managing Committee and another Vs. C. K. Rajan and others**, reported AIR 2004 (SC) 561, wherein their lordship’s held that;

“(B) Constitution of India, Arts. 226, 32-Public interest litigation-Principles of-Summarized.

The principles evolved by the Supreme Court in regard to public interest litigation may be suitably summarized as under:

(I) The court in exercise of power under Art. 32 and Art. 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court. The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises.

(II) Issues of public importance, enforcement of fundamental rights of large number of public vis-à-vis the constitutional duties and functions of the State, if raised, the Court treat a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings.

(III) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in, Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

(IV) The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, deproaved, illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right.

(V) When the Court is prima facie satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Govt. from raising the question as to the maintainability of the petition.

(VI) Although procedural laws apply on PIL case but the question as to whether the principles of res-judicata or principles analogous thereto would apply depend on the

nature of the petition as also facts and circumstances of the case.

(VII) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest litigation.

(VIII) However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for redressed of the personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice.

(IX) The Court in special situations may appoint commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of public institution taken over by such Committee. The Court will not ordinarily transgress into a policy. It shall also take utmost care not to transgress its jurisdiction while purporting to protect the rights of the people from being violated.

(X) The Court would ordinarily not step out of the known area of judicial review. The High Courts although may pass an order for doing complete justice to the parties, it does not have a power akin to Art. 142 of the Constitution of India.

(XI) Ordinarily the High Court Should not entertain a writ petition by way of public interest Litigation questioning constitutionality or validity of a statute or a Statutory Rule.”

On the other hand we have carefully gone through the decisions relied upon by the learned Advocate for respondent No. 16

1. In the case of **Syeda Rizwana Hasan Vs. Bangladesh and others**, reported in **18 BLC (AD) 54**,
2. **National Board of Revenue Vs. Abu Saeed Khan and others**, reported in **18 BLC (AD) 116**,
3. In the case of **R. Prasad Sinha Vs. K. B. N. Singh and others**, reported in **1981 (Supp) Supreme Court Cases 87**,
4. In the case of **Janata Dal Vs. H. S. Chowdhary**, reported in **(1992) 4 SCC, 306 relevant Para 109**.

But none of the said decision squarely apply in the present cases as the principle set down therein do not debar the petitioners to file these cases.

Considering the facts and circumstances and discussion made above and in the light of the decision as referred by the learned Advocate for the petitioners and also in the light of the guideline given in the latest decision in 18 BLC (AD) 116 we find that this is an appropriate case which squarely falls within the principle of persons aggrieved who can file Public Interest Litigation. Moreover, from the allegations made by the petitioners against respondents No. 15, 17 and 16 it appears that the said respondents with malafide intention entered into such agreements which are illegal and void ab-initio. As the acts of the said respondents a good numbers Orphans of the said Orphanage have been affected. In such view of the matter and in the light of the above decisions as referred above we are of the view that the petitioners have locus standi to file these two writ petitions before this Hon'ble court as Public Interest Litigation (PIL).

Now let us see the merit of both the Rules.

It appears from the contention of the writ petitioners that the transfer made by the deeds Annexures-C, C1 and C2 is illegal as well as *void ab-initio* and without lawful authority and also for declarations of all acts of the respondents to be illegal and liable to be set aside and also for necessary direction for maintaining and protecting the properties of the orphanage along other relieves. To substantiate the said contention of the petitioners we would like to peruse the relevant documents as appended by the parties, the relevant laws and other materials-on-records. From the Chronology of fact stated earlier we have seen how the said orphanage was set up in 1909 and how it has been established at its present location with the name Sir Salimullah Muslim Orphanage after the name of the founder in 1923. In the meantime several acres of land were leased out in its favour by then government of India. Thereafter, for the purpose of running administration of the said organization a constitution was framed wherein from Article 3 it appears that the aims, object and intention to establish the same is for the betterment and welfare of the helpless poor, fatherless and/or motherless children who are the Orphans. So, the said organization has been created by its founder for the purpose of the welfare of the orphans and not for any other purpose.

We have gone through the five registered lease deeds dated 27.05.1915, 29.10.1929, 14.05.1931, 18.05.1934 (Annexures-H, A, A1, A2 and A3 respectively to Writ Petition No. 1940 of 2013) executed by the then government of India in favour of the Orphanage. On perusal of the said deeds it appears that the land in question along with other lands have been leased out with a nominal rent of Tk. 1 per year along with some terms and conditions. From lease deed No. 1919 dated 27.05.2015 (Annexure-H) it appears that 3 Bigha, 12 Kata and 25 Dhul of land

have been leased out in favour of the Orphanage, wherein it is contended:

“WHEREAS the above named Mahomedan Orphanage Society which is incorporated under Act XXI of 1860, has been an useful institution and is doing good work in the city of Dacca and as such deserves the support of Government, and whereas the Government of Bengal by its letter No. 11062 dated the 25th November, 1914, sanctioned the grant of Government Khas Mahal land mentioned in the lease executed on the 27th day of July, 1915 at a nominal rent of Rs.1/- a year, and whereas the Committee of the said Orphanage has again applied to Government for obtaining a lease of another Plot of land contiguous to the plot previously granted to enable them to construct a building as an extension to the existing orphanage, and whereas Government has by its letter No. 2713 Misc. dated the 7th November, 1927. Conveyed its sanction to the grant of a lease of land described in the schedule hereunto annexed to the above named orphanage Society on a nominal rent of Rs. 1/- a year and on conditions as set forth below. NOW THES INDENTURE WITNESSETH- That in consideration of the object and reasons herein before mentioned and in consideration of the rent, covenants and conditions herein after contained, and on the part of the leasees and their successors in office for the time being, to be paid, observed and performed, the lessor doth hereby grant and demise to the lessees and their successors in office for the time being all that parcel or piece of Government land situated in the city of Dacca in Mahalla Ghorasail and appertaining to Khas Mahal Amalpara bearing Touzi No. 15215 of the Dacca Collectorate particularly described in the schedule hereunto annexed. To hold the same unto the said lessor or his successor in the office from the date of these presents, yielding and paying therefore during the time of the said lease, the yearly nominal rent of one Rupee to be paid on the 31st of January next and of a very successive year and that the said lessees do for themselves and their successors in office, covenant with the lessor and his successor in office and that it is hereby agreed between the parties to these presents that the land hereby demised and granted shall be liable to be resumed by Government if it is used for other than the specific purpose for which it is granted and that the said land shall revert to Government if this Society hereafter ceases to

exist; that should it be at any time resumed by Government.”

