

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

Writ Petition No. 15089 OF 2017.
IN THE MATTER OF:

An application under Article 102 read with Articles 27, 31, 42 and 44 of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Eftekharul Alam.

..... Petitioner.

-Versus-

Bangladesh represented by the Secretary Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Shahbag, Dhaka and others.

...Respondents.

Mr. M. Najmul Huda, with
Mr. Tapan Kumar Biswas, Advocate

.....For the Petitioner.

Mr. A.K.M. Amin Uddin, D.A.G with
Mrs. Helena Begum (Chiana), A.A.G.

..... For the Respondent.

Mr. Syed Mamun Mahbub, Advocate,

... For the Anti-Corruption Commission.

Mrs. Sufia Ahmed, Advocate,

...For the Respondent No.4.

Present:

Mr. Justice Md. Nazrul Islam Talukder
And

Mr. Justice K.M. Hafizul Alam

Heard on: 12.07.2018 and 04.04.2019
judgment on: 04.04.2019.

Md. Nazrul Islam Talukder,J:

On an application under Article 102 read with Articles 27, 31, 42 and 44 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi, at the instance of

the petitioner, was issued calling upon the respondents to show cause as to why Order No.10 dated 05.06.2017 passed by the learned Special Judge, Court No.1, Dhaka i.e. the Respondent No.3 in Special Case No.04 of 2017 arising out of Dhanmondi Police Station Case No. 10(4)2011 rejecting the application filed by the petitioner under Section 15 of the Money Laundering Protirodh Ain, 2009 for releasing the scheduled property of the petitioner being Shop No.276, Block-A (2nd Floor), Dhaka New Supermarket (South), measuring 78.98 square feet, Police Station-Newmarket, District-Dhaka from attachment in favour of the Durnity Daman Commission i.e. the Respondent No.2 (**Annexure-A**), should not be declared to have been passed without lawful authority and is of no legal effect and further why the respondents should not be directed to release the scheduled property of the petitioner from attachment and/or pass such other or further order or orders as to this Court may seem fit and proper.

It may be noted that on 31.10.2017, at the time of the issuance of the Rule, the respondents were directed to release the scheduled property of the petitioner being Shop No.276, Block-A(2nd Floor) Dhaka New Supermarket (South), measuring 78.98 square feet, Police Station-Newmarket, Dist: Dhaka within 03 (three) months from the date of receipt of this order and at the same time, the operation of the order dated 05.06.2017 passed in Special Case No.04 of 2017 by the Respondent No.3 (**Annexure-A**) was stayed for a period of 6(six) months from date.

The facts leading up to issuance of the Rule are as follows:-

- i) That the petitioner, by this writ petition, has challenged the order No.10 dated 05.06.2017 passed by the Respondent No.3 in Special Case No.04 of 2017 arising out of Dhanmondi Police Station Case No.10(4)2011 rejecting the application filed by the petitioner under Section 15 of the Money Laundering Prothrodh Ain,

2009 for releasing the scheduled property of the petitioner being Shop No.276, Block-A (2nd Floor), Dhaka New Supermarket (South) measuring 78.98 square feet, Police Station-Newmarket, District- Dhaka from attachment in favour of the Respondent No.2.

ii) That the petitioner is a businessman by profession having trade licence and is also a regular tax payer who purchased the scheduled property being bonafide purchaser for value.

However, the said property has been attached by an order of the lower court in favour of the Durnity Daman Commission i.e. the Respondent No.2.

iii) That the petitioner came to know about the attachment of his scheduled property on 08.05.2017 when some unknown persons has entered into the shop in question and told him that the scheduled property has been attached in

connection with the case mentioned earlier. Subsequently, the petitioner managed to get the case number and found that the scheduled property had been attached as per the order of the Respondent No.3. Later on after consulting his lawyer and as per his advice relevant documents have been collected and the petitioner as applicant filed an application to the court of below to release the scheduled property from attachment as per the provisions of Section 15 of the Money Laundering Protirodh Ain, 2009.

