

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

Present

**Mr. Justice K.M. Hafizul Alam**

-And-

**Mr. Justice Abdur Rahman**

WRIT PETITION NO. 17285 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 Bangladesh, represented by the  
Deputy Commissioner, Kushtia.

.... Petitioner

-versus-

Afroza Sultana and others

.... Respondents

Mr. J.R. Khan Robin, DAG with

Mr. Md. Osman Gani, DAG with

Mr. Ahmed Musanna Chowdhury, AAG with

Ms. Kamrunnahar Tamanna, AAG

...for the petitioner

Mr. Shasti Sarker, Advocate

....For the Respondent Nos. 4(a) to 4(e)

Heard on: 29.01.2026 and 26.02.2026

Judgment on: 11.03.2026 A.D. Wednesday, 26  
Falgun, 1432 B.S.

**Abdur Rahman, J:**

This *Rule Nisi*, at the instance of the petitioner, was issued on an application under Article 102 of the Constitution in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the judgment and decree dated 19.06.2016 passed by the Additional District Judge and Arpita Sampotti Prottarpon Appellate Tribunal, Kushtia in Arpita Sampotti Prottarpon Appeal No. 20 of 2015 and 24 of 2015 (Annexure-D) affirming the judgment and decree dated 22.06.2015 decree signed on 24.06.2015 passed by the Joint District Judge, 1st Court and Arpita Sampotti Prottarpon Tribunal, Kushtia in Arpita Sampotti Prottarpon Case No. 65 of 2014 (Annexure-C) decreeing the same shall 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 facts leading to the issuance of this *Rule Nisi* in brief are that: the Respondent No. 4, as plaintiff challenging the

Gazette notification enlisting the case property as vested property, filed Arpito Sompatti Prottarpon Case No. 65/2014 before the learned Judge of the Arpito Sompatti Prottarpon Tribunal, Kushtia. The plaintiff referred the background of the suit stating that Norendronath Singh, Surendronath Singh, and Monindro Nath Singho were the original owners of the scheduled land and subsequently the S.A. recorded tenant Nogendronath Singho died, leaving behind his 5 (five) sons, namely Nekhel Kumar, Deb Kumar, Nirmol Kumar, Amal Kumar, and Lethes Kumar Singh, Surendra Nath Singh, Monn dronath Singh, and the 5(five) sons of Nogendronath Singh who were the successors of Nogendro Nath Singho inherited 6.36 acres of land in the Khatian No. C.S. 77 and in S.A. operation 6.36 acres of land was recorded in their name in S.A. Khatian No. 94, and due to failure of paying Government rent by the tenant of S.A. Khatian No. 94, the then East Pakistan Govt. filed Certificate Case No. 3613/ S.A./ 1963-64 against them, and thereafter the scheduled land was declared to be auctioned. Thereafter, the father of the petitioner purchased the said auction "becoming the highest bidder" and it was executed on 20/01/1965 through the Court. The father of the petitioner, on behalf of him obtain

Boynama on 22/03/1965, and since then the petitioner has possessed the same.

Thereafter, the Deputy Commissioner, Kushtia i.e. the present petitioner as defendant contested the suit by filing a written statement stating that the recorded owner of the vested property having left the country, the said property was included in the list of vested and nonresident property as per law and rule, and the management and control of the said property having been vested upon the Government as per law, and accordingly the property has been leased out vide lease Case No. VP-563-2(X)/66-67 and the said property has been included in the "Ka" list of the Arpito Sompatti Prottarpon Ain 2001 (Amended 2011) and by the Supervision of the Government, the lessors possess the case land.

Thereafter, the learned Judge of the Arpito Sompatti Prottarpon Tribunal, Kushtia, after concluding the trial, was pleased to deliver the judgment and decree on 22/06/2015 (decree signed on 24.06.2015), allowing the case filed by the Respondent No. 4 and directed the defendant-petitioner to release the case property from the list of vested property.

