

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

Writ Petition No. 5568 of 2019

IN THE MATTER OF:

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

And

IN THE MATTER OF:

Pochondor Ali and others

----Petitioners.

-Versus-

Bangladesh, represented by the Deputy Commissioner,
Sunamganj and others

----Respondents.

Ms. Anita Ghazi Rahman, Senior Advocate with
Mr. Taposh Bhandhu Das,
Ms. Sameera Mahmud,
Mr. Joydipta Dev Chowdhury and
Mr. S. M. Mostafizur Rahman, Advocate

----For the Petitioners.

Mr. M. Mohiuddin Yousuf, DAG with
Mr. Ariful Alam, AAG

----For the Respondent Nos. 1-3.

Mr. Kumar Kishore Chowdhury, Advocate

----For the Respondent Nos. 4-13.

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice S. M. Saiful Islam

**Heard on: 11.06.2026, 28.06.2026 and
30.06.2026.**

Date of Judgment: 30.07.2026.

S. M. Saiful Islam, J:

On an application under Article 102(2) of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why judgment and order dated 01.04.2019 passed by the learned Arpita Sampatti Appeal Tribunal, Sunamganj in Arpita Appeal No. 53 of 2017 (Annexure- D) rejecting the said appeal and thereby affirming the judgment and order dated 05.03.2017 passed by the learned Arpita Sampatti Prattarpan Additional Tribunal (Joint District Judge), 1st Court, Sunamganj in Arpita Sampatti Prattarpan Suit No. 03 of 2016 dismissing the suit (Annexure- B) should not be declared to be without lawful authority and is of no legal effect and why the Gazette published in 8th May 2012 in (Ka) Schedule in connection with SA Khatian No. 633 corresponding Plot No. 5477 within the District- Sunamganj, Police Station- Chatak having JL No. SA- 448, Mouza- Jahidpur (Annexure- F) should not be declares to be without lawful authority and is of no legal effect and / or such other or further order or orders be passed as to this Court may seem fit and proper.”

Facts leading to this Rule, in brief, are that the petitioners, as the plaintiffs, filed Arpito Sampatti Prattarpan Suit No. 03 of 2016 before the Arpito Sampatti Prattarpan Additional Tribunal (Joint District Judge) 1st Court, Sunamganj seeking release of .16 acres of

land appertaining to SA Khatian No. 633 and SA Plot No. 5477 of Jahidpur Mouja under Police Station- Chatak in the district of Sunamganj. In the SA Khatian, the said land was recorded in the name of Dagon Nath, who died leaving behind his only daughter, namely, Haromoni. The said Haromoni Devi subsequently transferred the land to the petitioners vide Kabala deed No. 3475/86. On 01.10.2016, petitioner No. 2, for the first time, came to know that the case property had been enlisted as vested property. Thereafter, the petitioners filed the Arpito Sampatti Prattarpan Suit No. 03 of 2016 before the *Arpito Sampatti Prattarpan* Tribunal seeking release of the said .16 acres of case land along with an application under section 5 of the Limitation Act for condonation of the delay. The said Tribunal, however, rejected the plaint of the suit under Order 7 Rule 11(Ga) of the Code of Civil Procedure by its judgment and order dated 05.03.2017.

Being aggrieved by and dissatisfied with the said judgment and decree, the plaintiffs, as Appellants, preferred Arpito Appeal No. 53 of 2017 before the District Judge, Sunamganj sitting as the Appellate Tribunal. The Appellate Tribunal, upon hearing the parties, dismissed the Appeal by its impugned judgment and order dated 01.04.2019. Being aggrieved by and dissatisfied with the said impugned judgment and decree, and having no other equally

efficacious remedy available under any other law, the petitioners filed the instant writ petition and obtained the Rule.

At the time of issuance of the Rule, the parties were directed to maintain *status quo* in respect of possession and position of the land in question for a period of 6 (six) months and subsequently it was extended till disposal of the Rule.

The Rule was contested by respondent Nos. 1-3 and added Respondent Nos. 4-13. Respondent Nos. 1-3, filed an affidavit- in- opposition denying the material allegations made in the writ petition and contending, *inter alia*, that the case land is vested property of the Government and has been enlisted in the 'Ka' schedule published in the Bangladesh Gazette. It was further contended that the case land has been leased out to different persons vide V.P. Case No .07 of 1974-1975 and that the same had been recorded in the Khas Khatian No. 1/1 in the ongoing settlement. According to the respondents, the petitioners purchased the case land in violation of the Government Rules. The respondents further contended that the *Arpito Sampatti Prattarpan* Tribunal rightly dismissed the suit as it was not filed within the prescribed period of limitation and that the *Arpito Sampatti Prattarpan* Appellate Tribunal also rightly dismissed the Appeal by the impugned judgment and order. According to the respondents, there is no illegality in the impugned judgment and decree, and as such, the writ petition is liable to be rejected.