- iv) That the brief history of the scheduled property which has been revealed by the petitioner is that the property in question was allotted and handed over the possession to one Mr. Abdur Rob son of Ali Azam by the Additional State Officer on behalf of the Government of Bangladesh vide memo No.bazar-02/6(1-32) dated 05/12/1988. Thereafter, Mr. Abdur Rob

handed over ownership and possession of the scheduled property to Mr. Rajib Ali son of Md. Niamot Ali on 19.06.2005 through a transfer of possession deed. Subsequently, Mr. Rajib Ali mutated the scheduled property with Dhaka City Corporation in his name vide memo. No. bazar-2/1665/1 dated :14/08/2005 and he had been paying of city corporation taxes and other charges to the authority concerned. Later on, Mr. Rajib Ali sold his ownership and handed over the possession to Mr. Md. Israfil son of Md. Moï8nuddin on 31.01.2007.

- v) That a lease deed was made between Dhaka City Corporation and Mr. Md. Israfil on 14.03.2007 and he has been paying of taxes on regular basis by mutating the scheduled property being memo No.bang-2/2708 dated 16/01/2008. As Mr. Md. Israfil needed money he sold out the said property to one Mr. Md. Abul Basar Bepari son

of late Md. Khabir Ullah Bepary on 22.01.2008.

After purchasing the same he had mutated the shop in his name through memo No.ba-2/1199 dated 21/05/2009 and been paying utility bills and taxes regularly Mr. Abul Basar Bepari required money urgently for which he offered to sell the shop i.e. the scheduled property and one Mrs. Lubna Islam (Loni), wife Md. Arshad Hossain purchased the same and applied for mutation to the Dhaka City Corporation and the said property had been mutated vide memo No. ba-2/1493 dated 08/08/2009 in favour of Mrs. Lubna Islam (Loni).

- vi) That Mrs. Lubna Islam (Loni) wanted to sell the shop and the present petitioner felt interest and offered to purchase the scheduled property for the price of Tk.27,00,000/- (twenty seven lac). It was agreed by the seller and subsequently the total amount was paid to Mrs. Loni on

27.04.2010. It is to be mentioned here that the present petitioner purchased the scheduled property on 27.04.2010 and took possession in the same day. In this regard an agreement was executed between the petitioner and Mrs. Lubna Islam (Loni) on 27.04.2010 which was notarized as well. It is further to be noted that an application was preferred on 20.01.2015 to Dhaka City Corporation by Mrs. Loni to mutate the property in favour of the present petitioner. However, for oblique and unknown reason Dhaka City Corporation is not mutating the property in the name of the petitioner. Since purchasing the shop the petitioner has been owning and possessing the scheduled property and holding his business without any interruption from anybody whatsoever.

- vii) That it has been revealed from the documents of the docket that the scheduled property was

attached by the Respondent No.3 as per the application of the Respondent No.2 for attaching a number of properties of the accused and co-accused of the case pending therein i.e. Dhanmondi Police Station Case No.10(4)2011. The property in question i.e. the scheduled property of the petitioner was one of the properties mentioned in the schedule of DUDOK i.e. the Respondent No.2 in their application for attachment dated 10.04.2011.

viii) That the petitioner being bonafide purchaser for value had possessed the scheduled property by paying of city corporation taxes and other utility bills in favour of the authority concerned. There is no interruption from anybody. However, the petitioner had been informed by some unknown persons on 08.05.2017 that the scheduled property has been attached by an order of the Respondent No.3 in connection with a case. The

petitioner became shocked and astonished knowing the fact from the persons and he managed the case number and found that the scheduled property had been attached as per the order of the Respondent No.3. He also knew that Mrs. Lubna (Loni) is one of the co-accused of a case from whom the petitioner purchased the shop in question. Finding no other alternative the petitioner consulted his lawyer and as per his advice relevant documents have been collected and an application was preferred on 15.05.2017 to release the scheduled property from attachment as per the provisions of section 15 of the Money Launder Protidod Ain, 2009 before the Respondent No.3.

- ix) That the Respondent No.3 without considering the facts and circumstances of the case and without going through the application on merit most arbitrarily and with a malafide intention

rejected the application preferred by the petitioner under section 15 of the Money Laundering Protirodh Ain, 2009 for releasing the scheduled property of the petitioner being shop No.276, Block-A (2nd floor), Dhaka New Supermarket (South), measuring 78.98 square feet, Police Station-Newmarket, Distirct-Dhaka from attachment in favor of the Respondent No.2 vide order No.10 dated 05.06.2017. The said order is impugned herein and marked as Annexure-A to the writ petition.

Being aggrieved by the impugned order and for direction to release the property in question, the petitioner approached this court with an application under Article 102 of the Constitution of the People's Republic of Bangladesh and obtained this Rule along with an order of direction.