Being aggrieved by and dissatisfied with the judgment and decree dated 22/06/2015 passed by the learned Judge of the Arpito Shampotti Prattorpon Tribunal and Joint District Judge Court, Kushtia in Arpito Sompatti Prottarpon Case No. 65 of 2014, the petitioner preferred an appeal being Arpito Sompatti Prottarpon Appeal No. 24 of 2015 before the learned District Judge and Arpito Sompatti Prottarpon Appellate Tribunal, Kushtia. A stranger being appellant also filed another Appeal being No. 20 of 2015 against the same judgment and decree dated 22.06.2015, before the learned District Judge and Arpito Sompatti Prottarpon Appellate Tribunal, Kushtia, and hereinafter both appeals were sent to the learned Additional District Judge and Arpito Sompatti Prottarpon Appellate Tribunal, Kushtia for disposal. Learned Appellate Tribunal, after hearing both the parties, was pleased to dismiss the said Appeals vide judgment and decree dated 19.06.2016 passed in Arpita Sampotti Prottarpon Appeal No. 20 of 2015 and 24 of 2015 (Annexure-D), affirming the judgment and decree dated 22.06.2015 (decree signed on 24.06.2015), passed by the Joint District Judge, 1st Court and Arpita Sampotti Prottarpon Tribunal, Kushtia in Arpita Sampotti Prottarpon Case No. 65 of 2014 (Annexure-C),

decreeing the same. Thereafter, the instant petitioner, Deputy Commissioner of Kustia, finding no other alternative, challenged the said judgment and decree through this judicial review forum.

Mr. J.R. Khan Robin, the learned Deputy Attorney General for Bangladesh, appearing for the petitioner, submitted that the suit property was rightly included in the list of vested property as the recorded owner of the alleged property having left the country, and the property as per law and rule, and the management and control having been vested upon the Government, and accordingly the property has been leased out vide lease Case No. VP-563-2(X)/66-67, and by the Supervision of the Government, the lessors possess the case land.

Learned DAG further submitted that the learned Appellate Tribunal, being the final authority to consider the facts, passed the impugned Judgment and decree on misconceived laws and facts, and he has totally failed to apply his judicial mind in passing the said impugned judgment. The suit land has been enlisted and finally found published as vested property in the "Ka" schedule of the Arpito Sompatti Prottarpon Gazette notification in serial No. 419 and on page no. 33231 and 33232, and the learned appellate Tribunal, by disregarding the finally

published the above said gazette notification of the vested property, passed the impugned judgment without lawful authority, and as such, the impugned judgment is liable to be set aside.

Learned DAG finally submitted that both the Tribunals failed to identify the real owners or successor-in-interests in the suit property, and also failed to assess the evidentiary value of the VP case No. 563/1966-67, which was properly arising out of the census list. The Government obtained possession of the suit property, and none of the successors claimed the same through lease; moreover, the R.S. record of the suit land was correctly published in the name of the Government; consequently, the instant Rule is liable to be made absolute.

Contrariwise, Mr. Shasti Sarker, the learned Counsel, appearing for the respondent Nos. 4(a) to 4(e) submitted that it is an admitted position between the parties that the S.A. record stands undisputed. The recorded S.A. tenants, namely Surandronath Singh, Monindronath Singh, Nekhil Kumar Deb Kumar, Nermol Kumar, and Amol Kumar, owned the suit land but subsequently defaulted in payment of the requisite revenue. Consequently, upon due service of notice, the Government

initiated Certificate Case No. 3613/S.A./1963–64. After compliance with all legal formalities, the scheduled land was put to auction, wherein the father of the plaintiff-applicant emerged as the highest bidder and lawfully purchased the same on 29.10.1964 for a consideration of Tk. 1,500/- (Taka One Thousand Five Hundred) only. Thereafter, possession of the auction-purchased land was duly delivered to him through the Certificate Officer on 22.03.1965.

Learned Counsel further submitted that at the time of R.S. survey, some land illegally recorded in the name of District Commissioner, Comilla on behalf of Government of Bangladesh and the rest land were recorded rightly in the name of Rafiqul Islam (Respondent No: 4) of the Writ Petition, and the learned Arpitto Shompotti Appellate Tribunal, considering the material facts and evidence and applying judicial mind rightly pronounced the judgment dated 19.06.2016 affirming the judgment and decree dated 22.06.2015 passed by the Joint District Judge, 1st Court and Arpito Sompatti Prottarpon Tribunal, Kushtia in Arpito Sompatti Prottarpon Case No. 65 of 2014, and as such, the Rule is liable to be discharged with costs.

