

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

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 6092 OF 2008.

IN THE MATTER OF

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

-AND-

IN THE MATTER OF :

Human Rights Congress for Bangladesh
Minorities, Bangladesh, represented by its
Secretary General, Rabindranath Trivedi.

----- Petitioner.

-VERSUS-

1. Government of the People's Republic
of Bangladesh, represented by the

Secretary, Ministry of Law, Justice
and Parliamentary Affairs, Bangladesh
Secretariat, Ramna, Dhaka.

2. The Secretary, Ministry of Land,
Bangladesh Secretariat, Dhaka.

3. The Secretary, Ministry of
Establishment, Bangladesh Secretariat,
Dhaka.

----- Respondents.

-AND-

IN THE MATTER OF:

The Enemy Property (Continuance of
Emergency Provisions) (Repeal) Act,
1974 which received the assent of the
then President of People's Republic of
Bangladesh on 1st day of July, 1974 and
which was deemed to have come into
force on the 23rd day of March, 1974 vide

and subsequently promulgated অর্পিত সম্পত্তি
প্রত্যাপন আইন, ২০০১ vide Annexure A & A1.

To,

Mr. Justice M. M. Ruhul Amin, the Honorable Chief Justice of
Bangladesh Supreme Court and his Companion Justices of the said
Hon'ble Court.

The humble petition on behalf of the
petitioner above named most respectfully –

SHEWETH :

1. That the petitioner, Human Rights Congress for Bangladesh Minorities, Bangladesh, represented by its Secretary General, Rabindranath Trivedi (former Additional Secretary, Government of Bangladesh) is a permanent citizen of Bangladesh and who is working to increase awareness about Human Rights and filling public interest litigation in case of violation of fundamental rights Human Rights.

2. That the addresses of the petitioner and the respondents given in the cause title of this petition are correct addresses for the purpose of service notices upon them.
3. That the Constitution of the People's republic of Bangladesh has provide for all citizen to enjoy equal protection of law, to be treated in accordance with law, freedom of profession/occupation, freedom of religion, right to acquire property and protection of home.
4. That the petitioner in this writ petition, with full competence, impugns and questions the constitutional validity of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 which received the assent of the then President on the 1st July, 1974 and which is deemed to have come into force on the 23rd March, 1974. And without preamble অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ promulgated.
5. That to make an idea about the impugned Act one needs to go back to the year 1965. On the very day of the armed conflict between India and Pakistan, a state of Emergency was proclaimed by the Government of Pakistan. Defence of

Pakistan Ordinance (No.XXIII of 1965) was promulgated, where under all interests of Indian nationals and the residents in India in the firms and companies as well as in the lands and buildings lying in Pakistan became liable to be taken over by the Central Government of Pakistan or the Custodian of Enemy property appointed by it as Enemy Firm or Enemy Property for control or management of the same. An enemy firm included, by definition a company incorporated under the Companies Act.

6. That the control and management of such firm or property should be with the government of Pakistan so that benefit arising out of it, whether trade or business, or lands or buildings should not go during the continuance of the war, to the enemy so as to affect the war efforts of Pakistan or impair its defence in any manner.
7. That the Government of Pakistan appointed Controller of Enemy Firms under Rule 171 of the Defence of Pakistan Rules, generally or for a particular area, for supervision and

securing compliance with the rules relating to the enemy firms or appoint some persons under Rule 181 of the Rules for continuing the trade or business of an enemy firm, which has been affected by the state of war or appoint Custodian of Enemy Property under Rule 182 of the Rules for preventing the payment of any money to an enemy firm and the management of enemy property and vest in him.

8. That these were temporary measures for the pendency of war for the purpose of control and management of the trade or business of enemy firms and protection and administration of enemy properties. During this period, the trade or business of some enemy firms would remain under the control of the Controller of Enemy Firms or under the management of some persons, appointed by the Government of Pakistan, in its discretion or some enemy property would remain vested in the Custodian of Enemy for the purpose of management and such firms and properties would be returned to the rightful owners after the termination of the war on conclusion of peace.