(underlined for emphasis)

It appears from the lease deed No. 1960 dated 29.10.1929 which is in respect of 3 Bigha 9 Katas of land for setting up Orphanage for female orphans, executed by the then Government in favour of the Orphanage (Annexure-A), that similar terms and conditions have been set down in the said deed upon the executive/managing committee of the Orphanage which have been stipulated in the earlier deed in respect of use of lease hold land.

Similarly the lease deeds dated 14.05.1931 (Annexure-A1); 18.05.1934 (Annexure-A2); and 07.03.1938 (Annexure-A3) covering in total 22 bighas of land, have been leased out in favour of the Orphanage by the respondent No. 7 with the same terms and conditions in each of the said lease deeds.

It is admitted by the parties that the Government granted lease in favour of the Orphanage through five registered lease deeds with the terms and conditions that the land in question is year to year lease by fixing a nominal Tk.1/- (One) only as rent and the said land shall not be transferred or used for any other purpose i. e. the executant imposed restriction upon the executive committee of the Orphanage to transfer the said property to any other purpose or to use the same in any other manner other than for the Orphanage. There is specific mention about the consequence, that is to say, if any piece of land is sold/transferred/used by the said committee beyond the scope of the lease deeds, the said land shall be resumed in favour of the Government respondent No. 7. The lease deeds executed and registered from 1915 to 1934, as mentioned above, are more than 30 years old and the contents and the terms and conditions incorporated therein are not denied by respondents No. 15, 17 and 16 at any point of time. Rather, they have admitted those documents and for the purpose of fulfilling the object and intention of the lessor the then members of the executive committee of the Orphanage have entered into a joint agreement that the land which were settled in favour of the Orphanage shall be used for the purpose of the Orphanage only and the same shall not be used for any other purpose and if anybody, including the committee members transfers any portion of the said land then it shall be resumed in favour of the Government. Thus the respondents No. 15 and 17, being members of the executive committee has/had any power to transfer any of the portions of the lease hold property neither to respondent No. 16 nor even to any other person for any other purpose

in any manner. Rather, they have been prevented by the Government itself not to transfer any part of the lease hold property for any other purpose and specific consequence has been mentioned in the said admitted old documents, which are binding upon the parties of the deeds including the executive committee of the Orphanage.

It further appears that after receiving total quantum of 22 bighas and 12 kathas of lease hold land from the then government the management/executive committee of Sir Salimullah Muslim Orphanage framed a Constitution of its own on 13.12.1937 wherein in Article 3 it has incorporated the intention and object of the Orphanage and in 3.1(Ka) it has defined Orphans who are eligible to be admitted in the said Orphanage. The said provision are as under:

“তনং ধারাঃ-

(ক) ১৯৬১ সালের নিবন্ধন ও নিয়ন্ত্রণ অধ্যাদেশের অধীনে অত্র প্রতিষ্ঠান একটি সামাজিক ও মানবিক শিশু সদন হিসাবে গন্য।

(খ) সমাজের অসহায় এতিম শিশুদের সুন্দর জীবন গঠন এবং জীবিকা নির্বাহের সঠিক পথ নির্দেশ করা তথা সাবলম্বি হিসাবে গড়িয়া তোলাই অত্র প্রতিষ্ঠানের আদর্শ ও উদ্দেশ্য।”

“৩ (১) (ক) তাহারাই এতিম যাহাদের পিতা কিংবা পিতা-মাতা উভয়েই মৃত্যুবরণ করিয়াছেন। অথচ তাহাদের স্বাভাবিক জীবন-যাপন ন্যূনতম অবস্থা নাই তাহারাই এতিম হিসাবে অত্র এতিমখানায় পোষ্য হওয়ার যোগ্যতা রাখে।” Article-Cha deals with formation of the 15 member executive committee. In the constitution there is a provision to transfer the land of the Organization subject to prior decision/approved of $\frac{3}{4}$ members the general meeting as provided Article 2 (Pa) of the Constitution which as under:

(প) কার্যনির্বাহী পরিষদ অত্র প্রতিষ্ঠানের পক্ষে প্রতিষ্ঠানের অর্থ বিনিয়োগ তহবিল গঠন করিয়া কিংবা স্থাবর অস্থাবর সম্পত্তি ক্রয় করিবার ক্ষমতা সম্পাদককে প্রদান করিতে পারিবেন। কিন্তু কার্যনির্বাহী পরিষদ কোন ক্রমেই সাধারণ পরিষদের সভায় তিন চতুর্থাংশ সদস্যের সমর্থন ব্যতীত অত্র প্রতিষ্ঠানের স্থাবর সম্পত্তি বিক্রয় করিতে পারিবেন না।

It is clear from the said provision that after approval from the general committee the land of the organization can be sold out by the Secretary of the Executive Committee but there is no such provision to sell the government lease hold property of the Orphanage in any manner. Even though on perusal of the materials on records we do not find any such prior resolution by the $\frac{3}{4}$ members of the general body of the organization to transfer the case land in favour of the respondent No. 16 by the general secretary of the organization. However, we have gone

through some provisions of the Government Estates Manual, 1958 such as Clause 167, 170, 174 and 175 which are as under;

“167. All settlement of non-agricultural lands must be in the form of a lease which should be registered. In Appendix IV are given two forms, one for long term lease and one for short term lease. Without the sanction of the Board of Revenue, no variation from the standard form should be introduced in any lease. But if there are existing leases in old forms, they will continue to be governed by those lease till they are renewed at the time of renewal of settlement.