Ms. Anita Ghazi Rahman, the learned Advocate appearing for the petitioners, submits that Haromoni Devi, being the heir of SA recorded tenant Dagon Nath, transferred the case land to the petitioners by registered sale deed No. 3475/86. The petitioners subsequently had their names duly mutated in the Mutation Khatian No. 1608 and have been paying rent regularly in respect of the said land. Furthermore, in the ongoing Revisional Survey, DP Khatian No. 1815 has been duly prepared in the names of the petitioners in respect of the suit land.

She further submits that the Gazette Notification shows that the case property was, for the first time, treated as vested property in VP Case No. 07 of 74-75 dated 14.09.1974. She asserts that the illegality in including the case property as vested property is apparent on the face of the record, inasmuch as it is settled that law relating to enemy property, namely, the EP (Continuance of Emergency Provisions) Ordinance, 1969, itself ceased to have effect upon its repeal by Act No. XLV of 1974, namely, The Enemy Property (Continuance of Emergency Provisions) (Repeal) Act, 1974, on 23.03.1974. Therefore, no further vested property case could lawfully be initiated thereafter on the basis of a law that had already ceased to exist.

The learned Advocate for the petitioners further submits that our Apex Court, in several decisions, including Aroti Rani Paul Vs.

S.K. Paul [56 DLR (AD) 73], Saju Hossain Vs. Bangladesh [58 DLR (AD) 177] and Government of Bangladesh Vs. Md. Abdul Hye [19 ADC, 337], has consistently held that, since the law of enemy property itself ceased to exist upon the repeal of the EP (Continuance of Emergency Provisions) Ordinance, 1969 on 23.03.1974, no further Vested Property Case could lawfully be initiated thereafter on the basis of a law that had already ceased to exist. According to the learned Advocate, in the present case, VP Case No. 07 of 1974-1975 dated 14.09.1974, was instituted after 23.03.1974 and, therefore, is *ex facie* illegal, *malafide* and without jurisdiction. She further submits that the impugned action is violative of the petitioners' fundamental rights guaranteed under Articles 27, 31 and 42 of the Constitution.

She finally submits that the petitioners have been in continuous possession of the case property for more than 38 years. Respondent No. 4 claims the land on the basis of VP Case No. 07 of 1974-1975 dated 14.09.1974 which not tenable in law. On these grounds, the learned Advocate for the petitioners prays for the Rule to be made absolute.

Conversely, the learned Deputy Attorney General Mr. M. Mohiuddin Yousuf, appearing for the Respondent Nos. 1-3, submits that there is no illegality in the impugned judgment and decree passed by the *Arpito Sampatti Prattarpan* Appellate Tribunal. He

submits that the petitioners did not file the suit before the *Arpito Sampatti Prattarpan* Tribunal within the prescribed period of limitation and, accordingly, the suit was correctly dismissed. He contends that the *Arpito Sampatti Prattarpan* Appellate Tribunal also correctly dismissed the appeal by the impugned judgment and order.

He further submits that the petitioners cannot claim title to the case land by virtue of their alleged purchase, as all kinds of transfer of vested property are prohibited by law. According to him, the petitioners have not acquired any title to the case land by virtue of the alleged Kabala. He further submits that the case land has been leased out to different persons, who have been possessing the same. On these grounds, the learned Advocate for the respondents prays for discharge of the Rule.

The learned Advocate, Mr. Kumar Kishore Chowdhury, appearing for the respondents Nos. 4-13 adopts the submissions of the learned Deputy Attorney General and also prays for discharge of the Rule.

We have heard the learned Advocates appearing for both sides, perused the writ petition, the affidavit-in-opposition, and the Annexures appended thereto.

From the facts and documents on record, it appears that the petitioners instituted *Arpito Sampatti Prattarpan* Suit No. 03 of 2016

before the *Arpito Sampatti Prattarpan* Tribunal, Sunamganj. They also filed an application under section 5 of the Limitation Act seeking condonation of delay of 1,021 days in filing the suit (Annexure- A and A1). The learned *Arpito Sampatti Prattarpan* Tribunal, by its judgment and decree dated 05.03.2017, rejected the plaint, holding that the suit ought to have been filed by 30.06.2013, whereas it was filed on 18.10.2016. Consequently, the Tribunal held that the suit was not maintainable, having not been filed within the stipulated period prescribed under section 10 (1) of the *Arpito Sampatti Prattarpan* Ain, 2001.

