

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

Writ Petition No. 11058 of 2018

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Kartik Chandra Sarker and another
....Petitioners

Versus

The Government of Bangladesh, represented
by the Secretary, Ministry of Land, Bangladesh
Secretariat, Shahbag, Dhaka and others
....Respondents

Mr. Bivash Chandra Biswas, Senior Advocate
with

Mr. Utpal Biswas, Advocate with

Ms. Dipali Rani Das, Advocate

....For the Petitioners

Mr. Md. Abid Chowdhury, DAG with

Mr. M Mohiuddin Yousuf, DAG,

Mr. Monjur Elahi Porag, AAG,

Mr. Ariful Alam, AAG,

Mr. Md. Nazmul Hasan Chowdhury, AAG and

Mr. Md. Shahidul Islam, AAG

.... For the respondents

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S M Saiful Islam

Judgment on 09.07.2026.

Md. IqbalKabir, J:

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, this Rule Nisi was issued in the
following terms:

"Let a Rule Nisi be issued calling upon the respondent Nos.
1-7 to show cause as to why the impugned judgment and
decree dated 04.06.2018 (decree signed on 04.06.2018)
passed in Arpita Appeal No. 20 of 2015 by the learned
Arpita Sampatty Pratarpan Appellate Tribunal allowed the
appeal in part (vide Annexure-D) and thereby modifying the
judgment and decree dated 05.02.2015 (decree signed on

12.02.2015) passed in Arpita Sampatty Pratarpan Case No. 606 of 2012 by the learned Arpita Sampatty Pratarpan Additional Tribunal No. 2, Chandpur decreed the suit vide Annexure-"C" should not be declared illegal and without lawful authority 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 passed an interim order in the following manner:

"Pending hearing of the Rule, the parties are directed to maintain status-quo in respect of possession and position for a period of 3 (three) months from date."

Short fact stated in the application are that the petitioners along with respondent No. 8 as plaintiffs filed Arpita Sampatty Pratyarpan Case No. 606 of 2012 in the Court of Arpita Sampatty Pratyarpan Tribunal, Chandpur praying for releasing 1.0700 acers land of S.A. Khatian No. 58, 0.1600 acres land of S.A. Khatian No. 15 and 0.9300 acres land of S.A. Khatian No. 16 under Mouja Bhatiyapur, Police Station: Faridganj, District: Chandpur which has been enlisted in 'Ka' list under Arpita Sampatty Pratyarpan Ain, 2001 (as amended 2011) at serial No. 1 citing V.P. Case No. 1/85-86 reciting owners namely Ananda Mohan Sarker, Jagadish Chandra Sarker and Satish Chandra Sarker who are the S.A. recorded tenants. However, the Government contested the tribunal case, and the learned Judge of the Tribunal, vide its judgment and decree dated 05.02.2015, decreed the case. Against the judgment and decree, the Government preferred Arpita Sampatty Prattyarpan Appeal No. 20 of 2015 before the learned Judge of the Arpita Sampatty Prattyarpan Appellate Tribunal, Chandpur. The learned Judge, vide his judgment and decree dated 04.06.2018, allowed the appeal in part on decreeing the Tribunal Case in part.

Being aggrieved and dissatisfied with the aforesaid judgment and decree, the petitioners filed the instant petition and obtained Rule.

It appears that the petitioner Ananda Chandra Sarker, Satish Chandra Sarker and Jagadish Chandra Sarker were the recorded owners of 3.93 acers of land under S.A. Khatian No. 58 and 1.0700 aeres land

out of 3.93 acres land has been enlisted in 'Ka' list under Arpita Sampatty Pratyarpan Ain, 2001 (as amended 2011) and .61 acres land out of 1.0700 acres land has been released by dint of Title Suit No. 33 of 1994 in favour of plaintiff No. 3 who became owner by purchase and here it is mentioned that after selling of .61 acres land Jagadish Chandra died leaving behind his only brother Satish Chandra Sarker as has been shown through succession certificate (Annexure-K) who died leaving behind his paternal uncle son Ananda Chandra Sarker as shown in succession certificate (Annexure-K-1). The petitioners' case is that Ananda Chandra Sarker is the recorded owner of 1.82 acres of land under S.A. Khatian No. 15, of which 0.1600 acres has been enlisted in the 'Ka' List under the Arpita Sampatty Pratyarpan Ain, 2001 (as amended in 2011). They further contend that Satish and Jagadish are not the recorded owners of S.A. Khatian No. 16 and, therefore, the 0.9300 acres of land enlisted in the 'Ka' List under the said Act also belongs to Ananda Chandra Sarker. In the context, a question has arisen hypothetically that the name of Ananga has been cited in the 'Ka' list as S.A. recorded owner, and in this part it is to be mentioned that the “আনন্দ” should never be cited as “অনঙ্গ”.