We have heard the learned Deputy Attorney General, for the petitioner, and learned Counsel for the respondents, and also perused the writ petition and all its annexures. 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<sup>th</sup> September 1965 to 23<sup>rd</sup> September 1965, a State of Emergency was proclaimed by the Government of Pakistan by Defence of Pakistan Ordinance, 1965 (Ordinance No. XXIII of 1965) whereunder Defence 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<sup>th</sup> 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<sup>th</sup> April, 1971, Laws of Continuance Enforcement Order, 1971 was promulgated purporting to keep in force all the Pakistani laws which were in force in the then East Pakistan on or before 25<sup>th</sup> March, 1971, which were not in conflict with the proclamation of Independence. Bangladesh was not a successor state of Pakistan, but rather established itself by pursuing a war of liberation against Pakistan. Immediately after

liberation, on 26th 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 Pakistan Government became vested in the People's Republic of Bangladesh. Accordingly, all Government properties, including but not limited to Khaas land, river, Enemy Properties listed under the 1965 and 1969 Ordinance, etc., 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 give any wide power to the Government to manage or dispose of such properties. On 20<sup>th</sup> 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 enactments of the 1974 Act. Subsequently, on 26<sup>th</sup> 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 administer, control, manage, and dispose of by transfer or otherwise by the Government or by such office or authority as the Government may direct. 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 intending to return possession of the properties listed as ‘enemy property’ since 1969 to their original owners who were citizens of Bangladesh or their heirs under applicable personal law. The title of the draft law was the Vested Property (Return of Possession) Bill, 1999. According to the draft law, it was expected that upon enactment, subject to the provision of determination claim provided in the draft Act, any property which was not listed before 16<sup>th</sup> 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 draft of 1999, it was expressly provided upon enactment of the draft Act, that any lease created by the Government on such properties would be deemed to be 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 প্রত্যর্পণ বিল (2000 Bill) the main features of the draft proposed by the Parliamentary Committee,

has been abruptly changed by the Bureaucratic process, headed by the Secretary of the Ministry of Land. The word “প্রত্যর্পণ” is not commensurate with the Indo-Pak subcontinent Land Laws, and equity from Nababi amal to the present time “প্রত্যর্পণ” is used for moveable property. However, the Parliament enacted the 2001 Act, namely অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১) 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 প্রত্যর্পণ 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 প্রত্যর্পণ 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 displayed that the Government put the suit land into auction through Certificate case No. 3613/S.A./1963–64, wherein the father of the plaintiff-applicant appeared as the highest bidder and lawfully purchased the same on 29.10.1964 for a consideration of Tk. 1,500/- (Taka One Thousand Five Hundred) only. Thereafter, possession of the auction-purchased land was duly delivered to him through the Certificate Officer on 22.03.1965. Thus, the India-Pakistan war started on 06.09.1965, and the Government already vested the property in the name of the predecessor of the applicant, which was earlier in point of time; consequently, the inclusion of the property as vested property was illegal.

However, on perusal of the Judgment and Decree passed by the Learned Appellate Tribunal (Annexure-D) it is found that the learned Judge painstakingly analyzed the judgment and decree of the Arpita Sampampatti Prattarpan Tribunal along with the documents of the case provided by both parties, and also observed that, “রেসপনডেন্ট/আবেদনকারী পক্ষের দাবী অনুযায়ী নালিশী জমি

বকেয়া খাজনার দায়ে নিলাম হইলে রেসপনডেন্ট/দরখাস্তকারী পিতা রেসপনডেন্ট/দরখাস্তকারীর নামে ২৯/১০/১৯৬৪ খ্রি: তারিখে নিলাম খরিদ করেন এবং আদালতের মাধ্যমে ২২/০৩/১৯৬৫ খ্রি: তারিখে দখল প্রাপ্ত হন। কিন্তু নালিশী জমি অর্পিত সম্পত্তির তালিকাভুক্ত হইলে রেসপনডেন্ট/দরখাস্তকারীর আবেদনের প্রেক্ষিতে আপীল্যান্ট/১নং প্রতিপক্ষ তথা ডেপুটি কমিশনার, কুষ্টিয়া ০৩/১০/১৯৯২ খ্রি: তারিখে নালিশী জমি অর্পিত সম্পত্তির তালিকা হইতে অবমুক্তি আদেশ প্রদান করেন। রেসপনডেন্ট/দরখাস্তকারী নালিশী জমি বাবদ নামপত্তন করিয়াছেন এবং সন সন খাজনাদি পরিশোধ অন্তে নালিশী সম্পত্তিতে ভোগ দখলকার আছেন।”, so it is palpably seen that the proper authority of the Government released the property mitigating the existence of R.S. record as per law.

