

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. 5270 of 2019

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Prodeep Kumar Sarker and others.

.... Petitioners

-versus-

Judge, Arpito Sampatti Pratyarpan, Appellate
Tribunal, Rajbari and others

.... Respondents

Mr. Purnindu Bikash Das, Advocate

.... For the petitioner

Mr. Mohammad Imam Hossain, Deputy Attorney
General

...for respondent 3

No one appears

....for respondent 4 and 5

Date of Hearing & Judgment: 11.06.2026 A.D.

Thursday, 28 Jyashtha 1433 B.S.

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioners under Article 102 of the Constitution of the People's Republic of Bangladesh in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the judgment and order dated 18.07.2018 passed by the learned Judge, Arpito Sompatti Prottorpon Appeal Tribunal, Rajbari in Vested Property Appeal No. 111 of 2017 (Annexure-B and Bl to the writ petition respectively) dismissing the same as being time barred and thereby affirming the judgment and decree dated 23.04.2017, (decree signed on 27.04.2017) passed by the Arpito Sompatti Prottorpon Tribunal, Rajbari in Vested Property Suit No.158 of 2013, dismissing the same should 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 nub of facts leading to the issuance of this Rule Nisi, in brief, is that one Padmaboti Sarker was the S.A. recorded tenant

of the suit property. Padmaboti died issueless, leaving behind her husband's grandfather's full brother's grandsons, Profulla Kumar and Bijoy Nath Kumar. Thereafter, Bijoy Kumar died unmarried, leaving behind his brother Profulla Kumar Sarker, who died, leaving behind three sons, the plaintiffs 1 and 2, and Proshanto Kumar Sarker, the father of plaintiff 3. Thus, the plaintiffs have been possessing the suit land as the successive heirs of the S.A. recorded tenant. Once, the Government was trying to settle the property elsewhere, claiming it as vested property. Then, Profullah Kumar Sarker, in order to avoid settlement in another location, avoid further civil litigation, and protect his possession, took settlement of the suit property in the name of his sons through Lease Case No. XII-VP/36/74-75. The family cremation ground is situated on the Southern side of R.S. Plot 767. That the rest of the suit land has been possessed by the plaintiff by cultivating themselves and through bargaining within the knowledge of the defendants and others. The S.A. recorded tenants were the permanent citizens of this country. She died in the country, and she never left this country for India. The suit property was not listed in the census. To release the suit

property from the Arpita Sampatti Prottayarpan List, the plaintiffs filed the instant suit.

Thereafter, the defendant entered an appearance and contested the suit by filing a written statement denying all material allegations set forth in the plaint. That is the case of the defendant: Padmaboti Sarker was the S.A. recorded tenant. As stated, Padmaboti left the Country for India anytime between 06.09.1965 and 16.02.1969, resided there permanently, the suit property vested in the government by operation of law, and accordingly, the suit property appeared in the census list as vested property. The suit property is in the control of the defendant, and, as such, the government has leased the suit property to the plaintiff 2 through Lease Case No. XII-VP-136/74-75. During the B.S. operation, the land of R.S. Plot Nos. 625, 623, 681 and 767 recorded to B.S. Plot Nos. 771, 775, 749 and 750 under B.S. Khatian No. 1/1 in the name of the Government. The lessee of the suit land has been in possession of the suit land by regularly paying the lease money to the Government. The suit property is very valuable, and, as such, to obtain the suit property, the plaintiff has executed certain documents in

respect of the suit land. The plaintiff's case is false and, as such, the suit is liable to dismissal.

Thereafter, the learned trial Tribunal, the respondent 2, in order to try the suit, has framed as many as four issues, and in the course of the trial, the plaintiffs have adduced two witnesses and exhibited some documents in support of their claim, but the defendant neither adduced any oral evidence nor exhibited any document in support of his claim. The learned trial judge, without considering the evidence, both oral and documentary, and other materials on record, took an erroneous view and dismissed the suit by judgment and decree dated 23.04.2017 and 27.04.2017 respectively (Annexure-B and B-1).

Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiffs preferred Vested Property Tribunal Appeal 111 of 2017 before the Arpito Sompatti Prottorpon Appeal Tribunal, Rajbari, with an application for condonation of delay. The Respondent 1, without considering the case on merit, disallowed the said appeal on the point of limitation by the impugned judgment and order dated 18.07.2018 (Annexure-A). Hereinafter, the petitioner, finding no

other alternatives or equal efficacious remedy, invoked this jurisdiction.

Conversely, the respondents 4 and 5, who were added, did not file any Affidavit-in-opposition; thus, in the application for addition of parties, it was stated that the learned Arpita Sampatti Pratyarpan Tribunal, upon due consideration of the evidence on record, rightly delivered the judgment and decree dated 23.4.2017 in favour of the applicant-respondents in V.P. Suit No. 17 of 2014. They further stated that the Judge of the Arpita Sampatti Pratyarpan Tribunal, Rajbari, directed to release the property from the V.P. List in respect of 1.55 acres of land of Mouza: Maliyat, Serial No. 608 of S.A. Khatian No. 368, Plot Nos. 681 and 767 in favour of them.

Thereafter, the Deputy Commissioner, Rajbari, being aggrieved by and dissatisfied with the judgment and decree of the said Tribunal, preferred an appeal, being No. 131 of 2017, before the Arpita Sampatti Prattyarpan Appeal Tribunal, Rajbari, and after hearing, the learned Appellate Tribunal was pleased to dismiss the same on 17.08.2022, by upholding the judgment and

decree of the trial Tribunal. Accordingly, the instant Rule is liable to be discharged.

Learned Counsel, Mr. Purnindu Bikash Das, appearing on behalf of the petitioner, has submitted that the tribunal ought to have considered that the inclusion of the property in question in the alleged vested property 'Ka' scheduled list is ex-facie illegal as the same has been included after 23.03.1974 and the Government failed to prove that the recorded tenant leave the Country to India during 06.09.1965 to 16.02.1969; without considering such legal aspect the tribunal dismissed the suit and as such the same has got no legal effect.

Learned Counsel has further submitted that in the course of trial, the petitioners categorically proved that they are the 'co-sharer in possession by lease and in accordance with the definition of Section 2(Da), the petitioners are 'Malik' of the suit property, but the tribunal, without considering such legal aspect, dismissed the suit and as such the same has no legal effect.

Learned Counsel has further submitted that it is a settled principle of law that in a vested property case, the Government has to prove that the recorded tenant leaves the Country

permanently during the tenure of the ordinance No. XXII of 1965, and as such, the property was enlisted in the list of vested property. But in the instant case, even the tribunal found that the Government failed to prove its case by producing any document, though the tribunal dismissed the suit, and the Appellate Tribunal did not entertain the appeal because of 04 (four) days delay, and as such, the same has occasioned failure of justice.

Learned Counsel has further submitted that the Respondent 2 in order to pass its judgment found that the plaintiffs are not able to prove that they are the citizen of Bangladesh, but defendant in its written objection did not raise any question in respect of citizenship of the plaintiffs, moreover in the cause title of the plaint the plaintiffs used their permanent address which seems they are the citizen of Bangladesh and as such the judgment and decree passed by the Respondent 1 is not sustainable.

Learned Counsel has finally submitted that it transpires from the written statement, the Government claimed that the suit property was included in the vested property (VP) list

through V.P Case No. 136/74-75, so it is apparent that the instant V.P Case was initiated after 23.03.1974 and as such the alleged V.P Case is *ex-facie* illegal but the tribunal without considering such legal aspect dismissed the suit and the Appellate Tribunal did not entertain the appeal on point of delay of 04 days. So, the judgment and decree passed by both the Tribunal and the Appellate Tribunal are illegal and have no legal effect. He also posited that, the fundamental right conferred by Article 42 of the Constitution of the People's Republic of Bangladesh, Part III, will not be vitiated by the procedural mistake. The petitioners have right and title over the property in question by way of inheritance, which cannot be quashed on account of a procedural mistake; as such, the impugned judgment and decree are liable to be called for interference.

None appears on behalf of the added Respondents 4 and 5 at the time of hearing.

Mr. Mohammad Imam Hossain, learned Deputy Attorney General for respondent 3, submits that there is no room to condone delay as per the provision of Section 18(4) of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১), and thereby the learned

Arpita Sampatti Prattyarpan Tribunal, Rajbari, rightly rejected the appeal on the ground of limitation; consequently, the instant Rule is liable to be discharged.

