

FOCUS

Law and Our Rights

Repeal all the Black Laws

Vested Property Law: Trailing the Ghost of Pakistan

By Isaac Robinson

THE first question that may arise in ones mind is why vesting of property? The answer is that the property belonged to an enemy national. The second question is why is the persons called enemy national? The answer is that the state is at war with the state of the enemy national.

Now when we see the properties of Indian nationals are being treated to be vested properties, what conclusion can we infer? Bangladesh is at war with India?

Unfortunately the misapplication and abuse of the vested property law compel us to infer to the wrong conclusion that Bangladesh is at war with India. History says Bangladesh was never at war with India. Furthermore Bangladesh has friendship treaty with India.

The fact is that the enemy property law which is the offspring of the Defence of Pakistan Ordinance enacted after the outbreak of war between India and Pakistan in 1965 was unnecessarily carried forward in independent Bangladesh through the vested property law.

Concept of Enemy/Vested Property Law:

The law of enemy property is the creature of war and has become the international law of war period. The rationale of such law is to make it sure that the property of an enemy na-

tional do not render benefit to the enemy state in any manner or do not prejudice the defence of the host state.

History of such law can be traced back from World War-I of 1914 when the British Government decided to take action under the Enemy Trading Act (1916) against the property belonging to either German Mission or subject to German influence. Consequently Germany enacted the Enemy Mission Act 1921, having the object of validating the steps with reference to property formerly belonging to either German Mission or subject to German influence.

Under the Enemy Trading Act 1916 (British), the properties of those Missions were vested in the various custodians of enemy property.

During the World War II, in British India, enemy properties were maintained and controlled by the Defence of India Act and Rules 1939.

Indo-Pak War 1965 and the Root:

The existing Bangladeshi law on vested property had its origin primarily in the Defence of Pakistan Ordinance 1965 and the Rules made under

The new government has pledged to repeal all the black laws. The Daily Star, in its bid to create mass awareness against the existing repressive laws, have planned to publish a series of articles highlighting the anti-people nature of these laws. In the previous issue, we have highlighted the Special Powers Act. This issue is about the Vested Property Law.

After the outbreak of war on the 6th September 1965 all the properties of Indian nationals in Pakistan were vested in the Pakistan Government as enemy property.

Yet after the cessation of the war the provisions regarding enemy property were carried forward through the Enemy Property (Continuance of Emergency Provision) Ordinance 1969.

After the independence of Bangladesh all the property vested in the Pakistan Government in the eastern part were vested in the Bangladesh Government under President's Order No. 29 of 1972.

In 1974 another Ordinance was unnecessarily enacted (unnecessary due to the existence of P.O. 29 of 1972) to vest all the enemy property of Pakistan regime in the hand of Bangladesh Government.

The concept of the term

"enemy" was changed in the event of the emergence of Bangladesh as Indian nationals became the "alien friends" of Bangladesh. And thus the term "enemy property" was technically called "vested property".

For the maintenance and administration of the vested properties a new law called the Vested and Non-resident Property (Administration) Act 1974 was enacted. The purpose of the law was rather to benefit the persons whose property were already vested in the Government. The law provided that

The government would constitute Committees to be called Vested and Non-resident Property Management Committee for protection, good management and assertion of title of vested and non-residents property.

The committee would not

be entitled to transfer any vested or non-resident property.

The committee would only be entitled to let the property on lease on a monthly or annual basis.

With the written consent of the owner the committee could transfer vested or non-resident property.

The committee would return the income from any non-resident property to its owner.

In short, the power and function of the committee was very similar to that of a guardian of a minor child.

But, the scheme of the law was never given effect. No committee was constituted until the 7th of December 1976 when the whole law was repealed by an Ordinance.

After repealing of this law, there remained no safeguard to the people whose proper-

ties were vested in the custody of the government. Furthermore, the Ordinance of 1976 granted arbitrary power to the government to dispose of the property by way of transfer.

The law is one of the major elements that creates communal disharmony in the society. Vested interested quarters are always prepared to create communal tension in their respective areas so that they could grab the properties of Hindus driving them out of the country.

Unlike other black laws of the country, mere repeal of the law is not sufficient. A number of actions must follow the repeal. First of all, a list containing name, address, amount of property disposed,

dag, khatian, mouza etc. about those affected by enemy/vested property laws since Pakistan period should be published by the Government.

Secondly, steps should be taken to identify the real owner or the successors to the real owner of the property and the property is to be returned back to such owner or its successors. Property of the deceased persons should be distributed to his successors only according to the law of inheritance and in this scope the Government could take the opportunity to remove the discriminatory practices in Hindu law of inheritance by providing legal basis for Hindu women to succeed property equally.