At the very outset, Mr. M. Najmul Huda with Mr. Tapan Kumar Biswas and Mr. Md. Ikram Hossain appearing on behalf of the petitioner, submits as under:-

i) That the present petitioner is a bonafide purchaser for value who has no connection to the case pending in the lower judiciary; however his property has been attached by the Respondent No.3; his application for releasing the property has been rejected and therefore, the order dated 05.06.2017 may kindly be declared to have been passed without lawful authority and is of no legal effect and the property may kindly be released from attachment.

ii) That the petitioner has paid all the money to the owner who is one of the accused of the present case but she did not have any title or possession of the property at the time of applying for attachment by DUDOK and therefore, the order of attachment as well as the rejection of the application of the petitioner dated 05.06.2017 are liable to be declared to have been made without lawful authority and are of no legal effect.

iii) That the petitioner being valid and lawful claimant and owner of the scheduled property is entitled to get the same released from attachment

and therefore, a direction may kindly be given upon the respondents to release the scheduled property from attachment to restore rule of law under the Constitution.

- iv) That the respondents have violated the fundamental rights of the petitioners as guaranteed by Articles 27, 31, 42 and 44 of the Constitution of the People's Republic of Bangladesh and hence a direction is necessary from this Hon'ble Court to release the scheduled property of the petitioner.
- v) That the respondents have acted in gross violation of Section 15 of the Money Laundering Prohibition Act, 2009 by rejecting the application of the petitioner in not releasing the attached property of the petitioner and hence the impugned order dated 05.06.2017 may kindly be declared to have been passed without lawful authority and is of no legal effect.

- vi) That the fundamental rights of the petitioner have been taken away by attachment of his property for which he will not get justice and therefore, he has been compelled to file present petition under Articles 102, 27, 31, 42 and 44 of the Constitution of the People's Republic of Bangladesh.
- vii) That at the time of filing application by DUDOK for attachment of the property, the accused Mrs. Lubna Islam (Loni) did not have title, interest or ownership of the said property and therefore, the impugned order dated 05.06.2017 passed by the Respondent No.3, in view of section 15 (2)(b) of the Money Laundering Protorodh Ain, 2009, is liable to be set aside and the property may kindly be released from attachment.
- viii) That in the impugned order, the Respondent No.3 has failed to consider that the petitioner's case is completely different than the application filed by

others and therefore, the impugned order dated 05.06.2017 is required to be set aside and the property may kindly be released from attachment.

On the other hand, Mr. Syed Mamun Mahbub, the learned Advocate appearing on behalf of the Anti-Corruption Commission, Respondent No.2, submits that this writ petition is not maintainable since there is a provision of preferring appeal against the impugned order under Section 16 of the Money Laundering Protirodh Ain, 2012 and in that view of the matter, the writ petition is not maintainable.

He next submits that the petitioner did not submit the original documents in support of title and possession of the schedule property in question and that being the reason the learned Trial Judge has not committed any illegality in rejecting the application.

He lastly submits that the onus of proving the title and possession over the schedule property is on the petitioner

and the learned Trial Judge may be directed to hear an application afresh if the petitioner is able to produce the original documents of title and possession of the property in question before the trial Court and in that view of the matter, the Rule may be disposed of with a direction.

Mrs. Sufia Ahmed, the learned Advocate appearing on behalf of the Respondent No.4, submits that the writ petition is not maintainable without availing of the forum of appeal as laid down under Section 16 of the Money Laundering Protirodh Ain, 2012.

She next submits that the petitioner is not mutating the property in the name of the petitioner since the order of status-quo is extended till disposal of the Rule on 13.12.2017 in Civil Petition for Leave to Appeal No. 4459 of 2017.

She lastly submits that the petitioner failed to submit any original document in support of title and possession of the schedule property before the court and considering this

aspect of the case, the learned special judge did not commit any illegality in rejecting the application of the petitioner.