The petitioners assert that they filed an application under section 5 of the Limitation Act, which was not considered by the Tribunal. It is pertinent to note that section 5 of the Limitation Act applies only to appeals, applications for review or revision, and other applications to which the provisions of that section are made applicable by an express provision of law. Section 5 of the Limitation Act has not been made applicable to applications filed under section 10 (1) of the *Arpito Sampatti Prattarpan* Ain, 2001. Therefore, there was no legal scope for condoning the delay in filing an application before the *Arpito Sampatti Prattarpan* Tribunal seeking release of the case land. In that context, we are of the view that the *Arpito Sampatti Prattarpan* Tribunal correctly rejected the application, and the *Arpito Sampatti Prattarpan* Appellate Tribunal

also correctly dismissed the Appeal by the impugned judgment and order. Consequently, the present Rule, so far as it relates to the judgment and decree of the *Arpito Sampatti Prattarpan* Tribunal and the judgment and order of the *Arpito Sampatti Prattarpan* Appellate Tribunal, is devoid of merit.

In the latter part of the Rule, the petitioners have challenged the Gazette Notification by which the case property was included in the list of vested property. Undoubtedly, the said Gazette Notification affects the property rights of the petitioners in respect of the case land. According to the petitioners, they purchased the case land from the daughter and sole heir of the SA recorded tenant, Dagon Nath, by virtue of registered Kabala Deed No. 3475 of 1986. A copy of the said Kabala Deed has been annexed as Annexure- 'F'. The petitioners further claim that their names were duly mutated in Mutation Khatian No. 1608 and that they have been paying rent regularly in respect of the case land. A copy of the said Khatian has been annexed as Annexure- 'F1'. The petitioners also claim that, in the ongoing Revisional Survey, a draft publication (DP) Khatian has been duly prepared in their names in respect of the case land. A copy of the said DP Khatian has been annexed as Annexure- 'F2'.

The respondents have not challenged the genuineness or authenticity of the aforesaid documents (Annexure- 'F' series) produced by the petitioners and have, therefore, failed to effectively

controvert the same. Upon perusal of these documents, it appears that the petitioners have a good case in respect of the case land. Since their right and interest to the case property have been affected by the impugned Gazette Notification and they have no other equally efficacious alternative remedy, as the remedy available before the *Arpito Sampatti Prattarpan* Tribunal has already become time-barred, we are of the view that, in such circumstances, the writ jurisdiction of this Court may be invoked to protect and secure the property rights of the petitioners.

The question that now arises for consideration is whether the inclusion of the case property in the impugned Gazette as vested property is lawful. The impugned Gazette Notification has been annexed as Annexure- 'F'. It appears from the said Gazette Notification that the case land was included as vested property pursuant to VP Case No. 07 / 1974-1975, dated 14.09.1974. In a number of cases, our Apex Court has held that the law of enemy property itself died upon the repeal of Ordinance No. 1 of 1969 on 23.03.1974 and consequently no further vested property case can be initiated thereafter on the basis of a law which is already dead. This principle has been affirmed by our Apex Court in the cases of *Aroti Rani Paul Vs. S.K. Paul* reported in 56 DLR (AD) 73, *Saju Hossain Vs. Bangladesh* reported in 58 DLR (AD) 177 and *Government of Bangladesh Vs. Md. Abdul Hye* reported in 19 ADC, 337.

In the present case, the impugned Gazette Notification shows that, in respect of the case land, the VP Case No. 07 / 1974-1975 was initiated on 14.09.1974, i.e. after the promulgation of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Ordinance, 1974 on 23.03.1974. Thus, it is apparent on the face of the record that the inclusion of the case property as vested property in the impugned Gazette Notification was unlawful and without lawful authority. Moreover, it appears from Annexure- 'F1' that the case land was mutated in the names of the petitioners in Khatian No. 1608 pursuant to mutation and *Jamakharij* Case No. 237 of 1990-91. Having mutated the names of the petitioners and thereby recognizing them as tenants in the said Khatian, the respondent Nos. 1-3 are estopped from subsequently claiming the case property as vested property.

In view of the facts, circumstances, and discussions detailed above, we find merit in the submissions of the learned Advocate for the petitioners insofar as they relate to the inclusion of the case property in the impugned Gazette Notification as vested property.

Accordingly, we are of the view that the Rule deserves to be made absolute in part.

In the result, the Rule Nisi is made absolute in part.

The inclusion of the case land measuring .16 acres in Plot No. 5477, appertaining to SA Khatian No. 633 of Jahidpur Mouja under

Police Station- Chatak in the district of Sunamganj, in the impugned Gazette Notification publishing the list of vested properties, published on 8th May, 2012 is hereby declared to be without lawful authority and of no legal effect.

The order of maintaining *status quo* passed earlier is hereby recalled and vacated.

There will be no order as to costs.

Communicate this judgment forthwith.

Md. Iqbal Kabir, J:

I agree.