Therefore, we need to examine the provisions of Section 6 of the অর্পিত সম্পত্তি প্রত্যাপণ আইন, ২০০১ (সংশোধিত-২০১১) which are denoted as follows:

“৬। [প্রত্যাপণযোগ্য 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;

(গ) সরকার কর্তৃক কোন সংবিধিবদ্ধ সংস্থা বা অন্য কোন সংগঠন বা কোন ব্যক্তির নিকট স্থায়ীভাবে হস্তান্তরিত বা স্থায়ী ইজারা প্রদত্ত অর্পিত সম্পত্তি;

(ঘ) কোন সংবিধিবদ্ধ সংস্থার নিকট ন্যস্ত এমন অর্পিত সম্পত্তি যাহা শিল্প বা বাণিজ্যিক প্রতিষ্ঠান এবং উহার আওতাধীন সকল সম্পদ এবং এইরূপ সংবিধিবদ্ধ সংস্থা কর্তৃক উক্ত প্রতিষ্ঠান বা উহার আওতাধীন সম্পদ বা উহার কোন অংশবিশেষ হস্তান্তর করিয়া থাকিলে সেই হস্তান্তরিত সম্পত্তি;

(ঙ) এমন অর্পিত সম্পত্তি যাহা কোন কোম্পানীর শেয়ার বা অন্য কোন প্রকারের সিকিউরিটি;

(চ) জনস্বার্থে অধিগ্রহণ করা হইয়াছে এইরূপ কোন অর্পিত সম্পত্তি:

তবে শর্ত থাকে যে, উক্ত অধিগ্রহণকৃত সম্পত্তির বিপরীতে প্রদেয় ক্ষতিপূরণের অর্থ জমা থাকিলে উক্ত সম্পত্তির অধিগ্রহণ-পূর্ব মালিককে বা তাহার উত্তরাধিকারী বা স্বার্থাধিকারীকে ক্ষতিপূরণের অর্থ এই আইনের বিধান অনুসারে প্রদান করা হইবে যদি উক্ত মালিক বা উত্তরাধিকারী বা স্বার্থাধিকারী [\*\*\*]বাংলাদেশের নাগরিক ও স্থায়ী বাসিন্দা হন।”

From a plain reading of the said provision, we can calculate that as per Section 6 (Kha) of the অর্পিত সম্পত্তি প্রত্যাপণ আইন, ২০০১ (সংশোধিত-২০১১) the instant suit property has already been released by the custodian of the vested property, i.e., the Deputy Commissioner, Kustia, (as enshrined under the provisions of Section 2 (Ja) of the said Ain), and as such to enlist with the suit property as vested property in the "Ka" schedule of the Arpito Sompatti Prottarpon Gazette notification in serial No. 419 and on

page no. 33231 and 33232 are nothing but *mala fide*, illegal, and colorable exercise of power.

However, we deem it appropriate to respond to the submission advanced by the learned Deputy Attorney General regarding the identification of the “real owners or successors-in-interest” in respect of the suit property. It is to be noted that ***no provision of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১) imposes any obligation upon the Tribunal to adjudicate or determine title to the property in question except to prima facie, chain of documents, and its authenticity. The statutory mandate of the Tribunal is confined to the release of the property in favour of the original owner(s), their heirs, or lawful successors-in-interest. Any dispute or question pertaining to inheritance, succession, or title of the released property shall be dealt as per the provisions of Section 12 (Kha) and (Ga) of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১) the same squarely falls within the jurisdiction of the competent civil court for proper adjudication.***

Upon consideration of the foregoing factual matrix and the applicable law, we are of the considered view that both the

learned Arpita Sampatti Pratyarpan Tribunal and the Appellate Tribunal, having concurrently arrived at a finding in favour of releasing the suit property, committed no patent illegality or legal infirmity in their respective decisions. Consequently, we find no cogent ground warranting interference with the concurrent findings of the said Tribunals. Consequently, the Rule is devoid of merit and is liable to be discharged.

Accordingly, the Rule is discharged without any order as to cost.

The petitioner is hereby directed to implement the judgment and decree dated 22.06.2015 (decree thereunder signed on 24.06.2015) passed by the learned Judge, Arpita Sampatti Pratyarpan Tribunal, Kustia, in Arpita Sampatti Pratyarpan Suit No. 65 of 2014, decree the suit within 60 (sixty) days from the date of receipt of the copy of this judgment and order without fail. In default thereof, he shall incur the consequences envisaged under Section 32 (Ga) of the অর্পিত সম্পত্তি প্রত্যারণ আইন, ২০০১ (সংশোধিত-২০১১).

The order of stay and ***status quo*** granted earlier by this Court is hereby recalled and vacated.

The office is directed to send down the SCR along with a copy of the judgment and order forthwith.

( Abdur Rahman, J )

K.M. Hafizul Alam, J:

I agree.

( K.M. Hafizul Alam, J )