

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

Present

Mr. Justice Bhishmadev Chakraborty

-And-

Mr. Justice Abdur Rahman

WRIT PETITION NO. 16484 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:

Md. Hatem Ali Sardar, being dead, his legal heirs
(1) Mahmuda Khatun and others.

.... Petitioners

-Versus-

Arpita Sampatti Prottarpon Appeal Tribunal and
District Judge, Madaripur and others

.... Respondents

Md. Zahirul Islam, Advocate

....For the petitioner

Mr. Md. Imam Hossain (Tareq) Deputy Attorney
General with

Ms. Mahbubua Tasnim Akhi, Assistant Attorney
General

...for the respondents

Date of Hearing and Judgment: 11.06.2026

A.D. Thursday, 28 Jyashtha 1433 B.S.

JUDGMENT

Abdur Rahman, J:

This *Rule Nisi*, at the instance of the petitioner, was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh, upon the respondents 1-3 to show cause as to why the Judgment and Decree dated 09.10.2017 (decree drawn up thereunder and signed on 15.10.2017) passed by the learned Judge, Arpita Sampatti Prottyarpon Appeal Tribunal and District Judge, Madaripur (Respondent 1) in Arpita Appeal No. 02 of 2016, allowing the same and thereby reversing the Judgment and Decree dated 22.11.2015 (decree drawn up thereunder and signed on 27.11.2015) passed by the learned Judge, Arpita Sampatti Prottyarpon Tribunal (Joint District Judge, 2nd Court, Madaripur) in Arpita Sampatti Tribunal Case No. 67 of 2013 in decreeing/allowing the case and thereby releasing the case land from the list of 'Ka' schedule of Prottyarponjoggo property under serial 4 of 111 corresponding to Shakuni Mouza under Sadar Upazilla of

District Madaripur, which is published in the Gazette 07.05.2012 shall not be declared to be without any 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.

Eodem momento, this Division was pleased to pass an order staying the operation of the Judgment and Decree dated 09.10.2017 (decree drawn up pursuant to it and signed on 15.10.2017), passed by the learned Judge, Arpita Sampatti Prottyarpon Appeal Tribunal and District Judge, Madaripur, in Arpita Appeal No. 02 of 2016 for a period of 6 (six) months, which was thereafter extended from time to time, the last extension was being for till disposal of the Rule.

The kernel of the facts leading to the issuance of this Rule Nisi, in brief, is that the predecessor of the petitioners and proforma respondent 4, namely, Md. Hatem Ali Sardar as petitioner/plaintiff filed Arpita Sampatti Prottarpon Case 67 of 2013 before the

Respondent 2 for releasing the case property from the list of "Ka" schedule of prottyarponjoggo property stating *inter alia* that Debendra Chandra Mojumder son of Umakanto Mojumder was the owner of the case land and accordingly his name was duly recorded in the R.S. Khatian 161 containing plot 141, and the original address of said Debendra Chandra Mojumder was of village- Nondi, Police Station- Laxmipur and District- Nokhali, and the petitioner/plaintiff was his borgadar, and said Debendra enjoyed the crops of the case land by his borgadar. Thereafter, said Debendra Chandra Mojumder decided to move to his original address and his borgader, Md. Hatem Ali Sarder expressed his desire to take Pattan of the case land from the land Lord, Debendra Chandra Mojumder, and then said land Lord Debendra Chandra Mojumder gave Pattan of the case land to his Borgader, Md Hatem Ali Sarder, by executing an Amolnama, and received Tk. 1001 as Selami/consideration and fixed a yearly rent on the 30th

of Chaitra 1354 Bangla era. Thus, Md. Hatem Ali Sardar became the owner of the case land by a permanent Pattan and also got possession of the land. Thereafter, due to abolishment of Jamindar system said Md. Hatem Ali Sardar become tenant of the case land under the Government by operation of law; that thereafter said Md. Hatem Ali Sardar took job in foreign ship and thus he used to reside on the ship and due to his absence during the S.A. survey, the S.A. Khatian 152 was wrongly prepared in the name of someone, Nogendra Chandra Datta. Hereinafter, against the said wrong S.A. record, Md. Hatem Ali Sardar filed Title Suit 4 of 1996 before the Sub-Judge, 1st Court, Madaripur, and in the said suit, Nogendra was defendant 1, Deputy Commissioner was defendant 2, ADC (Revenue) as Assistant Custodian of vested property was defendant 3, and the said suit was decreed on 13.10.1996. Thus said Md. Hatem Ali Sardar, being the owner of the case land, his name was duly recorded in B.R.S. Khatian 1023 under plot 1219,

