

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 16298 OF 2017

In the matter of:

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

And

In the matter of:

Government of the People's Republic of
Bangladesh, represented by the Deputy
Commissioner, District-Dhaka

... Petitioner

-Versus-

Additional District Judge, 8th Court, Dhaka and
others

... Respondents

Mr. Syed Ejaz Kabir, DAG

with

Mr. Mohammad Imam Hossain, DAG

with

Ms. Mahbuba Tasnim Akhi, AAG and

Mr. Mustafizur Rahman Mukul, AAG

... For the petitioner

Mr. Md. Salim Azad, Advocae

For the respondent no. 4

**Heard on 19.11.2025, 20.11.2025, 30.11.2025
and Judgment on 30.11.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Hamidur Rahman

Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the judgment and decree dated 11.10.2015 (Decree signed on 15.10.2015) passed by the learned Additional District Judge, 8th Court, Dhaka in *Aripta* Appeal No. 48 of 2015 (Annexure-‘B’ and ‘B-1 to the writ petition) allowing the appeal and reversing the judgment and decree dated 09.08.2015 passed by the Senior Assistant Judge, Keranigonj, Dhaka in *Arpita Sampatti* Case No. 3773 of 2013 (Annexure-‘A’ and ‘A-1’ to the writ petition) and thereby dismissing the case, should not be declared illegal and have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, this court also stayed operation of the impugned judgment and decree dated 11.10.2015 for a period of 06(six) months which was subsequently extended from time to time.

The case of the plaintiffs herein respondent no. 3 and the predecessor of respondent 4 in short is that 4.5 acres of land appertaining to CS khatian No. 79 corresponding to SA khatian no. 136 originally belonged to one, Debendara Sharma @ Debendra and accordingly CS record was prepared in his name. During enjoying title and possession by that Debendara Sharma @ Debendra, he died leaving behind 3 sons namely, Mohendra, Zitendra and Dhirendra who got the property as descendents of Debendara Sharma @ Debendra. After the demise of Debendra Sharma, the said property was accordingly recorded in the name of his three sons and out of 3 sons,

Mohindra Bhattacharjee with amicable partition with his 2 other brothers, Dhirendhra started enjoying title and possession. While enjoying title and possession he then transferred 3.94 acres of land by registered deed of sale dated 15.08.1973 to one, Nurul Islam and said Dhirendra also sold out 3 acres of land vide registered sale deed dated 02.07.1973 also to Nurul Islam and three others and delivered possession in their favour. Subsequently, Nurul Islam vide registered sale deed dated 01.08.1985 transferred 91 decimals of land and another one named, Hira Miah by registered sale deeds transferred 50 decimals of land when Abdur Rahman by another sale deed transferred his portion of land that is, 50 decimals of land totaling 1.9 acres of land in favour of one, Sona Miah and Sona Miah by virtue of 4 sale deed got 1.91 acres of land. While he had been enjoying title and possession, he then transferred his portion of land vide registered sale deed dated 14.09.1991 in favour of plaintiff no. 1. Subsequently, another SA recorded tenant, Jitendra Kumar Bhattacharjee by registered sale deed dated 17.08.1961 transferred 2.59 acres of land in favour of plaintiff no. 2. In the aforesaid way, plaintiffs got 7 acres of land and started enjoying title and possession over the same. But said portion of land was wrongly enlisted in 'Ka' schedule compelling the plaintiffs to file the case. It has further been stated that, by way of the transfer, the property was supposed to be recorded in the name of Nurul Islam in RS record but it was wrongly recorded in the name of Mohindra Bhattacharjee and others in collusion with the survey officials. It has also been stated that during RS operation, Mohindra and others had never left the country rather they stayed in this country. It has

lastly been stated that, there has been no reason to enlist the property in 'Ka' list.

