

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

**WRIT PETITION No. 9665 OF 2016**

In the matter of:

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

AND

In the matter of:

Sazzad Ali and others

...Petitioners

-Versus-

Arpito Sompotti Prottarpon Additional Appeal Tribunal No. 5, Sylhet and others

..... Respondents

Mr. M.F. Ahmed, Advocate

..... For the Petitioners

Mr. Bepul Bagmar, D.A.G.

..... For the Respondent No. 3.

Ms. Kamrunnahar Tamanna

..... For the Respondent Nos. 4-9

**Judgment on: 30.06.2021**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**and**

**Mr. Justice Md. Mahmud Hassan Talukder**

**Md. Khasruzzaman, J:**

This *Rule Nisi* was issued calling upon the respondents to show cause as to why the judgment and decree dated 15.06.2016 (decree signed on 23.06.2016) passed by the Arpito Sompotti Prottarpon Additional Appeal Tribunal No. 5, Sylhet in Arpito Appeal No. 177 of 2014 allowing the appeal (Annexure- D) and thereby reversing the

judgment and decree dated 23.07.2014 (decree signed on 31.07.2014) passed by the Arpito Sompotti Prottarpon Additional Tribunal No. 2, Sylhet in Arpito Sompotti Prottarpon Suit No. 607/2012 decreeing the suit(Annexure- D-1) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioners as plaintiffs instituted Arpito Sompotti Prottarpon Case No. 607/2012 before the learned Judge of the Arpito Sompotti Prottarpon Additional Tribunal No. 2, Sylhet against the respondent Nos. 1-3 as defendants for releasing the property from serial Nos. 45 and 727 of 'Ka' scheduled land under case Nothi Nos. 10/96-97 and 1/85-86 respectively of Arpita Sompotti list published in the Bangladesh Gazette on 07.05.2012 and 15.04.2012 respectively (exhibit Nos. Ga/1 and Ga).

Facts as stated in the writ petition in short are as follows:

The original owner of the case land was Rosomoy Das and the khatian in settlement *jarip* was recorded and published in his name. Then he sold out the case land along with other lands to Sukur Ali, predecessor of the plaintiffs, vide registered deed No. 4363 dated 01.09.1965 and handed over the possession to him but in the *jarip* the said land was wrongly recorded as plot No. 2030 instead of plot No. 2130. However, khatian number and boundaries of the land were correctly written in the deed. It is mentioned that the land described in plot No. 2030 whose Khatian number is 92 and Kamini Mohan Dey

was the owner of that land. After purchasing the lands in plot Nos. 2130 and 844 described in the schedule of the plaint, the plaintiffs have been in possession. The recorded owner Rosomoy Das was the citizen and permanent residence of this country. He transferred the schedule land to the predecessor of the plaintiffs through registered deed before the enactment of the Arpito Sompotti Prottarpon Ain. Thus the plaintiffs are entitled to get a decree for releasing the suit property under Arpito Sompotti Prottarpon Ain, 2001 (Amended 2011).

The defendant No. 1 contested the suit by filing written statement denying all the material facts stated in the plaint. The positive case of the defendant is that the land measuring 28 decimals of land under S.A. Khatian No. 717 Plot No. 2130, Mouza-Kuberali, P.S.- Balagonj, District- Sylhet belonged to Rosomoy Das and Plot No. 844 was not found out in S.A. Khatian No. 391 under the said mouza. Plot No. 844 has been recorded two Khatians being Khatian No. 370 measuring land 5 decimals and Khatian No. 367 measuring land 4 decimals and Rosomoy Das was the recorded owner of these two khatians i.e. Khatian Nos. 370 and 367. The lands described in the schedule were correctly published in Serial Nos. 45 and 727 under 'Ka' schedule as per section 9 of the Arpito Sompotti Prottarpon Ain, 2001 as an abandon property and the government is controlling and possessing the said lands. The recorded owner Rosomoy Das left this country for India leaving the property as abandon and as such the said property was correctly recorded in the V.P. list. Moreover, the said property was