“170. The long term lease should ordinarily be for a period of 30 years, with rights of renewal upto 90 years.”

“174. Short term leases should not ordinarily be for longer period than 5 years. There should be no right of renewal but they may be renewed on expiry. The rent should be payable in advance, and may be paid quarterly or half-yearly to suit local conditions.”

“175. Short term leases are not transferable. If any such transfer is made, the Collector may settle the land with the transferee on such terms as he thinks fit, or he may take action for ejectment.”

It appears from the contention as well as the terms and conditions of the said deeds that all those are short terms lease and as such the lease hold lands are not transferable as per clause 175 of the said Manual. If any such transfer is made, the Collector may settle the land transferred with the transferee or take action for us ejectment from the said land *vis-a-vis* as stated in the lease deeds that if the land is used for other then the specific purpose of Orphanage for which it is granted, the said land shall be liable to be resumed by the Government.

It appears from Annexure-J which is S. A record of right of the case land including other lands of the said Orphanage wherein the record of right has been prepared in the name of the then Province of East Pakistan and that record has been prepared before the liberation war of our country. Thereafter, it appears that the said land of the Orphanage has been recorded in R. S. Khatian No. 1, in the name of the District Collectorate, Dhaka, on behalf of the Bangladesh and the said record has been prepared after independence of this country.

It further appears from the Annexure-J2 the Dhaka City Jarip, that the case land along with other lands of the Orphanage have been recorded

in the name of the District Collectorate, Dhaka for and on behalf of the Government of Bangladesh without any objection. So, all the records all along are maintained in the name of the Government even upto the R. S. as well as Dhaka City Jarip and none has taken any objection to such recording. Section 144A of the State Acquisition and Tenancy Act provides as under:

“144A Presumption as to correctness of record of rights- Every entry in a record-of-rights prepared or revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.”

In this regard, we would like to refer a decision in the case of Md. Mintu Chowdhury Vs. Khurshid Nayeem and others, reported in **33 BLD (AD) 72**, wherein their lordships held:

“it appeared that subsequently, R. S. Khatian No.76 of mouza Tejgaon Shilpa Elaka, previously Tejkunipara, P.S.-Tejgaon, previously Keranigonj was finally published under section 144(7) of the Act in the names of the aforesaid persons correctly and till date respondent No. 6 did not take any step in respect of the said finally published R. S. khatian in the name of the petitioners predecessor; since the later record of right i.e. R.S. record was finally published in the names of the predecessors, such entry in the record of rights shall be presumed to be correct unless it is proved by evidence to be incorrect and the R.S. record of rights shall prevail over the S.A. record.”

So, as per the said provision as well as in the light of the aforesaid decision the R.S. records of right being in the name of the Government (respondent No. 7) and till date it having not been proved to be incorrect, it is the best evidence that the entire lease hold land of the Sir Salimullah Orphanage till date are government lands. As such entering into agreement by Annexure-C dated 22.07.2003 between the President and Secretary of the Executive Committee of the Orphanage (Respondent No. 15 and 17) and Concord Condmersion Limited (Respondent No. 16) for construction of Multi-storied Commercial and Residential Building on 40 khatas equivalent to .066 acres of land leased out to the Orphanage situated on Plot No. 02 bigha at Mahalla, Gurasail, P. S. Lalbagh, District-Dhaka corresponding to S. A. Plots No. 111, 112, 113 and S. A. Khatian No. 15 which is the subject matter of lease deed. Annexure-C 1. Similarly on 22.07.2003 another deed of addendum to the said deed of agreement has been made by the said

Respondents No. 15, 17 infavour of Respondent No. 16 by mentioning C. S. Plot No. 103 (full), 96 (part), 102 (part), 112(part), 113(part), 114(part) of mouza Shahar Dhaka Sheet Nos. 11 and 20 S. A. Dag 1013, 1014 (full) 104(part) 9 (part) mouza Lalbagh No. 4, Sheet Nos. 1 and 3, R. S. Dag No. 1241, 1242 (full), 615 (part) of mouza Lalbagh No. 8, Sheet No. 6 and 8, P. S. Lalbagh, Dhaka but without mentioning the C. S., S. A. and R. S. Khatian number as the recorded in the name of the government. Thereafter, on 13.04.2004 the respondents No. 15 and 17 executed an irrevocable power of attorney in favour of respondent No. 16 in respect of the land of lease deeds executed by the Government dated 29.10.1929, 24.04.1930, 27.07.1915, 14.05.1931, 18.05.1934 and 07.09.1934 for the purpose of construction of the Multi-storied Building on the case land in favour of respondent No. 16 through Annexure C 2.

It appears from the Annexure-L dated 17.08.2015 (annexed to the supplementary affidavit filed by the petitioner in Writ Petition No. 1940 of 2013) which is the joint survey report prepared by the Surveyer, that the land illegally transferred by the executive committee of the Orphanage to respondent No. 16 is situated in the main part of the Orphanage which the Orphanage got by the second lease deed (first extension) being deed No. 1560 dated 29.10.1929 from the khas mohal land, sanctioned by the Government in Education Department. The said lease deed also contains the same terms and conditions of restricting transfer of the same for any other purpose other then the purpose to use the same for the female Orphans only.