and he has been in possession of the case land for over 65 years. Due to an incorrect S.A. record, the case land has been wrongly enlisted in the Orpitha Sampatty Prottyarpon list pursuant to an order passed in the Miscellaneous VP case No. XII-VP-76/67-68, but there was no ground for enlisting the case land in the 'Ka' schedule of Prottyarponjoggo property and hence the case. It is worthwhile to mention here that during the pendency of the said case, the original petitioner/plaintiff, Md. Hatem Ali Sardar died, and on his death, his successors, i.e., the present petitioners and proforma respondent 4, were substituted as petitioners in the original case by order No. 37 dated 29.07.2015.

Thereafter, the respondent 3 being the defendant contested the case by filing a written objection denying all the material assertions and contending *inter alia* that the case is not maintainable in its present form, the case is barred by limitation, principle of waiver,

estoppel; it was the further case of the government that Surandra Kumar Dotto being S.A. recorded tenant of 0.34 acre of land under S.A. Khatian 152 of plot 141 under Sakuni Mouza left this country and went to India during India-Pakistan War in 1965 and his land was listed in the vested property list. The government is in possession of the case land and has leased it out through Lease case XII-VP-76/67-68. The fact of the petition is false, and the case land has been properly listed in the 'Ka' schedule of vested property; the case is liable to be dismissed.

Thereafter, the learned Judge of the said Tribunal, during trial framed 4 (four) issues, i.e., (i) whether the case is maintainable in its present form and nature, (ii) whether the case is barred by Limitation, (iii) whether the petitioner is the owner and possessor of the property, and (iv) whether the petitioner is entitled to obtain remedy as prayed for.

Thereafter, in the trial petitioners examined 1 (One) witness, P.W.1, and produced some documents, which were marked as Exhibit 1-11 in support of the case. On the other hand, the opposite party, the Government, examined 1 (One) witness, D.W.1, in support of the defence case and produced some documents, which were marked as Exhibit Nos. Ka-Uma.

Thereafter, the learned Judge concluded the trial. Arpita Sampatti Prottyarpon Tribunal and Joint District Judge, 2nd Court, Madaripur, upon a just and proper appreciation and consideration of the materials and evidence on record, allowed the case by his judgment and decree dated 22.11.2015 (decree drawn up and signed on 27.11.2015) and thereby directed the defendant concerned to release the property from the Arpita Sampatti Prattyarpan List.

Being aggrieved by and the dissatisfied with the said judgment and decree passed by the learned Judge, Arpita Sampatti Prottyarpan Tribunal and Joint District

Judge, 2nd Court, Madaripur, the Government-opposite party as appellant preferred the Arpita Appeal 02 of 2016, and after hearing the parties, learned Judge, Arpita Sampatti Prottyarpan Appellate Tribunal and District Judge, Madaripur without considering the pleadings, materials and evidences on record allowed the appeal reversing the judgment and decreed dated 22.11.2015 (decree drawn up and signed on 27.11.2015) passed by the learned Judge, Arpita Sampatti Prottyarpan Tribunal and Joint District Judge, 2nd Court, Madaripur by his judgment and decree dated 09.10.2017 (decree drawn up and signed on 15.10.2017). Hereinafter, the petitioners, finding no other alternative and equal efficacious remedy, invoked this writ jurisdiction.

Learned Counsel, Mr. Md. Zahirul Islam, appearing on behalf of the petitioner, has vigorously contended that the learned Appellate Tribunal acted wholly beyond the scope of its jurisdiction in allowing the appeal without

first dislodging, reversing, or assigning any cogent reason for disagreeing with the findings, conclusions, and determinations arrived at by the learned Tribunal upon proper appreciation of the evidence and materials on record. It has been submitted that, in the absence of any specific finding demonstrating error, illegality, or infirmity in the judgment of the Tribunal, the Appellate Tribunal could not have lawfully interfered with the same. Accordingly, the impugned judgment and decree of the Appellate Tribunal are manifestly arbitrary, unsupported by the evidence on record, and contrary to the settled principles governing appellate jurisdiction. As such, the impugned judgment and decree are not sustainable in law and are liable to be declared passed illegally, without lawful authority, and consequently of no legal effect.