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

At this juncture, it is apposite to address the fundamental legal propositions relating to 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 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 and other enemies of the then East Pakistan continued by the Government of Pakistan. On 10 April 1971, the Laws of Continuance Enforcement Order, 1971, was promulgated, purporting to keep in force all Pakistani laws in force in the then East Pakistan on or before 25 March 1971, 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, rivers, 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.

The case at hand confirms that the suit property was included in the vested property (VP) list under V.P Case No. 136/74-75, and it is apparent that the instant V.P Case was initiated after 23.03.1974. But both the Subordinate Tribunals failed to observe these cardinal points of law in the petitioners' case.

Earlier, a Division Bench of the Supreme Court of Bangladesh in Writ Petition 168 of 2021 (Government of Bangladesh, represented by the Deputy Commissioner, Rajbari - Versus- Md. Moniruddin Zoaddar and others) held that,

"The purpose of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১), 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 considered as void inclusion, per se."

However, if we look into the preamble 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 unequivocally reflects that the beneficiaries contemplated by the statute are the original owner of the property, or, in his absence, his Bangladeshi heirs, successors-in-interest, assigns, or persons claiming through a valid chain of title, who shall be legally entitled to obtain restitution and restoration of those properties that were

included, enlisted, or deemed vested during the period from 06.09.1965 to 23.03.1974. The said provision leaves little room for doubt that the legislative objective is to safeguard the proprietary rights of the true owners and their lawful successors by facilitating the return of such properties upon proof of lawful entitlement.

Now the case in our hand unveiled that, the judgment and decree dated 23.04.2017, passed by the learned Judge of the Arpita Sampatti Pratyarpan Tribunal, Rajbari, passed in Arpita Sampatti Pratyarpan Suit 17 of 2014 (Respondents 4 and 5's case), decreeing the suit on contest, directed the defendant to release 155 out of 167 decimals of scheduled land in favour of the plaintiffs/applicants. On the same date, the learned Tribunal dismissed the Arpita Sampatti Pratyarpan Suit 158 of 2013 (petitioners' case) in respect of 193 decimals of scheduled land. Thereafter, the defendant Deputy Commissioner preferred an Appeal, being No. 131 of 2017, before the Arpita Sampatti Pratyarpan Appellate Tribunal, Rajbari, and after hearing the said appeal, Ms Jannatun Lilifa Akter Ja, learned Judge of Appellate Tribunal vide her judgment dated 17.08.2022, disallowed the

appeal by affirming the judgment and decree of the learned Arpita Sampatti Pratyarpan Tribunal, Rajbari, passed in V.P. Suit 17 of 2014.

On the other hand, the instant petitioners as appellants filed V.P. Appeal 111 of 2017 against the judgment and decree dated 23.04.2017 passed in V.P. suit 158 of 2013, and after hearing the said appeal, Mr Md. Aminul Hoq, learned Judge of Appellate Tribunal vide his judgment dated 18.07.2018, disposed of the appeal as being not maintainable on the ground of delay of 4(four) days.

From the aforementioned discussions, it is clear to us that during the trial, both suits were heard by a single Tribunal, and both the judgments were delivered on 23.04.2017. But the 2 Appeals were heard by different judges, with similar properties in the original suits, thereby violating the provisions of Section 20(4) of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১). For better understanding, the provisions of Section 20(4) of the said Act are reproduced below:

“(৪) একই সম্পত্তির ব্যাপারে একাধিক আপীল দায়ের হইলে আপীল ট্রাইব্যুনাল একযোগে ঐ সকল আপীল শুনানী ও নিষ্পত্তি করিবে এবং প্রয়োজনবোধে একটি রায় দ্বারা উহাদিগকে নিষ্পত্তি করিতে পারিবে।”

This clearly indicates that the Appellate Tribunal erred by failing to apply the mandatory instruction of law, thereby causing a miscarriage of justice in respect of similar appeals arising out of the same properties.