It appears from memo dated 21.11.2012 issued by the Directorate of Social Welfare for holding an inquiry for the purpose of protecting the land leased out to the Orphanage whereupon 28.11.2012 was fixed for holding enquiry as evident from Annexure-H to Writ Petition No. 6974 of 2013. Thereafter, vide letter dated 13.12.2012 another inquiry committee was formed by Respondent No. 1 to enquire into the entire matter regarding protecting immovable properties leased out to the Orphanage and also to enquire about the administration and running of the Orphanage for taking necessary steps. Annexure-H2 to the said writ petition shows that three member inquiry committee was formed who fixed 09.01.2013 at 10.00 a. m date and time for holding inquiry hereinafter, the said inquiry committee filed its report dated 10.04.2013 (Annexure-I) along with some recommendations to the respondent No. 1 with copies forwarded to the Personal Secretary to the Hon'ble Minister and the State Minister of the Ministry of Social Welfare. It appears from paragraphs 4, 6 and 7 other said inquiry report that the committee found that the Government leased out about 21 bighas 19

kata 4.51 chatak of land in favour of the Orphanage vide 5 lease deeds incorporating some terms and conditions which reads as follows:

“ ৪। এই ৫ টি দলিলে সর্বমোট জমির পরিমাণ ২১ বিঘা ১৯ কাঠা ৪.৫১ ছটাক। (এস. এ. জরিপে লালবাগ মৌজার ১ নং সীটভুক্ত ১৫ নং দাগে ২.৬৬ একর, লালবাগ মৌজার ১ নং সীটভুক্ত ৯/১০ নং দাগে ২.৩৯ একর, লালবাগ মৌজার ৩নং সীটভুক্ত ১০০৪ নং দাগে ১.৫২ একর, লালবাগ মৌজার ৩নং সীটভুক্ত ১০১২ নং দাগে ০.২০ একর এবং লালবাগ মৌজার ৩নং সীটভুক্ত ১০১ নং দাগে ৩.৪৯ একর, সর্বমোট ৭.৩১ একর বা ২১ বিঘা ১৯ কাঠা ৪.১৫ ছটাক) তবে শর্ত থাকে যে, এ জমি এতিমখানা ব্যতীত অন্য কোন উদ্দেশ্যে ব্যবহার করা যাবে না এ শর্ত ভঙ্গ করা হলে এ জমি সরকার বরাবর বাজেয়াপ্ত হবে।

৬। এ ছাড়া ১৮.০৭.২০০২ তারিখে গঠিত কার্যনির্বাহী পরিষদের সভানেত্রী, জনাব বেগম সামসুল্লাহর আহসান উল্লা ও সম্পাদক আলহাজ্ব গওহর আলী খান (জি এ খান) এর নেতৃত্বে গঠিত কমিটি স্যার সলিমুল্লাহ মুসলিম এতিম খানার ৪০ (চল্লিশ) কাঠা জমির ওপরে পাকা ভবন নির্মাণের জন্য ২২ জুলাই ২০০৩ খ্রিস্টাব্দ কনকর্ড কনডোমিনিয়াম লিমিটেড (৪৩, উত্তর বাণিজ্যিক এলাকা গুলশান, ঢাকা ১২১২) এর ব্যবস্থাপনা পরিচালক জনাব মীর শওকত আলী পিতা মৃত হাবিব আলীর সাথে চুক্তি করে এবং ১৩ এপ্রিল, ২০০৪ তারিখে ১২৯৩ নম্বর দলিল মূলে কনকর্ড কনডোমিনিয়াম লিমিটেড বরাবর জমি হস্তান্তর করে। সরেজমিনে পরিদর্শনকালে দেখা যায় ডেভেলপার প্রতিষ্ঠান ৪০ কাঠার পরিবর্তে ৪৭ কাঠা জমির ওপর ১৮ (আঠার) তলা বিশিষ্ট ভবন নির্মাণ করেছে।

৭। স্যার সলিমুল্লাহ মুসলিম এতিম খানার পরিচালনা পর্ষদ ও ডেভেলপার প্রতিষ্ঠান এর মধ্যে সম্পাদিত চুক্তির শর্ত অনুসারে ১৫ তলা বিশিষ্ট এ ভবনের এক থেকে ছয় তলা পর্যন্ত বাণিজ্যিক অংশে এতিমখানা পাবে ৩৫% আর ডেভেলপার প্রতিষ্ঠান কনকর্ড কনডোমিনিয়াম পাবে ৬৫% এবং সাত তলা থেকে পনের তলা পর্যন্ত আবাসিক ভবনের এতিমখানা পাবে ১২% ও ডেভেলপার প্রতিষ্ঠান পাবে ৮৮% পাওয়ার এক অসম চুক্তি সম্পাদন করে। এ ছাড়া ডেভেলপার প্রতিষ্ঠান কনকর্ডের নিকট হতে পরিচালনা পর্ষদ ৩০ লক্ষ টাকা সাইনিং মানি গ্রহণ করে। ”

The Committee further observed that ‘according to the latest record of right all the land used by the said Orphanage have been recorded in kahtian No. 1 in the name of District Collector, Dhaka on behalf of the Government.’ Under such circumstances the committee made seven recommendations including to cancel the deed of agreement with respondent No. 16 and thereby to confiscate the said building in favour of the Orphanage and to dissolve the existing committee of the Orphanage. The petitioner of Writ Petition No. 6974 of 2013 thus prayed a direction upon the respondents to implement the said recommendations made by the high power inquiry committee of the Government.