9. That in the absence of any formal treaty after the Indo-Pak war, a controversy was raised as to whether there had been an end to the state of war between the two countries. State of Emergency was revoked and the Defence of Pakistan Rules framed there under were repealed, but a new Ordinance, the Enemy Property (Continuance Emergency Provisions) Ordinance 1969 (Ordinance No.1 of 1969) was promulgated purporting to continue despite the repeal of Defence of Pakistan Ordinance and Rules.

10. That on the emergence of the new state of Bangladesh, an order being the Laws Continuance Enforcement Order, 1971 was promulgated on the same day as was the proclamation of Independence, purporting to continue in force in Bangladesh all the Pakistani Laws. Which were in force in East Pakistan on 25.03.71. The effect of this Order was that all those Pakistani Laws, which were consistent with the sovereign status of Bangladesh, would continue to be in force in Bangladesh.

11. That Bangladesh (Vesting of Property and Assets) Order No.29 of 1972 where under all properties and assets which had been vested in the Government of Pakistan or any officer appointed by such Government or were vested in or managed in by any board, constituted by or under any law or in the former Government of East Pakistan were deemed to have vested in the Government of Pakistan were purported to have vested in the Government of Bangladesh on and from the 26th day of March, 1971, was enacted on 26.03.71.

12. That in 1974 Bangladesh enacted two laws : Enemy Property (Continuance of Emergency Provision) (Repeal) Act, XLV of 1974 and the vested and Non-Resident Property (Administration) Act (Act XLVI of 1974). The first one provided for the repeal of Ordinance No.1 of 1969 with effect from 23.3.74 on which date the new Act was deemed to have come into force and also for vesting in the Government of Bangladesh all enemy properties vested in Custodian of Enemy property, and all enemy firms, the trade

or business of which was being carried on by any person or Board appointed or authorized “under the provisions of the defence of Pakistan Rules. Continued in force by the said Ordinance No.1 of 1969.”

13. That the other Act provided for the constitution of Management Committee for the properties which were purported to be vested under the first Act, viz. Act XLV of 1974 as well as the properties belonging to a “person who is not or has ceased to be permanent resident of Bangladesh or “has acquired foreign nationality and also for management of such properties. As regards the second category of the properties as referred to above which were distinguished from the vested properties”, the appropriate Management Committee could take charge of such properties of its own motion or on the application of non-resident or upon the direction of the Government of Bangladesh and administer the same in accordance with the provisions of the said Act.

14. That the sole purpose of enacting such legislation the President's Order No.29 of 1972 or Act XLV of 1974, which provide for vesting in the Government of Bangladesh, the Indian properties which had vested in the Custodian of Enemy Property for their protection and management, and the Indian firms the trade and business of which was being carried on by any person or Board appointed by the Government of Pakistan, during the period of war between India and Pakistan, appears merely to provide a legal basis for the continuance of the administration and management of those properties and firms, which were already taken over and being managed by the Officer or Board appointed by the Government of Pakistan until such properties and firms may be handed over to the rightful owners.

15. That the Government of Bangladesh was not only managing and administrating the Indian properties and firms, which were being managed by the Pakistan Custodian of Enemy property or some Pakistani Officer or Board, but has also been

taking over possession of by the Government of Pakistan or the Custodian of Enemy Property appointed by it, apparently on the view that it was entitled to take over possession of and administer the Indian properties in the same way as the Government of Pakistan was authorized under the Defence of Pakistan Ordinance and the Rules framed there under during the war against India.

16. That certain Rules were framed by the Government of Bangladesh in the form of instruction to, administration, management and disposal of ‘the vested properties’ in which a direction was given for the detection and taking possession of what has been termed as ‘Concealed Vested Properties.’ Special provisions have been made in these “Instructions” for regarding the Tahsilder and the staff of State Acquisition Tahsail Officers for the detection of vested property. In consequence, the State Acquisition Tahsil Officers have recently become busy in discovering ‘Concealed’ Indian Properties of which some alleged Indian nationals are alleged

to be the owner or a part owner and in taken possession of the same by throwing out the persons in possessions, who may have been possessing such properties on the basis of some arrangement with the Indian owner.