leased out in different persons and the same was leased out vide V.P. Case No. 1/85-86 in favour of Baton Ram Namu-Sudra. Thereafter, it was transferred to Joynul Islam and the lessee paid the taxes upto 1414 B.S. and the same was also leased out to Mosharaf Ali and others vide V.P. Case No. 10/96-97. The statements made in the plicant regarding transfer of the case land from Rosomoy Das to the predecessor of the plaintiffs were false, and the alleged deed No. 4363 dated 01.09.2016 is forged, collusive, void and it was created by a fictitious person. Thus the suit is liable to be dismissed.

The respondent No. 3 contested the Rule Nisi by filing an affidavit-in-opposition and the respondent Nos. 4-9 filed an affidavit-in-opposition but they did not contest the *Rule Nisi*.

The contents of the affidavit-in-opposition are that the statements made in paragraph No. 7 of the writ petition are not correct because the petitioner produced the khatian of late Rosomoy Das (Annexure-E to the writ petition) and as per the khatian the suit land is situated in plot No. 2130 but the writ petitioners purchased the land in plot No. 2030. In addition, plot No. 844 is not available in khatian No. 391, in fact the land in plot No. 844 is situated at Khatian No. 370. The instant writ petition was filed with vague and untrue statements with a view to grab the government land. The fact is that Rosomoy Das was the owner of the suit land and he left for India leaving his property uncared, and as such the same was recorded in the 'Ka' schedule of Vested Property. Accordingly, the same was leased out through V.P. Case No. 1/85-86

and 10/96-97 on yearly basis and the government has been enjoying and in possession the land in question. The petitioners cannot get any relief from this Court since they did not come with clean hands and as such the *Rule Nisi* may kindly be discharged.

The plaintiffs examined 3 witnesses and produced some documents which were marked as Ext. Nos. 1-2 series and the defendant to prove his case Senior Land Assistant Officer, Narayan Chandra Ray, was examined as D.W. 1 and he produced some documents which were marked as Ext. Ka-Uma series.

After conclusion of the trial the learned Judge of the Arpito Sompotti Prottarpon Additional Tribunal No. 2, Sylhet decreed the suit and thereby released the case property from the list of abandon property on 23.07.2014.

Being aggrieved by and dissatisfied with the said order the defendant as appellant filed Arpito Sompotti Appeal No. 177 of 2014 before the Arpito Sompotti Prottarpon Additional Appeal Tribunal No. 5, Sylhet and after hearing, the said appeal was allowed and thereby the judgment of the tribunal was set aside and the suit was dismissed on 15.06.2016.

Finding no other equally efficacious namely the plaintiff-petitioners filed this writ petition against the judgment and decree and obtained the above *Rule Nisi*.

Mr. M. F. Ahmed, the learned Advocate for the petitioners submits that the tribunal after considering the Ext. 1, deed No.

4363/1965 executed on 01.09.1965, the description of the land in Khatian No. 450/10 and the boundaries of the land described in the schedule of the deed which attracts S.A. Plot No. 2130 and said land was sold out by Rosomoy Das in favour of Sukur Ali, predecessor of the plaintiffs. But the Appellate Tribunal without considering Khatian No. 450/10 and the description of the boundaries allowed the appeal and thereby committed an error of law. He further submits that there is no dispute regarding the title of Rosomoy Das in respect of the land described in the deed Ext. 1, in plot Nos. 2130 and 844 and thereafter, said Rosomoy Das executed the sale deed No. 4363/1965 on 01.09.1965 and as such after executing the said deed Rosomoy Das transferred the case land along with other lands in favour of the predecessor of the plaintiffs and thus from 02.09.1965 said Rosomoy Das became title less person in respect of the case property and the plaintiff-petitioners and their predecessor never left this country and as such the inclusion of the petitioners' property as V.P. list is illegal and without lawful authority. He also submits that the plaintiff-petitioners have been in possession of the lands described in plot Nos. 2130 and 844 and others non-suited lands in 4 plots, thus the deeds, Ext. 1 acted upon in respect of the entire 1.5 acres of land and the plaintiff-petitioners have proved their possession over the case property. On the other hand, the government has failed to prove that the case property was leased out or possession was handed over to anyway. The mere statements in the written statement that the government leased out the