On the other hand from the affidavit-in-opposition filed by respondents No. 15, 17 and 16, who are the parties to the deed of agreement dated 27.07.2013 and 13.04.2013 (Annexure-C, C1) and Power of Attorney (Annexure-C2 of Writ Petition No. 1940 of 2013) it

appear that respondents No. 15 and 17 being the President and Secretary of the said Orphanage claim that for the welfare of the Orphanage they have rightly and correctly entered into the impugned agreements with respondent No. 16 in accordance with the provisions of the Constitution of the said Orphanage. As such they have not committed any wrong or illegality in entering into the impugned agreements and executing the power of attorney (Annexure-C, C1 and C2) in favour of respondent No. 16. Similarly respondent No. 16 also stated that according to Article 2 (Ka) of the Constitution of the Orphanage, the respondents No. 15 and 17, being President and Secretary of the executive committee of the said Orphanage have legally entered into the contract with respondent No. 16 for enhancing the funds of the Orphanage and accordingly Tk. 80,00,000/- was paid as signing money. Relying upon a letter dated 05.01.2004 (Annexure-1 to his affidavit) the respondent No. 16 claims, that the government through the Additional District Commissioner (Revenue), Dhaka by the said letter addressed to the President of the said Orphanage accorded permission to construct the Residence-cum-Commercial Multi-storied Building on the land in question. It is further claimed that in the said letter the government upon referring on memo dated 17.10.1995 has stated that the leased out lands to the Orphanage has vested upon it as perpetual lease. Therefore, respondent No. 16 claims that there is no necessity to take permission of the government to construct Multi-storied Residential-cum-Commercial Building on the said land. It is also claimed that by Annexure-5 the RAJUK has accorded permission to construct the multi-storied building in pursuance of an application filed by Begum Shamsunnahar Ahasan Ullah, the then President of the Executive Committee of the Orphanage. Thus relying on the letter issued by the Additional District Commissioner (Rev.), Dhaka dated 05.01.2004 and the permission by RAJUK. The said 18 storied commercial-cum-residential building has been constructed by the developer on the said land.

Mainly under such facts respondent No. 16 relied upon the contract as being the valid contract between the parties on the claim that the land in question has already been converted as a lease in perpetuity by the Government in the name of Orphanage and as such respondents No. 15 and 17 had authority to enter into the impugned contracts on behalf of the Orphanage in pursuance of the Annexure-1. And thereby the respondent No. 16 has constructed a Multi-storied Building after taking approval from the RAJUK through Annexure-5.

On the other hand the Deputy Commissioner, Dhaka (Respondent No. 7) categorically denied the claims of respondent No. 16 that it is a perpetual lease rather he claimed that the lands were leased out to the

Orphanage on short term basis with renewable clause on a nominal selami of Tk. 1 only with condition not to use/transfer any part of the same for any other purpose other than the purpose for which the same has been leased out. Since the land in question is owned by the government the R. S. record of the land has been published as khas land in the R. S. operation and in the City Jarip also the said land has been prepared and finally published in his name for and on behalf of the Government. Thereby, the said land still belongs to Khas Mohal Touzi of the government. In the affidavit-in-reply, the respondent No. 7 categorically denied issuance of the letter dated 05.01.2004 Annexure-1 of respondent No. 16 from his office. Rather it is stated that after holding a through inquiry it has been found that the said memo was not issued from the office of respondent No. 7. He categorically stated that the said memo is a forged one and has been created by way of cheating and forgery only for the purpose of fulfilling the ill motive of the said respondent as mentioned in his letter issued on 31.08.2015 as evident from Annexure-A to his affidavit-in-reply. We have perused the said Annexures-1 and 5 of respondent No. 16 and Annexure-A series of respondent No. 7 side by side.

On proper and effective consideration of the respondent annexures it appears that Annexure-1 of respondent No. 16 reads as under;

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জেলা প্রশাসকের অফিস, ঢাকা
(রাজস্ব শাখা)
স্মারক নং জেঃ প্রঃ ঢাঃ/রেভ-২০(মং)
তারিখঃ ০৫/০১/২০০৪

বিষয়ঃ স্যার সলিমুল্লাহ মুসলিম এতিমখানা এর বাস্তবায়নকৃত জমি চিরস্থায়ী মেয়াদে লীজ প্রদানসহ উক্ত জমি আবাসিক-কাম-বাণিজ্যিক ভূমি হিসেবে ব্যবহারের

অনুমতি প্রদান প্রসঙ্গে।

উপর্যুক্ত বিষয়ে তার ৩০/১২/২০০২ইং তারিখে আবেদন ও দাখিলকৃত (ক) ১৯৯৫ সালের ১৯১৯ নং (খ) ১৯৩০ সালের ১৫৬০ নং (গ) ১৯৩১ সালের ১৫০৭ নং (ঘ) ১৯৩৪ সালের ১৫৯০ (ঙ) ১৯৩৪ সালের ২৪১৩ নং লীজ দলিলের সহিমোহরী নকল ও ততথসংগীয় কাগজাদির প্রেক্ষিতে জানানো যাচ্ছে যে, উল্লেখিত লীজ দলিল মূলে বিষয়ে উল্লেখিত প্রতিষ্ঠানের অনুকূলে লীজকৃত সাবেক শহর ঢাকা মৌজার ৭নং ওয়ার্ড ও ২০ নং সীটভূক্ত সি, এস ৬৬, ৬৭, ৬৮, ৬৯, ৭৫, ৭৬, ৭৭, ৭৮, ৮৩, ৮৪, ৮৬, ৯২, ৯৩, ৯৪ ও ৯৫নং অংশ ও পূর্ণ দাগ মোতাবেক এস, এ লালবাগ মৌজার ১ নং সীট ভূক্ত এস, এ ১৫ নং দাগের ২.৬৬ একর, সাবেক শহর ঢাকা মৌজার ৭নং ওয়ার্ড ২০ নং সীটভূক্ত সি,এস ১০০, ১০১, ১০২, ১০৩, ১০৪, ১১০, ১১১, ১১২, ১১৩ ও ১১৪ নং দাগ মোতাবেক এস, এ লালবাগ মৌজার ১ নং সীটভূক্ত এস, এ ৯ ও ১০ দাগদ্বয়ের একুনে ২.৩৯ একর, সাবেক শহর ঢাকা মৌজার ৭ নং ও ১০ নং ওয়ার্ড সীটভূক্ত সি, এস ৪০৯, ৪১০, ৪১১ ও ৪১২ দাগ মোতাবেক এস, এ লালবাগ মৌজার ৩নং সীটভূক্ত এস, এ ১০০৪ নং দাগের ১.৫২ একর, সাবেক শহর ঢাকা মৌজার ৭ নং ওয়ার্ড ও ১০ নং সীটভূক্ত সি, এ দাগ ৪১৩ নং অংশ