17. That the Government of Bangladesh acted under an incorrect view. Since the properties of the Indians were vested in the Government of Bangladesh either under President's Order No.29 of 1972 or Act XLV of 1974, the Government has acquired full title to such properties and is therefore free to deal with those in any manner it thinks fit, particularly when the power of disposal has been conferred upon it. In doing so, the Government over looked the fact that under the said President's Order or Act, the Indian properties have vested in it in the same right and to the same extent to which they had vested it in the Custodian of Enemy Property appointed by the Government of Pakistan under the Defence of Pakistan Rules and Orders made there under and the Custodian of Enemy Property, as his designation itself implies was not obviously

the full owner of the said property.

18. That the right of the custodian was the limited right of protection and management of the said properties during the period of the war without transgressing the title of the owner of the said properties and the said two pieces of legislation of Bangladesh did not confer upon the Government of Bangladesh any higher right than that.

19. That the Parliament of Bangladesh also has recognized this position i.e. protection and management of such properties in enacting Act XLV of 1974. Section 7 of the Act of XLV of 1974 “provided that the Committee of Managers constituted under this Act, after taking charge of a vested property.” “shall take such measures as may be necessary for the good management and protection of such property.” “shall not be entitled to transfer, except by monthly or annual lease any vested property” and “may with the written consent of the owner and in the prescribed manner transfer any vested property.”

20. That the Act XLV of 1974 and President's Order No.29 of 1972 gave the Government of Bangladesh the authority and the responsibility for management of the Indian Properties so as to avoid any vacuum in the management of these properties.

21. That in the absence of any war between India and Bangladesh the seizure of any Indian property which had never been under the management of the Custodian of Enemy Property or any other Pakistan Officer or Board by the Government of Bangladesh, for the purpose of management and protection is clearly beyond the purview of the President's Order No.29 of 1972 or Act XLV of 1974.

22. That there are two principles sanctioned by the law of Nations with regard to the property of an alien. The first one is that every state should afford necessary protection to the property of an alien and the second is that every state should grant to aliens equality before the law with its own citizens as well as the aliens of different foreign states.

23. That in the absence of any words the provisions of President's Order or the Act should not be construed or interpreted in a manner which may involve Bangladesh in actions leading to a breach of its obligations under the law of Nations. There is nothing in the said President's Order or the Act which suggests that the vesting of certain properties in the Government of Bangladesh as contemplated in the said Order or Act conferred upon it any power of taking over any property of an Indian national by dispossession of the property which had been taken over by the Government of Pakistan because of a war. Such power would certainly have put the Government of Bangladesh in conflict with its international obligation and can not, therefore, be inferred from the words of the said Act in the absence of a positive provision of the said effect.

24. That it is clear that neither the provisions of the Act of 1974 nor those of President's Order No.29 of 1972 do purport to authorize the Government of Bangladesh to take over

possession of any property belonging to an Indian which was never taken possession of and taken under management by the Government of Pakistan or any of its officers under the provisions of defence of Pakistan Rules and the Order made there under. Apart from being violative of its obligation under the law of the Nations, any such action of the Government of Bangladesh thus appears to be inconsistent with the law of the country.

25. That a vested property in Bangladesh is such a property as was an enemy property while the country was a part of Pakistan and there was a war going on between India and Pakistan. The actual war did not subsist for long. As there had been no formal Treaty of Peace terminating the war, the said war was deemed to have continued in this part of the country till the said part ceased to be a part of Pakistan and with the emergence of an independent sovereign Bangladesh. There has never been a war between India and Bangladesh and as such a citizen or resident of India cannot be classified

as an enemy of Bangladesh in the context of the existing state of things. Bangladesh became independent by waging a war against Pakistan. India was an ally of Bangladesh in the said war and as soon as Bangladesh became fully independent by defeating Pakistan, the said two countries, viz. Bangladesh and India have concluded the Treaty of Friendship for a period of 25 years.

26. That after the termination of the war between Indian and Pakistan on the conclusion of the Treaty of Peace on 16.12.71 and the Emergence of Bangladesh in place of East Pakistan on 26.03.71 the citizens of India ceased to be the enemies of this part of the country which had become Bangladesh. The Indian Properties also ceased to be Enemy Properties and those Indian Properties, which had been taken over as enemy properties became liable to be restored to their owners without any encumbrance.