Learned Counsel has further submitted that the learned Appellate Tribunal failed to consider the material evidence available on record in its proper

perspective and arrived at its conclusions upon a misreading, non-reading, and misconstruction of the evidence and relevant documents. It is further contended that the Appellate Tribunal overlooked vital facts and circumstances having a direct bearing on the issues involved in the case and thereby reached findings which are perverse, erroneous, and unsustainable in law. Accordingly, the impugned judgment and decree suffer from serious legal infirmities resulting from non-consideration of relevant materials, improper appreciation of evidence, and misapplication of the governing legal principles. Consequently, the judgment and decree under challenge are vitiated by patent illegality and jurisdictional error and, therefore, deserve to be declared as having been passed without any lawful authority and being of no legal effect.

Learned Counsel has further posited that while passing the impugned judgment and decree the learned Appellate Tribunal failed to consider a very vital legal

aspect to the effect that certified copy of the documents, judgment and decree of title suit 04 of 1996 and the certified copy of the order sheet of the Miscellaneous case which has been submitted by the petitioner are public documents, and thus the impugned judgment and decree has been passed illegally, without any lawful authority and is of no legal effect.

Learned Counsel also submitted that the judgment and decree passed by the learned Appellate Tribunal suffers from misreading, non-consideration, misconstruction of the materials and evidence on record and as such, the impugned judgment and decree have been passed illegally and the same may kindly be declared to have been passed without any lawful authority and is of no legal effect.

Learned Counsel has further submitted that while passing the impugned judgment and decree the learned Appellate Tribunal failed to consider a very vital legal aspect to the effect that certified copy of the

documents, judgment and decree of title suit 04 of 1996 and the certified copy of the order sheet of the miscellaneous case which has been submitted by the petitioner are public documents and the court have to take judicial notice of those documents unless the contrary is proved and thus disbelieving those documents the learned Appellate Tribunal has committed gross illegally and as such the impugned judgment and decree may kindly be declared to have been passed without any lawful authority and is of no legal effect.

Learned Counsel has further submitted that while passing the impugned judgment and decree, the learned appellate tribunal failed to appraise that the judgment and decree passed in Title Suit 04 of 1996 remains unchallenged, and therefore, the very inclusion of the property in the 'Ka' list is illegal, *mala fide*, and without jurisdiction.

Learned Counsel finally submitted that upon a gross misreading and non-consideration of the materials and evidences on record the learned Appellate Tribunal in the impugned judgment held that on perusal of S.A. khatian (exhibit Kha), copy of lease (exhibit-ga) and Gazette of VP (exhibit-ka) it appears that government leased out the suit land to Surendra Kumar and Nogendra Chandra Datta in the year of 1967-1968 as homestead land and the plaintiffs did not give any specific denial as to the above claim of defendant and as such the impugned judgment and decree has been passed illegally and the same may kindly be declared to have been passed without any lawful authority and is of no legal effect.

However, Mr. Mohammad Imam Hossain, the learned Deputy Attorney General for Bangladesh, vehemently opposed the Rule and submitted that the petitioners, being the original applicants before the Tribunal, utterly failed to discharge the burden cast

upon them by law to establish a complete and uninterrupted chain of title in respect of the disputed property. He further contended that the petitioners were unable to produce the requisite documentary evidence demonstrating their lawful ownership, possession, inheritance, and status as successors-in-interest to the original recorded owners. Accordingly, the materials placed on record were insufficient, inconclusive and incapable of proving the applicants' entitlement to the property in question.

The learned Deputy Attorney General further argued that, upon proper scrutiny of the relevant records and documents, the Government authorities lawfully and rightly enlisted the disputed property in the "Ka" List under the applicable provisions governing vested/arpita property. He also submitted that such enlistment was made strictly in accordance with law and upon due consideration of the facts and circumstances surrounding the property.

It was next contended that the learned Arpita Sampatti Prattyarpan Tribunal, Madaripur, while allowing the claim of the applicants-petitioners, failed to properly appreciate the evidence on record and arrived at findings contrary to the weight of the evidence. Accordingly, the Tribunal misread and misconstrued the documentary evidence and thereby erroneously recorded findings in favour of the applicants without any lawful basis. As a result, the judgment and decree passed by the Tribunal suffered from serious infirmities of fact and law.

The learned Deputy Attorney General further submitted that the said errors were subsequently corrected by the learned Arpita Sampatti Prattyarpan Appellate Tribunal, Madaripur, which, upon an independent assessment of the evidence and materials on record, rightly allowed the appeal and reversed the judgment and decree of the Tribunal by its judgment dated 09.10.2017, the decree having been signed on

15.10.2017. He therefore contended that the impugned appellate judgment was passed upon proper appreciation of the evidence and in strict conformity with law, warranting no interference by this Hon'ble Court in the exercise of its review jurisdiction.