property and handed over the possession are not sufficient without any material documents. He contends that some lands of Rosomoy Das were also enlisted in the 'Kha' list as serial Nos. 7, 13 and 14 and subsequently it was released in favour of the plaintiff-petitioners on the basis of the said deed No. 4363 of 1965 Ext. 1. He further contends that on 23.03.1974 the Order No. 1 of 1965 was repealed, thus the initiation of V.P. Case Nos. 1/85-86 and 10/96-97 after 23.03.1974 on the basis of repealed Act declared the property as enemy property/vested property is illegal and without any lawful authority and the law of enemy property became inoperative. Thus no property could be declared as enemy property after 23.03.1974. In support of his submissions he cited a case of Govt. of Bangladesh and others Vs. Dhaka Memon Anjuan, 13 MLR (AD) 349. He also contends that the Appellate Tribunal without considering the relevant law and facts that recorded owner Rosomoy Das transferred the case property in favour of the predecessor of the plaintiff-petitioners on 01.09.1965 and on the same day possession was handed over to him but the law of Enemy Property Act came into operation on 06.09.1965 and thus it is clear that before the law of Enemy Property came into operation the case property was transferred to Sukur Ali, predecessor of the plaintiff-petitioners, and Sukur Ali and his successors never left this country for India. Moreover, the government has also failed to prove that Rosomoy Das left this country after 06.09.1965. As the government has failed to submit any census list which was prepared at that time and as such the

said property cannot be treated as vested and non-residence property and the same was not considered by the Appellate Tribunal. He lastly submits that the Appellate Tribunal without considering the legal provisions regarding “interpretation of a document” as he did not consider the contents of the entire documents he only considered the plot No. 2030 without considering the boundaries described in the schedule of the deed which attracts the plot No. 2130, and as such the impugned judgment passed on the basis of the plot number described in the deed is not at all tenable in the eye of law, and thus the Appellate Tribunal committed error of law.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of respondent No. 3 submits that the plaintiff-petitioners did not submit the original deed of the title which was executed on 01.09.1965 and registered on 14.09.1965 when the law of Enemy Property was enacted. He further submits that the plaintiff-petitioners acquired title in plot No. 2030 on the basis of the deed but he filed a suit for releasing the property from the abandon property list of plot No. 2130 whereas he did not acquire any right and title in plot No. 2130. He also submits that the plaintiff-petitioners filed the suit for releasing the property of Plot No. 844 under Khatian No. 391 whereas the khatian would be 367 and 370 measuring the land 4 decimals and 5 decimals respectively, and as such the petitioners are not entitled to get any relief from this Court and thus the Appellate Tribunal after considering these facts dismissed the appeal which calls for no



interference by this Court. He contends that the case property was leased out to different persons vide V.P. Case No. 1/85-86 and 10/96-97 on the yearly basis, thus the statements so far as it relates to possession of the petitioners are totally false and the petitioners failed to prove the possession in respect of that land. Accordingly, the Rule Nisi is liable to be discharged.

Heard the learned Advocate for the petitioners and the learned Deputy Attorney General, perused the application, affidavit-in-oppositions, judgments alongwith material documents on record and the annexures annexed thereto.