27. That so far as the area of East Pakistan is concerned the said war came to an end as soon as India recognized the

independent Bangladesh to be a new friendly sovereign state on its emergence on 26.03.71. Since the date, the non-vested enemy properties lying in Bangladesh have ceased to be enemy properties any more and the full fledged rights of the Indian owners have been restored in respect of the said properties. In the said circumstances the aforesaid properties are liable to be immediately restored to their lawful owner.

28. That it is submitted that the properties lying in East Pakistan which had vested in the Government of the East Pakistan because of the Indian domicile of the owners of such properties went under the ownership of the Government of Bangladesh after the emergence of Bangladesh under the provisions of the President's Order No.29 of 1972. Since India is not an enemy of Bangladesh. Such properties are liable to be restored to their original owners.

29. That it is submitted that it is a mistake on the part of the law-making authority of Bangladesh to conceive that the Ordinance which was enacted by Pakistan on the basis that

there was a war between India and Pakistan and that India and the Indians were the enemies of Pakistan, could continue as a law of Bangladesh under the said Enforcement Order of 1971 as the effect of continuing the provisions of the Ordinance in Bangladesh was to continue the war between India and Pakistan as a war between India and Bangladesh and to make India and the Indians the enemies of Bangladesh. The provisions of Defence of Pakistan Rules continued by Ordinance No.1 of 1969 could continue in Bangladesh with the consequential changes.

30. That it is submitted that the second mistake on the part of the said law making authority of Bangladesh was to ignore completely the provision of President's Order No.29 of 1972 under which the properties and assets vested in the Custodian of Enemy Property or an Officer or Board appointed by the Government of Pakistan had already in the Government of Bangladesh [Bangladesh Enemy Property Management Board Vs. Md. Abdul Majid 27 DLR

AD 52]. Apart from the fact that Ordinance No.1 of 1969 could not be a valid law in operation in the territories, now Bangladesh. Since the emergence of Bangladesh, the laws Continuance Enforcement Order, 1971 lost all of its force and became ineffectual since 26.03.71 after the promulgation of President's Order No.29 of 1972, as by virtue of the provisions of the said Order, all the properties and assets of the Indian nationals which were vested in the Custodian of enemy Property became vested in the Government of Bangladesh, which could administer the said properties and assets by making appropriate rules for the same. But the Government of Bangladesh and its Officers have been dealing with the properties of the Indian nationals, as if there had been no emergence of any such state as Bangladesh and so such laws as President's Order No.29 of 1972 and that the Government of Bangladesh was nothing but an agent of Pakistan to carry out the laws made by Pakistan.

31. That it is submitted that the whole idea behind these provisions seem to be that during the Emergency which was declared on the commencement of the war, the individual enemy owner was not considered suitable or safe for the management of his property or it might be that because of restriction on his movement or detention in prison an enemy subject was incapable of managing his property and as such it was necessary to make adequate provisions for the protection and management of such properties. To carry out this purpose the property was caused to be vested in an officer of Government of Pakistan, who was charged with the responsibility of protecting and managing the properties, realizing the money or compensation which was due to the enemy owner and keeping proper accounts of the same. So that the interest of the enemy owner was not sought to be extinguished in any way, but was purported to be placed in a state of hibernation.

32. That it is submitted that these were temporary measures for the “management and protection of property ” as stated in clause (III) of paragraph 3 of the Enemy Property (Lands and Buildings) Administration and Disposal Order and the right which accrued to the Deputy Custodian or Assistant Custodian by virtue of the vesting in consequence of the order under Rule 182 (1) (b) of the Defence of Pakistan Rule was no larger right than that of protection and management of the property, the benefit of which will ultimately rebound to the credit of the enemy owner.