Learned Deputy Attorney General to conclude submitted that the findings as to facts adopted by the learned Tribunal beyond the purposes of the অর্পিত সম্পত্তি প্রত্যারণ আইন, ২০০১ (সংশোধিত-২০১১), thus ousted the power of this Court under judicial review. Accordingly, the Rule is liable to be discharged.

We have heard the learned Counsel for the petitioners and the learned Deputy Attorney General for Bangladesh, and also perused the writ petition and all annexures appended thereto.

On a perusal of the judgment and decree of the learned Arpita Sampatti Prattyarpan Tribunal, Madaripur, it appears that the Tribunal found that the petitioner, in support of his claim, produced certified

copies of the relevant R.S. and S.A. Khatians, Amalnama, rent receipts, and the judgment and decree passed in Title Suit No. 04 of 1996, whereby his title was declared against an erroneous S.A. record. The Tribunal further noted that the Government defendants were duly served with summons in the said suit, but neither contested the proceeding nor challenged the decree by filing any appeal or other proceeding. The Tribunal also observed that the suit land was subsequently recorded in the petitioner's name in B.R.S. Khatian No. 1023 and that the Government did not dispute the genuineness of the petitioner's documentary evidence. Conversely, the documents produced by the opposite party were found to be inconsistent and contradictory regarding the identity of the recorded S.A. tenant. Accordingly, the Tribunal held that, following the decree passed in Title Suit No. 04 of 1996, the petitioner's title stood established and, in view of the restriction contained in section 6(Ka) of the Arpita Sampatti Prattyarpan Ain, 2001, there was no lawful basis for inclusion of the scheduled property in the

vested property list, and thus found merit in the petitioner's claim for release of the property.

On the contrary, the learned Arpita Sampatti Prattyarpan Appellate Tribunal, Madaripur, allowed the appeal upon holding, *inter alia*, that although the plaintiff-petitioner relied upon an amalnama in support of his claim, he failed to produce the original thereof and instead submitted only a certified copy allegedly obtained from Title Suit No. 04 of 1996. The learned Appellate Tribunal observed that, in the absence of the original document, it had no effective opportunity to examine or verify the authenticity and genuineness of the said amalnama. The Tribunal further noted that the plaintiff had neither disclosed nor established whether the alleged settlor possessed the requisite legal authority and competence to settle the suit property in favour of the plaintiffs' predecessor.

The learned Appellate Tribunal also expressed doubt regarding the decree passed in Title Suit No. 04 of

1996, observing that the suit had been decreed *ex parte* within a comparatively short period of approximately six months, which, in its view, appeared unusual. It further observed that although the plaintiffs sought to establish the validity and propriety of the said judgment and decree by producing certified copies of the records of the aforesaid title suit, including the process-server's report relating to service of summons upon the defendants, such materials did not afford the Tribunal sufficient scope to scrutinize the correctness and genuineness of the decree in question. The Tribunal was of the opinion that, because of the manner in which the plaintiffs relied upon certified copies of the relevant records, it was deprived of any meaningful opportunity to examine the authenticity of the judgment and decree passed in Title Suit No. 04 of 1996. The learned Appellate Tribunal further noticed, upon perusal of the order-sheet of Objection Case No. 1184 (Exhibit-11), that the plaintiffs had likewise attempted to

substantiate their claim by producing only certified copies thereof.

Proceeding further, the learned Appellate Tribunal recorded that a consideration of the S.A. Khatian (Exhibit-'Kha'), the lease document (Exhibit-'Ga'), and the Gazette Notification (Exhibit-'Ka') revealed that the Government had settled the suit land in favour of Surendra Kumar Datta and Nogendra Chandra Datta during the period of 1967–1968 for homestead purposes. The Tribunal also observed that the plaintiffs had failed to furnish any specific, categorical, or convincing denial of the defendants' assertion regarding such governmental settlement. On the basis of the aforesaid findings, the learned Appellate Tribunal concluded that the learned Arpita Sampatti Prattyarpan Tribunal had fallen into error both on facts and in law in decreeing the suit and, consequently, held that the judgment and decree passed by the Tribunal below were liable to be set aside.

