

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMAT 278 of 2025

Asfakul Haque and others
Vs.
Union of India and others

For the appellants	:	Mr. Bratindra Narayan Ray, Ms. Shetparna Ray
For the UOI	:	Mr. Indrajeet Dasgupta, Mr. Gourab Maiti, Ms. Susnita Saha Dutta
Heard on	:	02.04.2026
Judgment on	:	02.04.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal is a converted writ petition.
2. The brief facts are that according to the appellants, one Syed Fateh Ali Mirza, the original recorded owner of the subject plot, executed a registered hibanama on December 10, 1952 in favour of his wife and two daughters.
3. On August 03, 1973, as per the appellants' case, one of the donees, namely Kajmi Bibi, transferred the property in favour of one Mehboob Ali, who, in turn, transferred her share of the property on December 30, 1998 to the present appellants.

4. The appellants contend that when they attempted to have their names recorded in the records of rights on the strength of their transfer deed, it came to their knowledge that the property had been recorded as an enemy property coming under the purview of the Enemy Property Act, 1968 (for short “the 1968 Act”). Accordingly, information in that regard was sought by the appellants under the Right to Information Act, upon which it was given out that the subject lands had been vested under the 1968 Act by a Notification dated September 10, 1965 and September 11, 1965.
5. Accordingly, the appellants submitted a representation before the concerned authority under Section 18 of the 1968 Act, pointing out that the original owner and all the subsequent transferees were Indian citizens at all points of time and, as such, the property does not come within the purview of the 1968 Act. Initially, such representation was not being acted upon, prompting the present appellants to prefer a writ petition before this Court. The writ court, while directing the respondent-authorities to dispose of such representation, made certain remarks on the basis of the doctrine of non-traverse, since no affidavit-in-opposition was used by the respondents to the said writ petition of the appellants, to the effect that there was no dispute to the fact that the property was not an enemy property.
6. Subsequently, despite the direction of the writ court, the representation was not being disposed of, for which the appellants were constrained to file a contempt application.

7. In the contempt proceeding, it was pointed out by the respondents that the initial direction was passed on an authority who was not competent to adjudicate the representation under the 1968 Act, upon which direction was given on the appropriate authority to dispose of the representation, pursuant to which the same was disposed of ultimately by an order dated August 25, 2023.
8. Being aggrieved by the same, the appellants preferred another writ petition. During pendency of the writ petition, it transpired that an appeal under Section 18C of the 1968 Act lay to this Court against such order, upon which the writ petition was converted to an appeal. The said appeal is now before us.
9. Learned counsel appearing for the appellants submits that the entire premise of the impugned order, sustaining the vesting of the subject property under the 1968 Act, was apparently a report submitted by the Estate Manager which, in turn, relied on a book published by a foreign author.
10. Merely on the premise of the year of death of the original owner Syed Fateh Ali Mirza being mentioned to be 1948 in a genealogical table given in the said book, the authorities proceeded on the premise that the gift deed could not have been executed in the year 1952 by the said original owner, who was the first transferor through whom the appellants ultimately claim title. It is argued that in the absence of any death certificate by any competent authority, neither the Estate Manager had the authority under the law to certify the demise of a person, nor could the book by a foreign author simpliciter be

sufficient basis for coming to the conclusion that the original owner died in a particular year.

11. Secondly, it is argued that the transfer deeds down the line, including the original transfer deed executed by Syed Fateh Ali Mirza dated December 10, 1952, were registered documents and legal presumption of correctness is attached to such registered documents, unless rebutted. In the present case, there was no rebuttal whatsoever worth the name on the part of the respondents. Therefore, the impugned order was vitiated by contravention of law.
12. Moreover, it is argued by the appellants that Syed Fateh Ali Mirza was never a foreign national, let alone the citizen of an enemy nation. All the transferors of the title deeds which ultimately culminated in transfer in favour of the appellants, it is argued, have been Indian citizens and, as such, the rigours of the 1968 Act do not apply at all.
13. Lastly, it is submitted that the Notification dated September 10, 1965, which was purportedly the premise of the vesting of the subject property, was bald in nature and couched in a blanket fashion, without mentioning the specific property of the appellants in its schedule. It is submitted that the tenets of natural justice demand that a hearing and an enquiry should precede the vesting of a property in the garb of enemy property.
14. Learned counsel appearing for the Union of India controverts the submissions of the appellants and argues that the author of the book, on the basis of which it was held that the original owner Syed Fateh Ali Mirza expired in the year 1948, was none other than the son of

Syed Iskander Ali Mirza, that is, the own grandson of the said Syed Fateh Ali Mirza. It is submitted that Syed Iskander Ali Mirza was the first President of Pakistan and a person of repute. Hence, his son, the author of the book in question, hails from an illustrious family. As such, an element of authenticity is attached to the contents of the book written by him.