33. That it is submitted that from the perusal of President’s Order 29 of 1972 and Act XLV of 1974 it becomes clear that the Government of Bangladesh was given under the said President’s Order or Act the authority and the consequent responsibility for management of the Indian properties similar to what the Custodian of Enemy Property or any Officer or Board appointed by the Government of Pakistan had in respect of the said properties under the Defence of

Pakistan Rules and the orders made there under, so as to avoid any vacuum in the management of these properties.

34. That it is submitted that as there is no war nor had there ever been any war between India and Bangladesh, the *raison d'être* (the whole reason) for such management, is no longer in existence and there having been no question of adjustment of accounts between the two countries in consequence of any war between them. It is the necessary obligation of the Government of Bangladesh to restore such properties to the rightful owners.

35. That the properties of the persons who had left Pakistan for India after 3.12.65, also became enemy properties in view of the formal non-termination of the war and some of such properties were taken over by the Government of East Pakistan as enemy properties, but in the absence of any fresh vesting order, the said properties did not legally vest in the Government and as such these properties can not be deemed to be vested properties in any view of the matter. It was

contemplated as it appears from Act XLVI of 1974, that a Management Committee would be constituted for the management and disposal of the Vested and Non-Resident Properties but the said Act having been subsequently repealed no such committee was ever formed.

36. That it is submitted that the properties belonging to any person which had been taken over by the Government of East Pakistan or that of Bangladesh on the view that such properties having been assumed became vested or non-resident properties after 3.12.65 can be straight way restored to the present owners of the said properties because in the absence of a fresh vesting order the Government concerned has not acquired any title in respect of the said properties at the time when the said Government took them over and the title of the owner of such properties have not been affected in any way.

37. That it is submitted that in view of the existing political condition relating to India and Bangladesh there appears to

be absolutely no reason for preserving the law relating to the vested properties. The law should be enacted forthwith providing for restoration of all vested and non-vested properties under the control of the Government to their rightful owners. Pending such legislation, a process may be started for the restoration of both the vested and non-resident properties to the rightful owners of such properties.

38. That it is submitted that no new circumstances has arisen for invoking the power of the Constitution to bring without preamble “অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১” which was done with a ulterior motive and as such the same is liable to be declared to have been made and promulgated without lawful authority and is of no legal effect.

Being aggrieved by the passing of the Ordinance Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 and অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ by the Government of the People’s Republic of Bangladesh, and having no other

efficacious remedy, the petitioner has brought this petition under Article 102 of the Bangladesh Constitution on the following amongst other -

G R O U N D S

- I. For that the predominate idea behind the taking over management of the enemy property under this emergency provision seems to have been the prevention of certain Acts which might be prejudicial to the war efforts of the Government of Pakistan and the protection of the said properties during the continuance of the war. It was never in the contemplation of the Government of the country to acquire for itself any beneficial interest in the properties of any individual enemy owner under the said provisions. But to protect and manage the properties. So that the rightful owners could get back the properties on the conclusion of peace.

- II.** For that on the Emergence of Bangladesh in place of East Pakistan on 26.03.71 as well as after the termination of the war between India and Pakistan on the conclusion of the treaty of peace on 16.12.71 the citizens of India ceased to be the Enemy of Bangladesh and Pakistan and the Indian Properties lying in Bangladesh ceased to be Enemy Properties and hence the continuance of such an Ordinance does not have any justification and it needs to be repeated.
- III.** For that on the vesting of the enemy properties on the Custodian of Enemy Property or the Government of East Pakistan the right of possession and disposal of such properties vested in the concerned authority, but the title of the enemy owner thereof did not actually terminate. Such title remained eclipsed and the said properties came under the control of the Custodian or the Government as the case might have been.

- IV.** For that on the termination of the war between India and Pakistan the properties which becomes Enemy Property after 03.12.65 because of the migration of the owners of such properties to India during the continuance the said state of war but did not vest in the custodian of Enemy Property because of the Non proclamation of any fresh vesting order in respect of such properties ceased to be Enemy Properties and have become liable on such termination of the war to be restored to the original owners with immediate effect by repealing the impugned Ordinance.
- V.** For that the vested properties are concerned, no further control and management of such properties are necessary in the absence of any war. The owners of the said properties did not completely lose their title in spite of their vesting in the Government of East Pakistan or any of its officers and as such they are entitled to get back the said properties in their former conditions on

the cessation of the circumstances for which they were deemed to have vested. Some legislative measures appear to be necessary for the repeal of the law relating to the vested properties and for the enactment of a law providing for the restoration of the erstwhile vested properties to their rightful owners.