দাগ মোতাবেক লালবাগ মৌজার এস, এ ৩নং সীটভুক্ত এস, এ ১০১২ নং দাগের ০.২০ একর এবং সাবেক শহর ঢাকা মৌজার ৭নং ওয়ার্ড ও ১০ নং সীটভুক্ত সি, এস ৪১৪ নং দাগ মোতাবেক লালবাগ মৌজার এস, এ ৩ নং সীটভুক্ত এস, এ ১০১ নং দাগের ৩.৪৯ একর এককুনে বর্ণিত সি, এস দাগসমূহের বিপরীতে এস, এ. ৬ (ছয়৬ টি দাগের সর্বমোট ৭.৩১ একর মোতাবেক ২১ বিঘা ১৯ কাঠা ৪.১৫ ছটাক জমি সূত্রোক্ত ভূমি মন্ত্রণালয়ের ১৭/১০/১৯৯৫ইং তারিখে ৮-২৮/৮৫/১০২৩(৬৪) নং স্মারকের আদেশানুসারে ইতিমধ্যে স্থায়ী বন্দোবস্ত বলে বিবেচিত হয়েছে (কপি সংযুক্ত) এবং উক্ত জমির জন্য ভবিষ্যতে কোন নবায়নের প্রয়োজন নেই। উক্ত জমি ইতোমধ্যে স্থায়ী বন্দোবস্ত বলে বিবেচিত হওয়ায় তা আবাসিক-কাম-বাণিজ্যিক ভূমি হিসেবে ব্যবহারের ক্ষেত্রে এ অফিসের পূর্বানুমতির প্রয়োজন নেই।

সংযুক্তঃ বর্ণনামতে ১ (এক) ফর্দ

স্বাক্ষর/-

অতিরিক্ত জেলা প্রশাসক (রাজস্ব),

ঢাকা।

প্রাপকঃ বেগম এস. আহসান উল্লাহ

সভাপতি,

স্যার সলিমুল্লাহ মুসলিম এতিমখানা

আজিমপুর, ঢাকা।”

It appears that another claim of Respondent No. 16 is that the letter issued by the RAJUK by which the respondent was permitted to construct a Multi-storied Building on the said land dated 26.05.2004. The said memo of RAJUK is Annexure-5 to the affidavit-in-opposition of respondent No. 16 wherein he also referred the memo dated 05.01.2004 of the Office of respondent No.7 whereupon the RAJUK illegally allowed the prayer of respondent No. 16. It appears from Annexure-5 that some officers of RAJUK categorically stated that subject to fulfillment of the terms and conditions including condition No. 5, respondent No. 16 is entitled to construct Multi-storied Commercial-cum-Residential Building and thereby the same shall be placed for its approval before the authority. The condition No. 5 of the said recommendation by different officer of the RAJUK reads as follows: “HC Rjsfœ àÚjl; i”çj j;çmLje;l üaÄ çedÑjLZ L-le;z” However, no final approved by the authority of RAJUK, in pursuance of the said forwarding has been filed in the affidavit-in-opposition by the Respondent. So, we do not find any final approved letter issued by the RAJUK for constructing the said Residential-cum-Commercial Multistoried Building on any land of the Orphanage.

Again on examination of Annexure-1, relied upon by respondent No. 16, it appears that the same is a photocopy wherein it has been admitted that the Orphanage got the said land by five lease deeds executed by the Government which, according to them, has been converted into perpetual lease. The said claims of respondent No. 16 as to converting the land into perpetual lease has been categorically denied by respondent No. 7 the government, stating that the land in question was never settled with the Orphanage on perpetual lease basis rather the same was settled as short term lease and till date the said land is under the possession of the Orphanage on the basis of short term lease. It appears that respondent No. 7, who granted the lease on behalf of the Government through five lease deeds denied the proposition that the lease has been converted as lease in perpetuity. The said respondent No. 7 also denied issuance of letter dated 05.01.2004 from his office, relying upon which the respondents No. 15, 17 and 16 claimed that the office of the respondent No. 7 by the said letter informed that the lease have been converted into lease in perpetuity. Rather on enquiry it has been proved that the said letter dated 05.01.2004 is a forged and created document. The respondent No. 16 failed to produce any other reliable document in support of his claim and to prove that the letter dated 05.01.2004 Annexure-1 is a genuine one. The said respondent No. 7 further stated that the lease hold land in question has never been upgraded to perpetual lease or that the developer company can built such multi-storied building without obtaining permission from the lessor, government. Moreover, no reference of any proceeding to convert the land as a lease of perpetuity has been mentioned. Thereby it appears that the Ministry of Land did not issue any order in respect of declaring the said land as permanent leasehold land of the Orphanage. It further appears from Annexure-A series that in pursuance to letter dated 30.08.2015, issued from the office of the Attorney General for Bangladesh in respect of determining the genuinity of Annexure-1 the respondent No. 7 after holding inquiry by his competent officers informed that the heading and the reference of the said letter is not found/tally with the record and as such there is no basis of issuing such letter. Therefore, the alleged letter Annexure-1 is false and fabricated the said letter was never issued from the office of the respondent No. 7. As such the said letter (Annexure-1) is forged, false and fabricated has been created by respondents No. 16 and others for this own benefit. This contention finds support from the fact that had the land been a lease in perpetuity and vest on the Orphanage then the same would have been recorded in the name of the Orphanage. But interestingly all the records, from C. S. to the latest survey of Mohanagar Jarip the same have been recorded in the name of the government as khas Mohol land.

This recording has not been challenged by the Orphanage or any other person/authority before any competent court or authority.