We have gone through the writ petition and perused the materials annexed therewith. We have also gone the affidavit-in-oppositions submitted by Respondent Nos.2 and 4. It appears from the record that the property in question was attached by the learned Special Judge, Special Judge Court No.1, Dhaka in connection with the case following an application dated 10.04.2011 filed by the Anti-Corruption Commission under Sections 10(1) and 14 of the Money Laundering Protirodh Ain, 2009. Being aggrieved by the same, the petitioner claiming him as owner of the property in question submitted an application under Section 15 of the Money Laundering Protirodh Ain, 2009 for releasing the property from attachment but the said application was rejected by the learned Special Judge by order No.10 dated 05.06.2017. Though there is a provision for preferring appeal against the order passed under Section 15 but the petitioner preferred the writ petition before this

Court on the ground that he could not prefer appeal in time. As per submission of the learned Advocate for the petitioner, the writ petitioner is a bonafide purchaser for value who has been given possession soon after the contract of sale was made on 27.04.2010. He has been possessing the same without interruption by paying taxes and other charges to the government and Dhaka South City Corporation (DSCC). However, this name has not been mutated by DSCC with a reason that the shop has been attached in connection with a case of DUDOk although the petitioner is not a party of the said case i.e. he is not an accused. Therefore, he should get his shop released by order of this Court. Despite of repeated request, DSCC is not mutating his name even after application made after obtaining the instant order dated 31.10.2017 as well as the order of the Appellate Division dated 13.12.2017. It may be noted that the petitioner has not submitted any original document in support of title and possession of the scheduled property before this court. As per submission of the learned

Advocate for the petitioner, the petitioner has produced all the documents of title and possession of the scheduled property before the Dhaka City Corporation (DSCC) for mutating the property in question in his name but because of the status-quo order dated 13.12.2017 passed in Civil Petition for Leave to Appeal No.4459 of 2017, he is not getting the papers and documents returned to his possession as yet. The submission of the learned Advocate for the petitioner is that at the time of hearing of the application for release of the property from attachment, the petitioner could not produce the papers and documents of title and possession of the scheduled property before the court of special judge but he undertakes that the petitioner will submit and produce all the papers and documents in support of title and possession of the property in question before the special judge if a direction is given upon the learned special judge to hear the application afresh setting aside the impugned order dated 05.06.2017 for ends of justice.

Having considered all the facts and circumstances of the case, the submissions of the respective parties and the proposition of laws cited and discussed above, we are inclined to make the Rule absolute in part.

Accordingly, the Rule is made absolute in part.

In consequence thereof, the Rule, so far as it relates to Order No.10 dated 05.06.2017 passed by the learned Special Judge, Court No.1, Dhaka i.e. the Respondent No.3 in Special Case No.04 of 2017 arising out of Dhanmondi Police Station Case No. 10(4)2011 rejecting the application filed by the petitioner under Section 15 of the Money Laundering Protirodh Ain, 2009 for releasing the scheduled property of the petitioner, is made absolute.

And accordingly, Order No.10 dated 05.06.2017 passed by the learned Special Judge, Court No.1, Dhaka i.e. the Respondent No.3 in Special Case No.04 of 2017 arising out of Dhanmondi Police Station Case No. 10(4)2011 rejecting the application filed by the petitioner under Section 15 of the Money Laundering Protirodh Ain, 2009

for releasing the scheduled property of the petitioner is set aside being declared illegal and without lawful authority.

Further, the Rule with regard to direction to release the scheduled property of the petitioner from attachment is discharged.

In consequence thereof, the ad-interim order of direction to release the schedule property of the petitioner from attachment, stands vacated.

The parties are directed to maintain status-quo in respect of possession and position of the attached properties till conclusion of the trial of the case or till further order by the learned Special Judge, Court No.01, Dhaka/Trial Judge, Dhaka, whichever is earlier.

The learned Special Judge, Court No.01, Dhaka/Trial Judge, Dhaka is directed to hear and dispose of the application filed by the petitioner under Section 15 of the Money Laundering Protirodh Ain, 2009 for releasing the scheduled property of the petitioner being Shop No.276, Block-A (2nd Floor), Dhaka New Supermarket (South),

measuring 78.98 square feet, Police Station-Newmarket, District-Dhaka from attachment in favour of the Durnity Daman Commission i.e. the Respondent No.2 afresh if the petitioner submits and produce all the necessary original papers and documents in support of title and possession of the scheduled property, before the learned Special Judge, Court No.01, Dhaka/Trial Judge, Dhaka.

The learned Special Judge, Court No.01, Dhaka/Trial Judge, Dhaka is directed to proceed with the case in accordance with law and conclude the trial of the case as early as possible preferably within 01(one) year from the date of receipt of this judgment and order.

Communicate the judgment and order to the learned Special Judge, Court No.01, Dhaka/Trial Judge, Dhaka and the Chairman, Anti-Corruption Commission, at once.

K.M. Hafizul Alam, J:

I agree.