Now, to get down to the brass tacks of the legal propositions of the vested property, we found that on the backdrop of armed conflict between India and Pakistan in 6 September 1965 to 23 September 1965, a State of Emergency was proclaimed by the Government of Pakistan by Defense of Pakistan Ordinance, 1965 (Ordinance No. XXIII of 1965), whereunder the Defense of Pakistan Rules 1965 (1965 Rules) was promulgated. In the pretext of powers under the 1965 Rules, the Government of Pakistan indiscriminately took over the properties of Hindus as being enemies or enemy subjects or anyone who appears to the Pakistan Government to be associated with enemies in the then East Pakistan. Although the armed conflict between India and Pakistan ended in 1965, the State of Emergency continued up until 16 February 1969, on which date the Government of Pakistan promulgated the Enemy Property (Continuance of Emergency Provisions) Ordinance, 1969 by operation of which the

provisions relating to vesting of 'Enemy Property' contained in the 1965 Rules continued to be in force until the magnificent Liberation War of 1971, the arbitrary and discriminate confiscation of properties belonging to the Hindus of the then East Pakistan continued by the Government of Pakistan. Thus, no enactments or ordinances were enacted to bar the registration processes of any properties of the Hindus or enemies of Pakistan. The Liberation War of 1971 was fought based on the denial of the two-nation theory by the Bengali nation and thus the fundamental character of the Liberation War of 1971 was compatible with the notion of equal rights for every citizen irrespective of religion, caste or creed by the Proclamation of Independence declared at Mujibnagar on 10 April 1971 by the majority elected representatives of the Election'70 "to ensure for the people of Bangladesh equality, human dignity and social justice" and thus proclaimed Bangladesh as a sovereign Republic. On the

same day, i.e., 10 April 1971, the Laws of Continuance Enforcement Order, 1971, was promulgated, purporting to keep in force all Pakistani laws that were in force in the then East Pakistan on or before 25 March 1971, and that were not in conflict with the proclamation of Independence. Bangladesh was not a successor state to Pakistan but rather emerged from a war of liberation against Pakistan. Immediately after liberation, on 26 March 1972, the Government of Bangladesh promulgated the Bangladesh (Vesting of Property and Assets) Order, 1972 (P.O. No.29 of 1972). By this order, all properties situated in East Pakistan that belonged to the Government of Pakistan were vested in the People's Republic of Bangladesh. Accordingly, all Government properties, including, but not limited to, Khaas land, river, and Enemy Properties listed under the 1965 and 1969 Ordinances, became vested in Bangladesh. Although by the operation of the Proclamation of Independence and the Laws of Continuance

Enforcement Order, 1971, the 1969 Ordinance lost its applicability in the People's Republic of Bangladesh, in 1974 the Government of Bangladesh, for ensuring further equality of all the citizens promulgated the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974 (Act XLV of 1974), expressly repealing Ordinance I of 1969. This Act ensured that no property shall be included after 23.03.1974 as vested property. However, the 1974 Act stopped short of returning the 'enemy property' to the original owners or their heirs who became citizens of Bangladesh, and in fact, the 1974 Act left all 'enemy properties and firms' which were vested with the custodian of 'enemy property' in the then East Pakistan, vested in the Government of Bangladesh. According to section 3 of the 1974 Act, such properties remained vested in the Government of Bangladesh; however, the Act did not confer any broad power on the Government to manage or dispose of them. On 20 January 1975, the Ministry of Law, by its

Circular No.51, issued an order to immediately de-list any property included in the 'enemy property' list after the enactment of the 1974 Act. Subsequently, on 26 July 1975, the Ministry of Law issued its Circular No. VNR 29/75 issued a direction to stop any listing of property as 'enemy property' and also to submit a detailed report on any such listing. Thereafter, the Government promulgated the Enemy Property (Continuance of Emergency provisions) (Repeal) (Amendment) Ordinance, 1976 (Ordinance No. XCIII of 1976) by which section 3 of the 1974 Act was amended to give further power to the Government about the enemy properties. Section 2 of the Ordinance added power to the Government, or to such office or authority as the Government may direct, to administer, control, manage, and dispose of by transfer or otherwise.