It appears from the deed No. 4363 of 1965 (Ext. 1) that Rosomoy Das transferred 28 decimals of land in plot No. 2030 under jaripi Khatian No. 450/10 and 9 decimals of land in plot No. 844 under jaripi Khatian No. 257 and the boundaries of the land have been stated in the said deed. The plaintiff-petitioners in his plaint stated that “বিগত ০১/০৯/১৯৬৫ ইং তারিখের দলিলে লেখক মোহরীর ভ্রমবশতঃ দাগ নং ২১৩০ স্থলে ২০৩০ উল্লেখ করেন। তবে খতিয়ান নম্বর ও চৌহদ্দি সঠিকভাবে উল্লেখ করেন। উল্লেখ্য যে, ২০৩০ দাগের মালিক কামিনী মোহন দেব বটেন এবং ৯২ খতিয়ান সংক্রান্ত বটে।”

P.W. 1 in his examination-in-chief stated that রসময় দাস অপরাপর ভূমি সহ নালিশী ভূমি ০১/০৯/১৯৬৫ তারিখের ৪৩৬৩ নং দলিলে আমার পিতা শুকুর আলী বরাবরে বিক্রি করেন এবং দখল হস্তান্তর করেন। দলিলের তপশীলে মহরার ভুল করে ২১৩০ স্থলে ২০৩০ উল্লেখ করেছে। খতিয়ান এবং চৌহদ্দি সঠিকভাবে উল্লেখ করা হয়েছে। ২০৩০ দাগের

মালিক কামিনী মহন দে । উহা ৯২ নং এস এ খতিয়ানের জমি and in his cross examination he denied the suggestions given by the defendant.

Thus the P.W. 1 supported the facts that Rosomoy Das transferred the case property to Sukur Ali, predecessor of the plaintiff-petitioners, vide registered deed being No. 4363 dated 01.09.1965 and possession was handed over on the same day and the scrip was wrongly written plot No. 2030 instead of 2130 and he further ascertained that the land in plot No. 2030 under Khatian No. 92 belonged to Kamini Mohan Dey. He also ascertained that the khatian and boundaries of the land have been correctly written / described in the schedule of the said sale deed which attacks the land of plot No. 2130. This fact has not been categorically denied by the defendant-opposite party No. 3 in their written statement and on this point the defendant did not cross examine the P.W.1 which has been discussed by the trial Court. On the other hand, the Appellate Tribunal without considering the boundaries of the case land as stated in plot No. 2030 Porcha Khatian No. 450/10 which attracts the plot No. 2130 and Rosomoy Das was the owner of the said Plot No. 2130. On the other hand, Kamini Mohan Dey was the owner of the land of Plot No. 2030 Khatian No. 92. Thus the land described in the schedule of the sale deed was sold by Rosomoy Das in favour of the predecessor of the plaintiff-petitioners, Sukur Ali, on 01.09.1965.

It appears from the deed No. 4363/1965, Ext. 1, that Rosomoy Das transferred 9 decimals of land in plot No. 844, Porcha Khatian No. 257, Mouza-Purbarani but in the plaint Khatian No. 391 has been

written instead of Khatian Nos. 367 and 370. The defendant-respondent No. 3 in their written statement categorically stated that the Khatian would be 367 and 370, the land measuring 4 decimals and 5 decimals respectively and accordingly, plaintiff-petitioners did not acquire any right of the said 4 and 5 decimals of land in Plot No. 844 under Khatian No. 367 and 370. But it appears from the Ext. Kha and Kha-1 that Rosomoy Das was the owner of 4 decimals of land of Plot No. 844 under Khatian No. 367 and 5 decimals of land of plot No. 844 of khatian No. 370 and thus lands attract the boundaries of plot No. 844 described in the deed as well as in the plaint, and as such there is no dispute that Rosomoy Das was the owner of the said land. Thus it can be presumed that Rosomoy Das transferred the said 9 decimals of land in Plot No. 844 under Porcha Khtian No. 257 which has been published in the list of the abandon property. Here the government did not raise any question as to whether the boundaries of the land attract or not the land of plot No. 2130 under Khatian No. 717 and plot No. 844 under Khatian Nos. 367 and 370. Thus it goes in favour of the plaintiff-petitioners which have been stated in their plaint that the boundaries attract the land of plot No. 2130, and in this regards P.W. 1 supported these facts. The plaintiff-petitioners filed the suit for releasing the property from the list of enemy property. In this case the title of the plaintiff-petitioners has to be proved incidentally and the government has to prove whether the property-in-question was properly included in the list of enemy property by following provision of law. The plaintiff-