VI. For that the Enemy (Vested) Property Act is like an ulcer in our national life. With the enactment of the Act the religious minorities have been put to administrative injustice and they were persuaded to leave the country. After the victory in the Liberation War of 1971, the Act was annulled but in 1976 another Public Ordinance was proclaimed which revived the Enemy (Vested) Property Act. Many of the minorities were dispossessed of their properties through circulars. This Act has brought in disorder in the society and has given incentive to the social

miscreants. This Act has made lives of the minorities hostages at the hands of some fellow citizen.

VII. For that the Pakistani rulers proclaimed this Act in order to perpetuate its ulterior motive. This Act was applied for the displacement of the religious minorities in the border areas. It is surprising how a law can be discriminating factor for two sections of citizens of one country and that is on religious ground. The Speaker of the Bangladesh Parliament in a gathering at Dhakeshwari Temple said that there can not be two laws in one country and the Enemy (Vested) Property Act needs to be annulled. Moreover, the 5th and 8th Amendment of the Constitution should be struck out since this has made the religious minorities inferior co-citizens of this country.

VIII. For that the Enemy (Vested) Property Act is a constant threat to the conception and practice of equal rights. The religious minorities are the citizens of this country

by their birthright. But this Act is a flagrant discrimination between the minorities and the majority whereas all fought for the liberation war in 1971 irrespective of their religious affiliation and hence the annulment of this black law is a pressing necessity.

IX. For that the Pakistan Government proclaimed this Act as an instrument of oppression and torture on the minorities, so that they must leave their homeland. Afterwards the Enemy Property Act was only re-named as Vested Property Act but the contents remained the same. The Constitution of 1972 (as amended) was commended as very democratic and just document all over the world. But this Constitution has been amended on ulterior motives and that has encouraged communalism all over the country. This Act is absolutely anti-people, anti-constitutional, anti-democratic and this is against the UN Charter of the Declaration of Universal Human Rights. Hence the

annulment of this black law the Enemy (Vested) Property Act is a must in order to make our freedom meaningful.

X. For that there cannot be any second view that the Enemy (Vested) Property Act is simply against our fundamental rights. The politics of communalism worked together behind the proclamation of the Act. Today communalism is emerging as a new force, it is taking stronghold in politics. It is taking us to the bad days of the past when this Act was proclaimed, where discrimination was upheld as a virtue. The existence of this law till now is shaking the very foundation of our national unity.

XI. For that it is a shame that after more than a quarter of a century of our independence we have not been able to establish a civil society. This act certainly worked as a fuel to the communal fires that we saw in 1990 and 1992. This Act provokes a section of people to drive

out their neighbors in the minority and to possess their land holdings and material properties. Things have gone so far that the minorities even feel afraid to file FIR in the police station. Fundamentalism have been encouraged with the 5th and 8th amendments in the Constitution.

XII. For that the Defence of Pakistan Rules under which the provisions of the Enemy (Vested) Property Act were included deemed India as the enemy at the outbreak of the war in 1965. But the enemy became friend in 1971. In 1972 the Enemy (Vested) Property Act became only Vested Property Act. Still the Hindus are being dispossessed of their property. The first Government of the country annulled the Act. The Government of Ziaur Rahman proclaimed the annulment by the first Government of the country void. On August 6, 1984 the Ershad Government declared that there would be no further enlistment of

vested property. We cannot think of any state in the modern times which is based on religion. Religion is no more an issue for this Act. We have no war and there is no Pakistan in Bangladesh. So there cannot be any reason on earth why should there be an Enemy (Vested) Property Act.