In this factual matrix, some affected individuals resorted to civil litigation and obtained declarations from the competent Courts that the inclusion of their

properties in the census lists and their treatment as Vested Property were *ultra vires*, unlawful, and *non-est* in law. However, in 1999, the Parliamentary Standing Committee prepared a draft law to return possession of properties listed as 'enemy property' since 1969 to their original owners, who were citizens of Bangladesh or their heirs under applicable personal law. The draft law was titled the Vested Property (Return of Possession) Bill, 1999. According to the draft law, it was expected that upon enactment, subject to the provision of the determination claim provided in the draft Act, any property which was not listed before 16 February 1969 would cease to be treated as vested on the Government as 'enemy property' and the title and possession of the original owner who is a citizen of Bangladesh or his lawful heirs would be restored. In the said 1999 draft, it was expressly provided that upon enactment of the draft Act, any lease created by the Government on such properties would be deemed cancelled. Subsequently,

to the utter surprise, in the name of examining the draft in the Ministry of Land, for further improvement, it has been transformed into অর্পিত সম্পত্তি প্রত্যাপন বিল (2000 Bill), the main features of the draft proposed by the Parliamentary Committee, have been abruptly changed by the Bureaucratic process, headed by the Secretary of the Ministry of Land. The word “প্রত্যাপন” is not commensurate with the Indo-Pak subcontinent Land Laws, and equity from Nababi amal to the present time “প্রত্যাপন” is used for moveable property. However, the Parliament enacted the 2001 Act, namely অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১, deviating from the initial scheme of reinstating title and possession of the original owners of the properties listed as enemy property.

However, if we look into **the purpose of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১)**, it might be found that-“যেহেতু অর্পিত সম্পত্তি হিসাবে তালিকাভুক্ত কতিপয় সম্পত্তি বাংলাদেশী মূল মালিক বা তাহার বাংলাদেশী উত্তরাধিকারী বা উক্ত মূল মালিক বা উত্তরাধিকারীর বাংলাদেশী স্বার্থাধিকারী (Successor-in-

interest) এর নিকট প্রত্যাপন এবং আনুষংগিক বিষয়াদি সম্পর্কে বিধান প্রণয়ন সমীচীন ও প্রয়োজনীয়”, which ***manifestly indicates that the rightful claimants likely original owner, or his Bangladeshi heirs or their successor-in-interest shall be entitled to have the properties which had been included during the period of 06.09.1965 to 23.03.1974, under the authority of the Defense of Pakistan Ordinance, 1965 (Ordinance No. XXIII of 1965), and the Defense of Pakistan Rules, 1965 and the other included properties beyond those period need not be declared to be released, rather be consider as void inclusion, per se.***

Now the case in our hand unveiled that the judgment and decree passed by the learned Judge of the Arpita Sampatti Pratyarpan Tribunal, Madaripur, passed in Arpita Sampatti Pratyarpan Suit No. 67 of 2013, decreeing the suit on contest, directed the defendant concerned to release 0.34 acres of scheduled land in favour of the plaintiffs/applicants immediately.

Thereafter, the defendant Deputy Commissioner preferred an appeal, No. 02 of 2016, before the Arpita Sampatti Prattyarpan Appellate Tribunal, Madaripur, and after hearing the said appeal, the learned Appellate Tribunal vide its judgment dated 09.10.2017, allowed the appeal by reversing the judgment and decree of the learned Arpita Sampatti Prattyarpan Tribunal, Madaripur.

On perusal of the Judgment of the learned Tribunal, Madaripur, it is found that the learned Judge specifically mentioned that,

“It also appears that though the opposite party has claimed that the S.A. recorded tenant has left this country and went to during India- Pakistan war time in 1965 and his land was listed in the vested property list and Govt has leased out the scheduled property to some Jamaluddin vide lease case no XII-76/67-68, but in this concern it appears that Govt.-opposite party has not submitted the

concern any census list, not submitted any lease record. Thereafter it appears that the petitioner has claimed that due to wrong record of the scheduled property in the S.A khatian by the name of the Nogandra Chandra Dotto against that wrong S.A record the petitioner has filed Title suit no 4/96 before the 1st Sub-Judge Court of Madaripur and on perusal the certified copy of the judgment and decree of that title suit no 4/96 (exhibit-9 and 9/1) it appears that in that title suit 4/96 that Nogandra the defendant no 1, District Commissioner was defendant no 2, ADC (Revenue) as Assistant Custodian of vested property was defendant no 3 and that suit has decreed on dated 13/10/96. Thus, it appears that the present opposite party was the defendant of that Title suit where summon notices have duly server upon Govt(exhibit-10 and 10/ka), but it appears that Govt has not contested that suit, neither has filed

any Misc. case nor filed any Appeal. Thus, it appears that the title of the petitioner has established and declared and by the judgment and decree of that Title suit no 4/96.”