15. It is pointed out that it is nobody's case that Syed Fateh Ali Mirza was a foreign national. Even as per the case of the respondents before the authority, after the demise of the said Syed Fateh Ali Mirza, his property devolved upon Syed Iskander Ali Mirza by inheritance. The name of Syed Iskander Ali Mirza was recorded in the RS records of rights. Subsequently, after his migration to Pakistan, all the properties owned by Syed Iskander Ali Mirza, including the subject property in the present litigation, were vested in the Custodian of Enemy Property by dint of the Notification bearing No. 12/2/64-E.Pty dated September 10, 1965, issued in exercise of the power conferred under sub-rule (1) of Rule 133-V of the Defence of India Rules, 1962.
16. It is thus submitted that since the appellants kept mum over the matter during the prolonged period prior to filing of the writ petition, they cannot be permitted now to dispute the vesting of the property under the 1968 Act. It is also submitted that the appellants never had their names recorded as owners in respect of the subject property. On the contrary, learned counsel for the Union of India relies on a supplementary affidavit filed by the respondents in the writ petition, which was converted to the present appeal, where it was

pointed out that the appellants have been paying rent, in the capacity of tenants, in respect of the subject property. Thus, obviously, the appellants conceded to the Custodian of Enemy Property being in charge of the property. Hence, it is argued that a contrary stand of ownership cannot now be asserted by the appellants on the strength of a purported transfer deed.

17. Learned counsel insinuates further that the original hibanama was never produced by the appellants.
18. Upon hearing learned counsel for the parties, we come to the following conclusions:
19. At the outset, it may be noted that the argument as to the appellants admitting themselves to be tenants by depositing rent was never made, nor did it form a part of the ratio of, the order passed by the Joint Secretary to the Government of India which has been impugned before us.
20. Thus, the respondents cannot be permitted to take such objection to justify the impugned order for the first time at the stage of a challenge to the said order dated August 25, 2023, being hit by the proposition laid down in *Mohinder Singh Gill v. Chief Election Commissioner*, reported at (1978) 1 SCC 405.
21. Secondly, we do not find anywhere in the impugned order dated August 25, 2023 that it was the case of the respondents that the original hibanama was never produced. Rather, the Joint Secretary, while passing the impugned order, took into consideration the arguments of the parties as to whether a registered deed carries a

presumption of correctness. Thus, we cannot entertain such contention of the respondents at this belated stage in the appeal.

22. On the merits of the case, the sole premise of the respondents for turning down the representation of the appellants was that the original owner Syed Fateh Ali Mirza (whose ownership of the property has never been disputed) who executed the hibanama dated December 10, 1952, on which the appellants rely as their first chain deed of title, met his demise prior to execution of the deed, that is, in the year 1948. Such so-called information is derived solely from a report filed by the Estate Manager, Murshidabad. From the said report, which is a part of the records before us, it is evident that the only source of reference cited by the Estate Manager to come to the conclusion that Syed Fateh Ali Mirza died in the year 1948 was page number 344 of a book by the name "FROM PLASSEY TO PAKISTAN", ISBN 969-0-01621-0, American Edition, first published in 1999 by University Press of America, written by one Humayun Mirza, allegedly the only surviving son of Iskandar Ali Mirza, the latter being the son of the said Syed Fateh Ali Mirza.
23. Irrespective of whether the author of such book is the grandson of Fateh Ali Mirza and hails from an illustrious family or not, a year of death mentioned as a sub-script in a genealogical table in a book published by an author, which book is not a sacrosanct authority from any point of view on the question of the facts mentioned therein, could not be a valid basis for the Joint Secretary to come to the conclusion that Syed Fateh Ali Mirza died in the year 1948. In the

present case, neither any death certificate issued by any competent authority was produced, nor did the Estate Manger have the authority in law to certify the date of death of the said Syed Fateh Ali Mirza. Even from the report, it is found out that only the year of alleged death of Syed Fateh Ali Mirza was mentioned as 1948 in the book in question, without furnishing any particular date or any other details regarding such death whatsoever.