Isaac Robinson — General Secretary, Law Review.

Lawscape

Workshop on Public Interest Law

A two-day workshop on Public Interest Law will be held on the 26 and 27th July 1996 at the Old High Court Building premises. The workshop is organised by Madaripur Legal Aid Association and Ain O Salish Kendra.

Judges and senior lawyers of the Supreme Court of Bangladesh will be the discussants at the workshop. Lawyers and NGO activists interested in litigating in public interest matters are invited to attend the workshop.

Background to Public Interest Litigation

Although litigation enjoys a popular perception as the cornerstone of rights protection, there are limitations — expense, delay, distance from the courts — on access to justice through litigation. Furthermore, internal obstacles to litigation, such as restricted notions of locus standi, cumbersome rules of procedure and their strict application and the narrow range of available remedies add to the reality that access to courts is rarely synonymous with access to justice.

These limitations on litigation mean that issues which affect classes of persons or the public interest fail to be adequately addressed by the legal system. An innovative path to widening access to justice has been found in the concept of public interest litigation or social action litigation (PIL/SAL) which has been developed most notably in the USA and India. Introducing PIL methods may open up the possibility of adapting our legal system to establish the rights of self-employed workers, undertrial prisoners, bonded labourers and others.

Concept of Public Interest Litigation

In PIL, a public spirited citizen seeks to enforce public duties or restrain public wrongs on behalf of a person or a determinate class or group of persons. It is an attempt at balancing the scales of justice by equalising the resources available to organised and unorganised groups. PIL as a movement, seeks to make the fundamental rights guaranteed in the Constitution meaningful to 'excluded' sections of the community. Moreover, it acts as a bridge between the Fundamental Principles of State Policy and the Fundamental Rights enshrined in the Constitution, while at the same time, enhances the reception of international norms and standards of human rights into domestic law.

In PIL, the rights of the public are affected though there might be no direct or specific injury to any one member of the public as such. PIL is thus undertaken for redressing a public wrong or injury, enforcing a public duty, protecting social and collective rights and interests and vindicating the rule of law. It is essentially directed towards governmental lawlessness and as much against the non-performance of constitutional and statutory obligations as against mis-performance.

Nature of remedies available to Public Interest Litigation

One of the unique features of PIL is the nature of remedies which the courts have fashioned. Thus, immediate relief can often be granted in terms of interim orders. Orders have been made for affirmative actions and continuous monitoring as well as the appointment of independent investigative commissions which would report to the court on the implementation of schemes.

Impact of Vested Property Law on Rural Bangladesh

[Based on an exploratory study conducted by Dr Abul Barkat, Dr. Shafique uz Zaman, Dr Azizur Rahman and Dr Sujit Poddar. 8 Unions of Gazipur, Sirajganj, Barisal, Brahmanbaria and Habiganj districts were served under the study.]

Over 46 per cent of the Hindu households in the sample unions were affected under the law.

The average amount of land per household affected under the law, according to official records, was about 100 decimals.

The estimated total Hindu households affected since the Pakistan period would be 10,48,390 and the estimate amount of total land disposed due to these would be about 1.05 million acres.

The target of enlistment under the law was mostly agricultural land, followed by homestead.

In terms of land holding structure, compared to the past, the proportions of landless persons has increased and the proportion of rich farmers has decreased.

Even, some respondents who were rich/small/marginal farmers in the past, own no land at present.

The highest proportion of respondents were dispossessed by manipulation of documents, followed by forceful engulfment by others.

The highest proportion of respondents lost their land during 1965-71 followed by the period 1976-81.

Two-thirds of the affected persons do not feel secured to live in the area.

Case Study

Physical and Legal Disposition

Mr PKH, a 30 years old businessman. At present, he owns only 21 decimals of land, 1034 decimals have been enlisted under VPA.

The father of the respondent was a homeopathy practitioner.