petitioners in their plait categorically stated that the Khatian numbers and the boundaries are correctly mentioned in the deed which attracts the land of S.A. plot No. 2130 and these facts were not denied by the defendant-respondent in their written statement and as such it is not mandatory upon the plaintiff-petitioners to prove the boundaries of the land by an investigation whether the boundaries of the land attracts or not.

It also appears from the certified copy of the original deed No. 4363 of 1965 that Rosomoy Das executed the said deed on 01.09.1965 and possession was handed over to the predecessor of the plaintiff-petitioners on the same day and P.W. Nos. 1 and 2 categorically stated that Rosomoy Das transferred the case property to Sukur Ali, and they have been in possession and P.W. 3 elected member of the Union Parishad disposed that Sukur Ali had been in possession and after his death the plaintiff-petitioners have been in possession of the case property. D.W. 1 in his examination-in-chief stated that Rosomoy Das left this country during the war in 1965 and as such his property has rightly been vested upon the government and it was treated as enemy property and lastly published in "Ka' list and the government has been in possession by leasing the same to others but they have failed to prove their case as recorded owner Rosomoy Das transferred the case property to the predecessor of the plaintiff-petitioners on 01.09.1965 and the matter handing over the possession has not been exhibited and none of the lessee was examined that the case property has been

enjoyed by him. Thus the documents exhibited by the D.W. regarding leasing out the property is completely a paper transaction. It also appears from Ext. Uma and Uma-1 that the plaintiff-petitioners filed Title Suit No. 83 of 2009 in the Court of Assistant Judge, Sylhet for declaration of title and the said suit was dismissed, then they filed Title Appeal No. 42 of 2012 Jononirapotta Adalot before the learned District Judge, Sylhet and it was transferred to the Janonirapatta and at this stage the Arpito Sompotti Prottarpon Ain, 2001 was amended and all suits, appeals and revisions pending before any Court were abated as per section 13 of the Ain. Thereafter they filed the Arpito Sompotti Prottarpon Case No. 607 of 2012 for releasing the said proerety. As such the judgment of Title Suit No. 83 of 2009 has no manner of application.

Considering the facts and circumstances and the discussions made above, we have found substance of the submissions of the learned Advocate for the petitioner as well as merit of the Rule.

In the result, the *Rule Nisi* is made absolute without any order as to cost.

The judgment and decree dated 15.06.2016 (decree signed on 23.06.2016) passed by the Arpito Sompotti Prottarpon Additional Appeal Tribunal No. 5, Sylhet in Arpito Appeal No. 177 of 2014 allowing the appeal and thereby reversing the judgment and decree dated 23.07.2014 (decree signed on 31.07.2014) passed by the Arpito Sompotti Prottarpon Additional Tribunal No. 2, Sylhet in Arpito

Sompotti Prottarpon Suit No. 607/2012 decreeing the suit is hereby declared to have been passed without lawful authority and is of no legal effect.

Thus the judgment and decree dated 15.06.2016 (decree signed on 23.06.2016) passed by the Arpito Sompotti Prottarpon Additional Appeal Tribunal No. 5, Sylhet in Arpito Appeal No. 177 of 2014 allowing the appeal (Annexure- D) is set aside and the judgment and decree dated 23.07.2014 (decree signed on 31.07.2014) passed by the Arpito Sompotti Prottarpon Additional Tribunal No. 2, Sylhet in Arpito Sompotti Prottarpon Suit No. 607/2012 decreeing the suit (Annexure-D-1) is hereby affirmed.

Send down the records of the Tribunal and the Appellate Tribunal.

Communicate the order.

**Md. Mahmud Hassan Talukder, J.**

I agree.