

Court No. 19
(265719)

19.01.2026
(AD 19)
(S. Banerjee)

WPA 27884 of 2025

Rokeya Begum Muswi & Anr.
Vs.
The Union of India & Ors.

Ms. Priyanka Jana
Mr. Bikramjit Mandal

...for the petitioners

Mr. Dhiraj Kumar Trivedi, Ld. DSGI
Mr. Shailendra Kumar Mishra

...for the Union of India

Mr. Chandi Charan De, Ld. AGP
Mr. Anirban Sarkar

...for the State

Mr. Trivdei, learned Deputy Solicitor General of India, submits that the appropriate authority has not been impleaded as a party-respondent in this writ petition. He submits that a decision on the issue(s) raised in the representation dated October 24, 2024 can be decided by the Joint Secretary, Foreigners and Freedom Fighters Rehabilitation, Ministry of Home Affairs, Government of India having its office at Connaught Place, New Delhi – 110 001.

Faced with such situation Ms. Jana, learned advocate appearing for the petitioners prays for leave to add such authority as a party-respondent and amend the cause-title of this writ petition.

Such prayer is allowed.

Learned advocate-on-record of the petitioners is permitted to amend the cause-title of the instant writ petition by impleading the appropriate respondent as a party-respondent in this writ petition.

Since the Union of India is represented by the learned Deputy Solicitor General of India, there is no necessity to serve a copy of the amended writ petition upon the added respondent. However, the learned advocate-on-record of the petitioners shall be obliged to serve copy of the amended cause-title of the writ petition upon the learned advocate-on-record of the Union of India and the State forthwith.

The petitioners have submitted a representation dated October 24, 2024 praying for setting aside the order dated October 20, 2016 passed under Section 8 of the Enemy Property Act, 1968.

Ms. Jana, learned advocate appearing for the petitioners submits that in spite of receipt of such representation, the respondent authorities have not communicated its decision on such representation till date.

Mr. Trivedi, learned DSGI, submits that there is an alternative, efficacious remedy provided under

Section 18 of the Enemy Property Act, 1968 to an aggrieved party against the vesting of property as enemy property. He submits that the order of vesting was passed as far back in the month of October, 2016 and the petitioners have approached this Court at a belated stage.

Heard Mr. De, learned AGP for the State.

Learned advocate appearing for the petitioners submits that the property was initially recorded in the name of Sayedani Umme Fatema Hamera Khatun. She died on March 22, 2004 at Malda. She further submits that the order dated October 20, 2016 was not communicated to the successor-in-interest of the original recorded owner. She further submits that in the meantime Syed Aminul Muswi, husband of the petitioner no. 1 and the father of the petitioner nos. 2 and 3, died sometime in the month of August, 2024. She submits that due to the death of the predecessor-in-interest of the petitioners and the original recorded owner, there was some delay in submitting the application.

Section 18 of the Enemy Property Act, 1968 states that the Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the

Custodian within a period of thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.

Section 18 of the Act contemplates submission of representation within a specified time limit. The time limit for submission of representation shall start from the date of receipt of the order. Petitioners allege that the said order was not served upon them or their predecessor-in-interest and they have received the said order along with a reply given to the queries made under the provisions of the Right to Information Act, 2005 sometime in the month of June, 2024. This Court also cannot shut its eyes to the factual matrix that at the relevant point of time the original recorded owner had already passed away and thereafter the heirs of the original recorded owner, i.e., the

predecessor-in-interest of the present petitioners also passed away.

The question that arises is what would be the fate of an order passed against a person who had passed away prior to the date of passing of such order.

The other issue would whether the order was communicated immediately after passing such order.

Since various factual and legal issues arise for consideration in this writ petition, this Court feels that the same shall be best left open to be decided by the concerned authority under Section 18 of the 1968 Act as a comprehensive representation has been submitted by the petitioners.

In view thereof, this writ petition stands disposed of without entering into the merits of the claims made in the representation dated October 24, 2024 and by directing the, the Joint Secretary, Freedom Fighters & Rehabilitation Division, Ministry of Home Affairs, Government of West Bengal, being the added respondent no. 10 herein, to consider the said representation dated October 24, 2024 and pass a reasoned order after giving a reasonable opportunity of hearing to the petitioners or their authorized

representatives and communicate such order to the petitioners immediately thereafter. The entire exercise shall be completed by the added respondent as expeditiously as possible but positively within a period of six weeks from the date of receipt of a server copy of this order along with a copy of the representation dated October 24, 2024.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)