XIII. For that the foundation of our state rests on equal rights, justice and no discrimination for the citizens of this country. While the provisions of fundamental right remind intact in the Constitution. The existence of the Enemy (Vested) Property Act is unconstitutional. This law is here because of the unsatisfied greed, dishonest motive and corruption of some of the immoral people. This is a movement not of Hindus or the Minorities but of every people who believe in freedom and justice. A country which believes in democracy cannot allow Enemy (Vested) Property Act to sustained. There was no concept of the majority or the minority while the

constitution was conceived or passed. This black Act provoked tensions, enmity, mistrust and violence among people. This Act has persuaded the state and the servants of the state to indulge in immoral actions and hence the law must be annulled.

XIV. For that if the state looks at its citizens discriminately, legal discrimination finds a natural growth and that helps the miscreants engaged in social evils. Pakistan used Islam in order to create difference among people but one can not justify the existence of Enemy (Vested) Property Act in Bangladesh. The 5th and 8th Amended in the Constitution have made the Hindus, Buddhists and Christian second class citizens of this country and the continuance of the law should be declared void.

XV. For that if a study of the people of South Africa and Palestine is made one can understand why the religious minorities live in the country and also why many of them leave this country. If Bangladesh Constitution of

1972 was active till this day without the surgeries it sustained. Probably there would not have taken place the exodus of many Hindus from this country. This Act is blatantly communal and hence anti-constitutional. This has brought in immense sufferings specially to the Hindus. The sooner this Act is annulled, the better is the future of the country.

XVI. For that the impugned Ordinance totally goes against the very fundamental principles of state policy as enunciated in Article 8(1) of the Constitution of Bangladesh, this Article is as follows :

“the principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice. Together with the principles derived from them as set out in this Part, shall constitute the fundamental principles of state policy”

XVII. For that the impugned Ordinance totally goes against Article 31 of the Constitution. Article 31 is as follows :

“To enjoy the protection of the law and to be treated in accordance with law, and only in accordance with law is the inalienable right every citizen, wherever he may be and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property any person shall be taken except in accordance with law.”

XVIII. For that the impugned Ordinance is totally against Article 32 of the Constitution. Article 32 of the Constitution is as follows :

“No person shall be deprived of life or personal liberty save in accordance with law.”

XIX. For that the impugned Ordinance is absolutely against Article 42(1) of the Constitution of Bangladesh.

Article 42 is as follows :

“Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized save by authority of law.”

XX. For that no new circumstances has arisen for invoking the power of the Constitution to bring without preamble “অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১” which was done with a ulterior motive and as such the same is liable to be declared to have been made and promulgated without lawful authority and is of no legal effect.

39. That your humble Petitioner has no other efficacious adequate expeditious, speedy and specific remedy other than the remedy herein as prayed.

Wherefore, the petitioner prays that your Lordships would kindly issue Rule Nisi

calling upon the Respondents to show cause as to why :

A) Various circulars orders, gazette notifications and enactments including Pakistan Defence Ordinance and Rules of 1965, Presidential Order 29 of 1972, Act 45 and 46 of 1974, Ordinance No.92, 93 of 1976, circular dated 23rd May 1977 and অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ and circular, administrative orders, instructions issued in this context as these contradict with the fundamental rights and the charter of declaration of Independence Bangladesh, 17th May, 1971 should not be declared to be ultra vires; and why the properties so far incorporated in the list as Enemy

(Vested) Property should not be returned to the title holder/ successors/ legal possession holders, lawful sharers.

B) That after hearing the parties makes the Rule Absolute.

C) Pass such other or further order or orders as your Lordships may deem fit and proper under the facts and circumstances of the case.

And for this act of kindness, you humble petitioner, as in duty bound shall ever pray.

AFFIDAVIT

I, Rabindra Tribedi, son of Late Chitta Ranjan Trivedi of 25 Joy Chandra Ghosh Lane, Sutrapur, of Police Station of District Dhaka, aged about 64 years, by faith Hindu, by

profession Human Rights Activist, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:-

1. That I am the Petitioner in this case and acquainted with the facts and circumstances of the case competent to swear this affidavit.
2. That the facts stated above are true to the best of my knowledge.

Prepared in my office.

(S. N. Goswami)
Advocate.

Deponent.

The deponent is known to
me and identified by me.

Advocate

Solemnly affirmed before
me this the 10th August,
2008.

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.**