Sunday 21st July

BBC

Earth Report 10:30 Time Out: Food And Drink 11:00 BBC World News 11:20 Britain In View 12:00 BBC World News 12:20 Window On Europe 1:00 BBC World Headlines 1:05 Under The Blue Flag 2:00 BBC World News 2:30 Time Out: The Contenders 3:00 BBC World Report inc. World Business Report 24 Hours 4:00 BBC World Report inc. World Business Report/24 Hours 5:00 BBC World News 5:10 The Money Programme

CHANNEL V

10:30am The Best of Ek Kaam 11:00 BPL Oye! 12:00 Sarsai Mangta Ha 12:30 First Day First Show 1:00 Speak Easy 1:30 Big Bang VJ Alessandra 2:30 Videocon-Flash Back 3:00 Asian Top 20 VJ Nona 4:30 Rewind VJ Top 3:00 Building 8:30 BBC World News 3:30 Time Out: Auction 4:00 BBC World Headlines 4:45 Everyman 5:00 BBC World News 5:20 The Art Marathon 6:00pm BBC World Headlines 6:05 Correspondent 2:00 BBC World News 2:30 Time Out: Building 8:30 BBC World News 3:30 Time Out: Auction 4:00 BBC World Headlines 4:45 Everyman 5:00 BBC World News 5:20 The Art Marathon 6:00pm BBC World Headlines 6:05 Inside Burma: Land Of Fear 7:00 BBC World Headlines 7:05 Breakfast With Frost 8:00 BBC World News 8:30 Time Out: Tap Gear 9:00 BBC World Headlines 9:05 Horizon 10:00 BBC World News 10:30 Opening Announcement: Al-Quran Programme Summary 3:10 Recitation from the Bible 3:15 Cartoon: Woody Woodpecker 3:45 Retranslate of Weekly Drama 4:00 News in Bangla 4:45 Maram 5:00 News in Bangla 5:25 Sports Programme 6:00 News in Bangla 6:30 Apur Dakta 7:00 News in English 7:05 Open University 7:25 Tagore Songs 8:00 News in Bangla 8:25 Jamathibumi 8:30 Ships-Banji Artha 9:00 Film Series: Akbar The Great 10:00 News in English 10:30 Shekharathai 10:35 Su Lahon 11:30 News in Bangla 11:35 Monday's programme 11:40 Close down

STAR PLUS

6:30am Voltron 7:00 King Arthur 7:30 Classic Cartoons 8:00 Terry Toons 8:30 T-Bag 9:00 Thailand Panorama 9:30 India Business Week 10:30 The Road Show 11:00 Amul India Show 11:30 Budget 96 Preview 12:30 The Fall Guy 13:00 Vegas 2:30 Best Sellers: "Little Women" 4:30 Love Boat 5:30 World Around Us: Ancient Prophecies 6:30 Amul India Show 7:00 The Road Show 7:30 Snowy River: "The McGregor Saga" 8:30 Beverly Hills 90210 9:30 Pickle Fences 10:30 Barikes Law 11:30 21 Jump Street 12:30 Star Trek: "The Next Generation" 1:30 India Business Week 2:30 Amul India Show 3:00 The Oprah Winfrey Show 4:00 Hooperman 4:30 Home And Away 5:00 The Sullivans 5:30 Gabrielle

STAR Sports

6:30am The Asian Football Show 7:30 Futbol Mundial 8:00



Beverly Hills 90210 On Star Plus at 8:30 pm Tonight

Asia Sport Show 8:30 World Wrestling Federation Action Zone 9:30 Super 8's Semi Final 1 From Kuala Lumpur 11:30 Super 8's Semi Final II From Kuala Lumpur 1:00 Super 8's The Final From Kuala Lumpur 3:30 This Is The PGA Tour 4:30 Live 1996 World Motorcycle Championship British Grand Prix From Donington Park Circuit 6:00 Join in Progress Cricket '96 Sunday League 9:00 Middlesex Tea 10:00 Live Cricket 96 Sunday League 2:30m Australian Football League 11:30 The Asian Football Show 3:00 The Bahamas Boating Slips 4:00 PABA Boxing Julius Francis vs. Gary Delaney British Heavyweight Title

Tape (Hindi Subtitles) 11:30 Based On A True Story: Hear Me, Song (Arabic Subtitles) 1:30 Thriller Best Seller: Arabic Subtitles 3:30 Film Club: Faust (Arabic Subtitles) 5:30 Thriller: Mirage (Arabic Subtitles)

ZEE TV

6:00 News 6:30 Jagran 7:00 A To Z Computer 7:30 Maa 8:30 Mythological Film 10:30 Aap Ki Adalat 11:00 Galaxie 11:30 Lakme Khobosurat 12:00 Film Chakkar 12:30 Bounvita Quiz Contest 1:00 Namaste India 1:30

2:00 Computer 3:00 Star Trek 3:30 Sunday Show 4:00 Uthup Show 11:30

Space Nine 8:20 Hawa Ki Naam 9:00 Break for Headlines News 9:20 Su Taser (Pakistani Film) 1947 9:30 Ru Ba-Ru 9:30 Far Or Fit 10:30 Chalo Cinema 11:00 The Movie Usha Uthup Show 11:30

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