24. Thus, such so-called information on the basis of a book by a foreign author could not have been a valid or legal basis for coming to the conclusive finding that Syed Fateh Ali Mirza met his demise in the year 1948, thereby negating a registered deed of gift dated December 10, 1952 executed by the said Fateh Ali Mirza.
25. Secondly, as rightly argued by learned counsel for the appellants, a registered deed carries a presumption of correctness unless rebutted by cogent evidence. In the present case, no rebuttal evidence worth the name whatsoever has been produced to dislodge the presumption of correctness of such registered document.
26. Moreover, from the impugned order itself, it is found that the respondents' categorical case was never that Syed Fateh Ali Mirza was ever a foreign national, let alone the citizen of an enemy nation.
27. Rather, it was the categorical case of the respondents that the subject property, in the CS era, belonged to Syed Fateh Ali Mirza and after his demise the property devolved upon his successor (son) Syed Iskander Ali Mirza, whose name was also recorded in the RS records of rights.

28. Thus, the Indian nationality of Syed Fateh Ali Mirza and his ownership of the subject property during his lifetime remain uncontroverted even by the respondents.
29. It is trite law that unless a property is owned by an “enemy” or “enemy subject” or “enemy firm” within the contemplation of Section 2(b) of the 1968 Act or is otherwise an “enemy property” under Section 2(c) of the 1968 Act, the rigours of 1968 Act cannot apply at all.
30. Hence, since there was no valid or legal basis for disputing the deed of gift executed by Syed Fateh Ali Mirza, which was the original source of title of the predecessors-in-interest of the appellants, there cannot be any doubt that the vesting of the subject property, which had already been transferred by Syed Fateh Ali Mirza prior to his demise, could not come under the ambit of the 1968 Act.
31. The Joint Secretary, Government of India, turned the burden of proof on its head by observing that no document was produced by the appellants during hearing to show when Syed Fateh Ali Mirza died. Since it was the positive assertion of the respondent-authorities that Syed Fateh Ali Mirza had met his demise prior to the execution of the deed of gift in 1952, the burden and the initial onus was on the respondents to validly prove the date of death of the said original owner.
32. Once a registered deed of gift and subsequent chain deeds are produced by the appellants, the onus shifts on the respondents, who

dispute such deeds, to prove the date of death of the transferor beyond doubt.

33. Having not done so, it does not lie in the mouth of the respondents to say that no attempt of mutation of the property was made by the appellants in their names at any point of time. Although the respondents argue that the appellants never challenged the vesting under the 1968 Act at all material times, the notice of a registered deed is supposed to be the date of such registration within the contemplation of the Transfer of Property Act.
34. The respondents never challenged the registered deed of gift executed by Syed Fateh Ali Mirza on December 10, 1952 in respect of the subject property, or the subsequent transfer deed by one of his donees, Kajmi Bibi, on August 03, 1973 in favour of one Mehboob Ali and thereafter the transfer deed executed by Mehboob Ali in favour of the present appellants on December 30, 1998, all being registered deeds.
35. Thus, we do not find any valid basis of the impugned order.
36. The Notification of 1965 relied on by the respondents only covered enemy properties and not properties which were owned at all points of time by Indian nationals.
37. In such view of the matter, we do not find any substance in or legal basis of the impugned order dated August 25, 2023.
38. Accordingly, FMAT 278 of 2025 is allowed on contest, thereby setting aside the impugned order dated August 25, 2023 passed under

Section 18 of the Enemy Property Act, 1968 by the Joint Secretary to the Government of India, Ministry of Home Affairs (FFR Division).

39. We further declare that the vesting of the subject plot under the 1968 Act was bad in law and set aside the same, of course, only insofar as the present appellants are concerned.
40. Any action taken pursuant to such vesting, if still subsisting, is hereby revoked and set aside as well.
41. There will be no order as to costs.
42. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)