Thus from the facts and circumstances, the terms and conditions of the lease deeds, the record of rights including the R. S. record and city jarip, the inquiry report of high power three members inquiry committee of the office of respondent No. 1 it appears that the contention of the petitioners that the respondents No. 15 and 17 most illegally entered into an agreement with respondent No. 16 to construct a multi-stories commercial-cum-residential building on certain irrational terms on the government land leased out to Sir Salimullah Muslim Orphanage wherein neither the management of the Orphanage nor the respondents No. 15 and 17 had any right or authority.

In such view of the matter, we do not find any legal basis in support of the claim of respondents No. 16, 15 and 17 to enter into any such contract on the land of the Government, respondent No. 7 nor they had any authority to execute any power of attorney for the said land in favour of respondent No. 16 in any manner. The principle of law is he who does not acquire any valid/legal title on any property cannot enter into any agreement to transfer the same or part with it. In this case the Orphanage or its management did not acquire any title, whatsoever, on the lease hold land under any law. Therefore, entering into an agreement by them to construct a multi-storied building with 78% share to be given to the developer is, of course, parting with that partition of the land permanently, is totally illegal and without lawful authority. Such agreement has been executed inconnivence with respondents No. 15, 16 and 17, each other only to grab and misappropriate the government land. Such action of the said respondents cannot be allowed to continue. Therefore, the building constructed on the government land on the basis of an illegal construct should be confiscated for which none of the respondents would be entitled to be compensated. This view find support in the case of State Vs. The Government of Bangladesh and others in Suo Moto Rule No. reported in 2 LNJ 513 (commonly known as BGMEA case) and in the case of Metro Making and Developers Ltd. Vs. Bangladesh Environmental Lawyers Association (BELA) and others, reported in 65 DLR (AD) 181. Again in the case of **Ekushey Television Ltd and another Vs. Dr. Chowdhury Mahmood Hasan and others**, reported in **55 DLR (AD) 26**, wherein their lordship's held that;

“The general principle is that in discharging the judicial function of the Court it has the duty of resolving issues of law properly brought before it and once it is done the finality is

reached and once the finality is reached a judgment can be reviewed only on certain laid down principles.”

“The remedial role of law is not to perpetuate the wrong but to remove the wrong, if any, even though in the process some may suffer damage. The rights acquired by third persons having no notice of the improper means by which the licence for ETV was obtained is a question which this Court will approach with much circumstances. It shall have to appreciate that the different participants involved in a proceeding for judicial review may well attach importance to different aspects to suit their interest but the Court’s overriding interest shall be more in safeguarding and retaining of public interest. What is required to be protected is the interest of the general public from abuse of power by the executive, the most eloquent aspect of this case. The nature, of public interest litigation (called PIL hereinafter) is completely different from a traditional case which is adversarial in nature whereas PIL is intended to vindicate rights of the people. In such a case benefit will be derived by a large number of people in contrast to a few. PIL considers the interest of others and therefore, the Court in a public interest litigation acts as the guardian of all the people whereas in a private case the court does not have such power. Therefore, in public interest litigation the Court will lean to protect the interest of the general public and the rule of law vis-a-vis the private interest. Where the rule of law comes into conflict with third party interest the rule of law will, of course, prevail.”

In view of the above discussion and in the light of the decision as referred above as well as in the 11 DLR (SC), 55 DLR (AD) 26, in the case of ETV, 61 DLR (AD) 28, in the case of Rangs Bhabon, 65 DLR (AD) 181 in the case of Madumati Model town and 63 DLR (HC) 385 it can easily be held that the deeds of contract and power of attorney in respect of land in question Annexure-C, C1 and C2 are illegal and void ab-initio as 1. The land in question has been leased out to the Orphanage by short terms lease vide 5 (five) lease deeds by the Government for the purpose of setting up the Orphanage which are not transferable according to the terms and conditions of the lease deeds;

- II. There was no Government decision to transfer the said land to the respondent No. 16 at any point of time;
- III. The decision to transfer the said land from the other lands of the orphanage to the respondent No.16 has been taken by the then

president and secretary (respondents No. 15 and 17) without taking any prior permission of the authority as well as prior approved of the 2/3 members of the General body of the Orphanage.

IV. The land in question has been leased out by lease deed for the purpose to use as the Female ward of the Orphanage which can not be transferred by the respondent No. 15 and 17 in favour of the respondent No. 16 or anybody. Since it is admitted and well proved that the land in question is government Kash land lying with the Government till date;

V. The terms and conditions of lease deeds are legal and valid by which respondent Nos. 15 and 17 were prevented not to transfer the same to anybody for any other purpose other than for the purpose as mentioned in the lease deeds. There is specific restriction and mention the consequence if any transfer is made in that case the land in question shall be vested upon the Government as evident from the contents of all the 5 lease deeds;

VI. The contention of the petitioners well proved by the documentary evidence annexure-A series, H which are supported and corroborated by R.S. record of right and City Zarip and the enquiry report Annexure-1.

VII. The land in question including other lands were granted by lease for short terms upon fixing a nominal rent at Tk. 1/-only.

VIII. Inquiry report dated 10.04.2013 Annexure-I of the high power inquiry committee of the Government supported the petitioners case. Who made some recommendations which are not denied by the respondent No. 16;

IX. The document in respect of Annexure-I filed by the respondent No.16 to show that the land in question has been converted as lease of perpetuity, which has been proved to be false, fabricated, forged one and it has no legal evidential value, which has been created purposefully for the interest of the respondent No. 15, 17 and 16;

X. That the Annexure-5 of the Respondent No. 16 about the approval of the RAJUK for giving permission to construct multistoried building on the land in question is also not proved in accordance with law and which has no basis. Rather it has been created purposefully for the interest of the respondent No. 15, 17 and 16;

XI. Even a lease of 90 years sometimes it can not be said as a lease perpetuity as decided in the case of M.H. Khandokar -Vs- Bangladesh reported in 30 DLR (SC) 1.