On the contrary, the present petitioner who was the defendant in the original case filed a written statement denying all the material statement so made in the plaint contending *inter alia* that, the SA recorded tenant left the country during India-Pakistan war in 1965 with their family and they never returned to this country for which the property was enlisted as vested property and the government took over the said property by enlisting the same through initiating vested property case no. 1060 of 1967, 1103 of 1962 and 242 of 1968 and accordingly RS record was rightly prepared in the name of the government and while the government had been in possession leased out the said property to different lessees and have been in possession by 2 lessees. It has further been stated that, in order to grab the case property, the plaintiffs filed the suit by manufacturing some concocted documents and since the original owner whose name CS and SA record was prepared left the country so the property has rightly been enlisted in 'Ka' list under section 9 of the *Arpita Sampatti Protarpon* Ain, 2001 and finally prays for dismissing the suit.

In order to dispose of the case, the learned judge of the trial court framed as many as 5 different issues. To prove the case, both the plaintiffs and the defendant no. 1 adduced single witness each in support of their case. Apart from that, the plaintiffs and the defendant no. 1 produced several document which were also marked as exhibit nos. '1-14 ka' and that of the defendant as exhibit nos. 'Ka-Ja'.

After conclusion of trial, the learned judge of the trial court vide judgment and decree dated 09.08.2015, dismissed the suit on contest against the defendant no. 1.

Feeling aggrieved by and dissatisfied with the said judgment and decree of dismissal, the plaintiff then preferred an appeal being *Aripta* Appeal No. 48 of 2015 before the learned District Judge, Dhaka which was on transfer heard by the learned Additional District Judge, 8th Court, Dhaka. The learned Additional District Judge after hearing the parties to the appeal and considering the materials and evidence on record, vide impugned judgment and decree dated 11.10.2015 allowed the appeal so preferred by the plaintiff and thereby set aside the judgment and decree passed by the trial court. It is at that stage the defendant no. 1 of the case as petitioner filed this writ petition and obtained instant rule and order of stay.

Mr. Mohammad Imam Hossain, the learned Deputy Attorney General appearing for the petitioner upon taking us to the writ petition and all the documents appended therewith at the very outset submits that, the learned judge of the trial court has rightly dismissed the suit considering that the document so have been produced and exhibited at the instance of the plaintiffs can never be conferred title of the plaintiffs over the suit property until and unless they could prove their possession in the case property and though the plaintiffs claimed to acquire the case property since 1961 till 1991 but not a scrab of document about mutation of the case land in their name has been produced in absence of which, no title can be conferred or passed on to the plaintiffs and therefore the trial court has rightly dismissed the case. By taking us to the judgment of the appellate court below, the

learned Deputy Attorney General also contends that, the learned judge while setting aside the judgment and decree of dismissal, put much emphasis on the shortcomings of the defendant's case without taking into consideration that the plaintiff has miserably failed to prove their case of acquiring title in the case property.\

The learned Deputy Attorney General by referring to the documents so have been annexed at the instance of the government mainly exhibit- 'Cha' (८) further contends the said document is vital one in determining title over the case property yet the appellate court below did not touch upon the said document which clearly proves that at the time of preparation of RS record, SA recorded tenants were not present in this country which is why in the possession column of that RS record, the name of the government has been mentioned something it construes that, the property has rightly been enlisted in 'Ka' list as of vested property.

The learned Deputy Attorney General lastly contends that, since it is incumbent upon the plaintiffs to prove their own case in toto but apart from producing certain documents, and making them an exhibits, the plaintiffs had not taken any endeavour to prove acquiring title in the case property and therefore the learned judge of the trial court has rightly dismissed the case which remains uncontroverted by the appellate court below in his entire judgment and finally prays for making the rule absolute by setting aside the judgment and decree passed by the appellate court below.

On the contrary, Mr. Md. Salim Azad, the learned counsel appearing for the heirs of the respondent no. 4 vehemently opposes the contention taken by the learned Deputy Attorney General and contends that, the

appellate court below has rightly passed the impugned judgment and decree on setting aside the judgment and decree passed by the trial court finding title and possession of the case land in favour of the plaintiff-respondent no. 4 having no reason to interfere with the same. When we pose a question to the learned counsel for the said respondent with regard to preparation of RS record that stands in the name of the government as a custodian of the case land, the learned counsel then finds it difficult to impress us with any plausible reply but only submits that since in the RS record name of the SA recorded tenants have been mentioned, so it construe that plaintiffs got the property and have been in possession over the same and hence the case property has wrongly been enlisted in 'Ka' list.