Now it is the crux point in this case is that who are entitled to release the case land from 'Ka' list under Arpita Sampatty Pratyarpan Ain and here it is to be mentioned that according to Section 2(৬) of Arpita Sampatty Pratyarpan Ain heirs of Ananda Chandra Sarker are firstly entitled to release the same and as Ananda died leaving behind 2(two) sons from first wife i.e., Ananga and Arbinda and 1(one) son from second wife i.e., Hemanga and Ananga died leaving behind his full brother Arabinda as legal representative and Hemanga is not his legal representative as his brother of half blood (Article 9(ii) of Hindu Law) and lastly Arabind died leaving behind his 2(two) sons who are the petitioners.

Mr. Utpal Biswas submits that the case land has been recorded as "বাড়ি (Bari)" and "ভিটি (Bhiti)", and the remaining land is contiguous and appurtenant thereto. Under section 6 of the Land Reform Act, 2023, such

homestead land cannot be enlisted or retained as vested property under the Arpita Sampatty Pratyarpan Ain. According to him, Article 42 of the Constitution guarantees the right to acquire, hold and protect property. Moreover, the Government has accepted rent from the petitioners and their predecessors-in-interest, which constitutes acknowledgment of their title and possession, and rent receipts are recognized as relevant evidence of title.

Further, section 2(৩) of the Arpita Sampatty Pratarpan Ain recognizes the right of co-sharers in possession to seek release of land enlisted in the 'Ka' List. The petitioners, being successors and co-sharers in possession, are therefore entitled to such relief. He claims that Petitioner No. 3 has already been recognized as the lawful successor in respect of 0.61 acres of the enlisted land, while the remaining petitioners are the heirs of the original recorded owner. The respondents cannot accept the title of one successor while denying the title of the other heirs. Furthermore, the respondents never challenged the judgment and decree passed in Title Suit No. 33 of 1994, declaring V.P. Case No. 1/85-86 illegal, and are therefore precluded from relying on that proceeding. They also failed before the Tribunal to specifically deny the petitioners' possession, succession, genealogy or title, and accordingly cannot now dispute the petitioners' lawful title and possession.

He brought notice to the Government, in its written statement, that neither disputed the plaintiffs' possession in the Prattarpan Case nor denied their chain of succession and chronology of title. It also made no assertion challenging the Tribunal's finding that V.P. Case No. 1/85–86 was illegal and liable to be cancelled. Having failed to raise these issues before the Tribunal, the Government is now precluded from challenging the factual and legal findings regarding the plaintiffs' title and the cancellation of V.P. Case No. 1/85–86.

It is pertinent to note that the subject matter of the Rule is in conclusion of the property in the Arpita Sampatty Ain as of “Ka” list. However, in the midst of the hearing, the learned Advocate for the

petitioners submits that he annexed some documents which were required before the Trial Court. According to him, if those documents were examined by the trial/ Appellate Tribunal, the judgment would be otherwise. Thus, he submits that this Court may take appropriate initiative to consider those documents by the Appellate Tribunal. According to him, no one would be prejudiced if this Court allows such a prayer in order to fulfill the object of law.

We find substance in his submissions made by the petitioners. However, we are of the view that justice would be best served if this Court directed the Appellate Tribunal to consider the documents, if any, produced before the Appellate Tribunal by the petitioners.

Accordingly, the Appellate Tribunal is directed to accept the documents, if any, filed by the petitioners. Upon receiving those documents or evidence, the Appellate Tribunal shall allow both parties to prove or disprove those documents and, thereafter, dispose of the case in accordance with law within 4(four) months from the date of receipt of a copy of this judgment.

In view of the above, the judgment passed by the Appellate Tribunal is set aside.

With the above observation, the Rule is disposed of.

The order of status-quo granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to costs.

Send down the Lower Court Records along with the copy of this judgment at once.

S M Saiful Islam, J:
I agree.