Conversely, it is evident from the Judgment of the learned Appellate Tribunal, where it opined that,

“On perusal of certified copies of title suit no- 4/96(Exhts-9 series & 10 sereis) it appears that the predecessor of present plaintiffs namely Hatim Ali Sardar filed the above suit against the said Nogendra Chandra Datta and the Government and the said suit was decreed on exparte vide order dated 10.10.96 more or less with in a period of 6(six months), but its a matter of miracle that the plaintiffs proved the propriety of above judgment & decree before the Ld. Trial Court by adducing certified copy of above suit including the report of serving of summons upon the defendants/Government. Due to above Tractise of

plaintiffs this Court including the Ld. Trial Court had no legal scope to consider the genuineness of the above judgment and decree passed in Title suit no-4/96. On perusal of order sheet of objection case no-1184 filed u/s East Bengal Tenancy Rules, 1955(Exht-11) (by which the suit land has been separately recorded in the name of plaintiffs) it appears that the plaintiffs also proved the same by submitting certified copy and the plaintiffs did not able to prove the same by bring the original from the concerned office. These drawbacks also help us to form a negative opinion in respect of claim of plaintiffs."

On a careful analysis of the above observations of both the Tribunals, it is manifested that the learned Arpita Sampatti Prattayarpan Tribunal, Madaripur, believed the decision of the judgment and decree dated 13.10.1996 passed in the Title Suit 4 of 1996, and the learned Judge of Arpita Sampatti Prattayarpan Appeal

Tribunal totally disbelieved the said decision of the Title Suit 4 of 1996, in favour of the instant petitioners. It is the admitted position that the petitioner, as plaintiff, earlier filed Title Suit 4 of 1996, which was decreed *ex parte* against the Government as well as the S.A. tenants of the suit property. Subsequently, no one preferred any appeal against the said judgment and decree even today. More so, the BRS Khatian 1023, Plot 1229, has been published in the name of the petitioner.

At this juncture, we need to examine the legal footing as contained in the relevant provisions of Sections 12 and 20 of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১), which are respectively reproduced below:

“অবমুক্তির সিদ্ধান্তের আইনগত প্রকৃতি:

১২। এই আইনের অধীনে কোন সম্পত্তি [প্রত্যাপনযোগ্য] সম্পত্তির তালিকা হইতে অবমুক্তির সিদ্ধান্ত প্রদান করা হইলে-

(ক) উক্ত সম্পত্তি ধারা ৬ তে উল্লিখিত প্রকারের সম্পত্তি হওয়ার বিষয়ে চূড়ান্ত হইবে; এবং

(খ) যে ব্যক্তির আবেদনে অবমুক্তির সিদ্ধান্ত প্রদান করা হয় তাহার স্বত্ব বা দখল বা অন্য কোন অধিকার উক্ত সিদ্ধান্ত দ্বারা ঘোষণা বা বহাল করা হইয়াছে বলিয়া গণ্য হইবে না;

(গ) অন্য কোন আইনের অধীন উক্ত সম্পত্তির ব্যাপারে আবেদনকারী বা অন্য কোন ব্যক্তির বৈধ অধিকার থাকিলে তাহা ক্ষুণ্ণ হইবে না।

And

আপীল ট্রাইব্যুনাালের এখতিয়ার:

২০। (১) এই আইনের অধীনে দায়েরকৃত আপীলে উত্থাপিত তথ্যগত প্রশ্নে (question of fact) এবং আইনগত প্রশ্নে (question of law) আপীল ট্রাইব্যুনাল উহার সিদ্ধান্ত প্রদানসহ আপীলকৃত সিদ্ধান্ত সম্পূর্ণ বা আংশিকভাবে রহিত করিতে বা ক্ষেত্রমত অনুমোদন (confirm) করিতে বা উহা সংশোধন করিতে পারিবে:

[তবে শর্ত থাকে যে, ধারা ১০(৮) এ উল্লিখিত বিষয় এবং ট্রাইব্যুনাালের রায় বা সিদ্ধান্তের বৈধতা ও যথার্থতা [***] ব্যতীত অন্য কোন বিষয়ে আপীল ট্রাইব্যুনাল সিদ্ধান্ত প্রদান করিবে না।]

(২) ---

(৩) ---

(৪) ---”

From the plain reading of the aforesaid provisions,
it is perceived that the decision of the Tribunal in

respect of releasing the suit property from the 'Ka' list should not be considered to declare the title, possession or confirm any right thereto, and the Appellate Tribunal only determines the legality and accuracy of the judgment and decree of the Tribunal. Thus, the learned Appellate Tribunal committed errors in law and facts without considering the purpose and powers delegated to it by the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১), and lacking controverting the reasons given by the Tribunal, and also interfered with the decision of an unchallenged judgment of a competent Civil Court.