The learned counsel further contends that, though the trial court in his judgment found some discrepancies in the name of Debendra whose name CS record was prepared the predecessor of SA recorded tenant from whom the plaintiff got the case land but that does not ipsofacto invalidate acquiring title by the plaintiffs who acquired the same through a series of documents ranging from 1961 to 1991.

The learned counsel further contends that, since the document so have been produced by the plaintiffs were rightly marked as exhibit nos. '1-14A' without any objection by the defendant-government, so those will be treated as valid documents and proved as evidence of title and therefore the appellate court below has rightly decreed the case in favour of the plaintiffs. On those submissions, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission so placed by the learned Deputy Attorney General and that of the learned counsel for the respondent no. 4. Together, we have also very meticulously gone through the documents lying with the lower court record (LCR) and those of the documents annexed with the writ petition. In the first instance, when we checked the exhibited documents in LCR, we find, the plaintiffs had produced as many as 14 sets of documents which were marked as exhibit nos. '1-14 ka' but those documents were withdrawn by the plaintiffs on 12.05.2016 and those have not been reproduced hindering us to examine the correctness of those documents. Regardless, on going through the description so made in the plaint and discussion made in the judgment, we don't find after purchasing the case property since 1961 till 1991, the plaintiffs had taken any step in getting their name mutated in the *khatian* (record of right) let alone to pay any land development (*khazana*) to prove acquiring valid title and holding possession in the case property. Mere producing documents do not *ipsofacto* confer any title over any property for any one's favour until and unless clear evidence in its favour is proved and holding of actual possession over the case property in absence of which, the documents can only be treated as mere paper transaction.

On top of that, though the plaintiffs produced as many as 14 different sets of documents but in spite of having their knowledge about preparation of RS record they did not bother to take any steps to get it corrected and no explanation has been offered in the plaint as to why they could not produce RS record which cast a reasonable doubt about acquiring title and to claim the case property by the plaintiffs. On the contrary, the learned Deputy

Attorney General put much emphasis on RS record which has been exhibited as exhibit 'Cha'. On careful examination of exhibit-'Cha', we find that though that very RS record was prepared in the name of SA recorded tenants that is in the name of Mohindra Bhattacharjee and his 2 brothers, but the same is shown to have possessed by the government as custodian. So that very endorsement clearly shows that the government had been in possession long before RS record was prepared else their name would not have there which alternatively proves, though CS and SA record was prepared in the name of Debendra and then in the name of his 3 sons but after that, since they had not been found in this country, RS record was prepared showing the government is in possession as of custodian. Since RS khatian in that area the case land is located was finally published in the year 1972, so invariably having found no CS and RS record tenants or their heirs in possession in the case property it has thus rightly been enlisted in 'Ka' list under section 9 of the *Orpita Shampatti Protarpon* Ain. However, on going through the judgment passed by the appellate court below, we further find that, in the entire judgment the learned judge has tried to find out the loopholes of the defendant's case but in the entire judgment what wrong has been committed by the trial court has not been addressed other than some evasive discussion on the defects of the name of Debendra but whether the plaintiffs have been able to prove their acquiring title and holding possession in the case land by any DCR or *dhakila* has not been discussed which has correctly been addressed by the trial court in his judgment.

Regard being had to the above facts circumstances and discussion, we don't find any substance in the judgment passed by the appellate court below which cannot be sustained in law.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned judgment and decree dated 11.10.2015 (Decree signed on 15.10.2015) passed by the learned Additional District Judge, 8th Court, Dhaka in *Aripta* Appeal No. 48 of 2015 is hereby set aside and the case is dismissed.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

Md. Hamidur Rahman, J.

I agree.