For the above reasons it is thus held that the agreement in question and the Power of Attorney for the land in question (Annexures-C, C1 and

C2) between the respondents No. 15, 17 and 16 are papers transactions only and no right has been vested on such transaction and the same are also void ab-initio.

We have gone through the decisions as cited by the learned Advocate for the respondent No. 16 which are as under;

1. In the case of **Superintendent Engineer, RHD, Sylhet and others Vs. Md. Eunus and Brothers (Pvt) Ltd and another**, reported in **16 BLC (AD) 73** wherein their lordship's held that;

“As the contract was an ordinary commercial contract, the relief sought for and granted by the High Court Division is not available to the respondent. As the alleged contract does not fulfill any one of the requirements to make it is a statutory contract entered into by the Government in the capacity as a sovereign, the claimed relief is not entertainable when disputed question of fact cannot be decided in the writ jurisdiction.”

1. The case of **Shamsunnahar Salam and others Vs Mohammad Wahidur Rahman and others**, reported in **51 DLR (AD) 232**, wherein their lordship's held that;

“A writ Court cannot and should not decide any disputed question of fact which requires evidence to be taken for settlement”.

The learned Advocate tried to show that he has a case of simple commercial contract and disputed question of fact and also a breach of contract. Therefore the writ jurisdiction is barred and also tried to show that the land in question is a lease of perpetuity with building standing thereon. Therefore, the relief sought for cannot be granted in writ jurisdiction. We are in respectful agreement with above cited decisions but we can not ignore the admitted facts of lease in question through 5 registered lease deeds by the Government for the purpose of orphanage and admittedly the same have been granted for short terms lease and the title is still lying with the Government. There is no evidence that the Government committed any wrong or even gave any assurance or authority to the respondent No. 15, 17 and 16 to treat the said land as a lease of perpetuity.

In such view of the matter the Government can not be estopped to take any action for the illegal acts of the respondent Nos. 15, 17 and 16. It has been argued by the learned Advocate for the respondent that the respondent No. 16 on the basis of Annexure-I and deed of agreement

and the power of attorney he construct the multistoried building of the said property and thus he has acquired a vested right in the said property. As such the said respondent now can not be evicted from the said property by the Government. But we are unable to accept this argument for the respondent No. 15, 17 and 16. Though respondent No. 16 is possessing the said land for more or less 12 years on the basis of void deeds no vested right can be created on the basis of such void agreements/deeds against the Government. The learned advocates of the respondents No. 15-17 argued that the writ petitions are not maintainable as those are hit under Section 42 of the Specific Relief Act. We are also unable to accept this contention of the learned Advocates. Since it is the cardinal principle of law that void deeds need not be cancelled and void deed does not require to be cancelled by the order of the Court and no right accrues on the basis of void deeds. In the present case we have already found that the impugned deeds of contract and the power of attorney are void ab-initio for the reasons stated above. As such the contention and the decision as referred by the learned Advocate for respondent No. 16 are not acceptable and applicable in the instant cases in any manner.

Moreover, it appears from the report of the high power inquiry committee held at the instance of respondent No.1 that the conduct of the supervisory and controlling authority of the said Orphanage i. e. the Executive Committee are not satisfactory and accordingly made some observations and recommendation to safeguard and protect the interest of the orphanage which is also required to be considered by this court for effective disposal of the rules.

Therefore, to protect the government property and the Orphanage it is necessary to pass some direction/orders by this Court for the interest of backward, disadvantaged and helpless orphans of the said orphanage this court cannot sit idle as has been held by the Appellate Division in the case of Ekushey TV, reported in 55 DLR (AD) 26.

In such view of the matter and for the reasons mentioned above we find substance in both the rules.

Accordingly, both the Rules are made absolute.

The failure of the respondents to protect the government property leased out infavour of Sir Salimuallah Muslim Orphanage and illegal transfer of land to the developer company respondent No.16 under the influence of the committee members namely the President and Secretary Respondents No. 15 and 17 is hereby declared to be without lawful authority and is of no legal effect; As such we hereby declared that the deed of agreement and amendment of said deed as well as the power of attorney dated 22.07.2003, 13.04.2004 and 13.04.2004

Annexures- C, C-1 and C-2 respectively between the respondent No. 15, 17 and 16 are cancelled as those are void ab-initio.

The building which is under construction along with all properties therewith in pursuance of Annexures-C, C1 and C2 is hereby confiscated in favour of Sir Salimuallah Muslim Orphanage to be used for the purpose and benefit of the Orphanage. Thereby respondent No. 16 is directed to hand over the under construction Multi-storied Building along with land in favour of the Sir Salimuallah Muslim Orphanage through respondent No. 1 within 30 (thirty) days from the date. And respondent No. 1 is also directed to take possession of said land along with the Multi-storied Building from respondent No. 16 for on behalf of the said orphanage within the said period and failing which the respondents No. 1 to 12 of writ petition No.1940 of 2013 are directed to take necessary steps for taking possession of said building and property by evicting the respondent No. 16 and his men from the said properties within 07 (seven) days without fail in accordance with law and handover the same to the said Orphanage.

We also direct respondents No. 1-12 to take immediate necessary steps to make a effective managing committee to run the administration and management of the said orphanage including to protect, maintain and to develop the property of the said Sir Salimuallah Muslim Orphanage only for the purpose of Orphanage in accordance with law kipping in the mind the purpose of lease deeds executed by the Government vide annexures A, A-1, A-2 and A-3 and H effectively.

The respondent No. 7 is also directed to take necessary steps against respondents No. 15, 17, 16 and others, if any, for committing forgery, cheating and abating and purposefully acting beyond the interest of the Orphans/Orphanage, in accordance with law.

However, there will be no order as to costs.

Send down the copy of the judgment and order to respondents No. 1-12 of Writ Petition No. 1940 of 2013 for information and taking strict and effective compliance of the above mentioned order and directives of this Hon'ble Court at once.