In these premises, we wish to be certain that a **statutory Tribunal, unless expressly empowered by the governing statute, lacks jurisdiction to sit on as an appellate authority to interfere with or invalidate a judgment and decree of a competent civil Court. Such interference may be justified only where the decree is demonstrated to be a nullity on the ground of want of**

jurisdiction (*coram non judice*), statutory prohibition, or fraud.

However, it is also evident from the judgment and decree of the Appellate Tribunal that the learned Judge deliberately failed to get notice of the provisions of Section 6 of the অর্পিত সম্পত্তি প্রত্যারণ আইন, ২০০১ (সংশোধিত-২০১১), of which relevant portions run as follows:

“৬। [প্রত্যারণযোগ্য সম্পত্তির তালিকায়] নিম্নবর্ণিত সম্পত্তি অন্তর্ভুক্ত করা যাইবে না, যথা:-

ক) কোন সম্পত্তি অর্পিত সম্পত্তি নহে মর্মে এই আইন প্রবর্তনের পূর্বে যথাযথ আদালত চূড়ান্ত সিদ্ধান্ত প্রদান করিয়া থাকিলে সেই সম্পত্তি;

(খ) এই আইন প্রবর্তনের পূর্বে যে কোন সময় তত্ত্বাবধায়ক কর্তৃক অর্পিত সম্পত্তির তালিকা হইতে অবমুক্ত করা হইয়াছে এরূপ কোন সম্পত্তি;”

So, it is manifested from the aforesaid provisions that there is a specific bar to include any property in the Arpita Sampatti Prattayarpan List, which is contained in any judgment and decree passed by a competent civil Court, or already released the property by the Custodian of the Vested Property concerned.

On shifting the judgment and decree of the learned Arpita Sampatti Prattyarpan Tribunal, Madaripur, it is found that the Tribunal reliably held that the suit property was erroneously enlisted and liable to be released from the alleged List. Whereas the learned Appellate Tribunal failed to understand the facts and legal propositions in adhering to the case in its truest perspective, but in the instant writ, the petitioner successfully proved their pedigree, right, title, and successive interest as well as possession of the suit property by adducing and producing proper evidence and documents.

Upon a careful consideration of the aforesaid facts and the governing law, we are of the considered view that the Judgment and Decree dated 09.10.2017 (decree drawn up thereunder and signed on 15.10.2017) passed by the learned Judge, Arpita Sampatti Prattyarpan Appeal Tribunal and District Judge, Madaripur (Respondent 1) in Arpita Appeal No. 02 of 2016

(Annexure-E and E-1) allowing the same and thereby reversing the Judgment and Decree dated 22.11.2015 (decree drawn up thereunder and signed on 27.11.2015) passed by the learned Judge, Arpita Sampatti Prattyarpan Tribunal (Joint District Judge, 2nd Court, Madaripur) in Arpita Sampatti Tribunal Case No. 67 of 2013 in decreeing/allowing the case, is hereby declared to be without any lawful authority and is of no legal effect.

Accordingly, we find essence in the Rule Nisi. In the result, the Rule is made absolute without any order as to costs.

The respondent 3 is hereby directed to give effect to and implement the Judgment and Decree dated 22.11.2015 (decree drawn up thereunder and signed on 27.11.2015) passed by the learned Judge, Arpita Sampatti Prattyarpan Tribunal (Joint District Judge, 2nd Court, Madaripur) in Arpita Sampatti Tribunal Case No. 67 of 2013 in decreeing/allowing the case and thereby

releasing the case land from the list of 'Ka' schedule of Prottayarpanjoggo property under serial 4 of 111 corresponding to Shakuni Mouza under Sadar Upazilla of District Madaripur, which is published in the Gazette on 07.05.2012, as per the provisions of Section 11 of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১), from the date of receipt of a copy of this judgment and order, without fail.

The office is directed to send down the Records of the Tribunals, Madaripur (if any), along with a copy of the judgment and order forthwith.

(Abdur Rahman, J)

Bhishmadev Chakraborty, J:

I agree.

(Bhishmadev Chakraborty, J)