However, the learned Appellate Tribunal specifically observed and decided that,

“অর্পিত সম্পত্তি প্রত্যর্পন আইন ২০০১ এর ১৮(৪) ধারা মতে সিদ্ধান্ত বা রায় প্রদানের ৪৫ (পয়তাল্লিশ) দিনের মধ্যে আপীল দায়ের করতে হবে। এক্ষেত্রে The Limitation Act, 1908 (Act IX of 1908) এর Section-5 প্রযোজ্য হবে না।

ইতিপূর্বে উল্লেখ করা হয়েছে যে, অত্র আপীল মোকদ্দমাটি দায়েরের ক্ষেত্রে ০৪ দিন তামাদি রয়েছে। এক্ষেত্রে তামাদি মার্জনার কোন সুযোগ নেই। অর্পিত সম্পত্তি প্রত্যর্পন আইন, ২০০১ এর ১৮(৪) ধারার বিধান মতে তামাদি মার্জনার আইনতঃ কোন সুযোগ নেই, ইহা আইনের সুস্পষ্ট বিধান। এমতাবস্থায় আপীল্যান্ট-দরখাস্তকারী পক্ষ কর্তৃক আনীত তামাদী মওকুফের দরখাস্তটি অগ্রাহ্য করা হলো।

উল্লিখিত পর্যালোচনার আলোকে অত্র ভি.পি, আপীল মোকদ্দমা বিশেষভাবে তামাদির আইনগত প্রশ্নে গ্রহণযোগ্য নয় মর্মে অগ্রাহ্য করতঃ নিষ্পত্তি করা হলো।”

In this context, we need to examine the provisions of Section 18 of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১), which are reproduced as follows:

“আপীল:

১৮। (১) উপ-ধারা (২) এ উল্লিখিত ট্রাইব্যুনাালের সিদ্ধান্তসমূহের বিরুদ্ধে শুধুমাত্র আপীল ট্রাইব্যুনাালে আপীল দায়ের করা যাইবে; ট্রাইব্যুনাালের অন্য কোন সিদ্ধান্তের বিরুদ্ধে আপীল ট্রাইব্যুনাালে বা অন্য কোন আদালতে বা কর্তৃপক্ষের নিকট উক্ত সিদ্ধান্তের বৈধতা, যথার্থতা বা সঠিকতা সম্পর্কে কোন প্রশ্ন উত্থাপন করা যাইবে না, এবং তাহা করা হইলে আপীল ট্রাইব্যুনাাল বা উক্ত অন্য আদালত বা কর্তৃপক্ষ সরাসরি নাকচ করিয়া দিবে।

(২) ট্রাইব্যুনাালের নিম্নবর্ণিত সিদ্ধান্তের বিরুদ্ধে আপীল ট্রাইব্যুনাালে আবেদনকারী বা প্রতিপক্ষ আপীল দায়ের করিতে পারিবেন:-

(ক) ধারা ১০ এর উপ-ধারা (১), (২) বা (৪) এর অধীনে কোন আবেদন শুনানীর জন্য গ্রহণ না করিয়া সরাসরি নাকচের সিদ্ধান্ত;

(খ) একতরফা বা দোতরফা শুনানী অন্তে ধারা ১০ এর উপ-ধারা (১) বা (২) এর অধীনে প্রত্যর্পণযোগ্য সম্পত্তি প্রত্যর্পণ বা ক্ষতিপূরণের টাকা পাওয়ার আবেদন মঞ্জুর বা নামঞ্জুর করিয়া প্রদত্ত রায়;

গ) একতরফা বা দোতরফা শুনানী অন্তে ধারা ১০(৩)] এর অধীনে উপস্থাপিত অবমুক্তকরণের আবেদন মঞ্জুর বা নামঞ্জুর করিয়া প্রদত্ত রায়:

তবে শর্ত থাকে যে, এই উপ-ধারায় উল্লিখিত ট্রাইব্যুনাালের সিদ্ধান্ত বা রায়ের পূর্বে প্রদত্ত এমন অন্তর্বর্তী আদেশের ব্যাপারে আপীলে প্রশ্ন উত্থাপন করা যাইবে যাহার ভিত্তিতে ট্রাইব্যুনাাল উক্ত সিদ্ধান্ত বা রায় প্রদান করিয়াছে।

(৩) ট্রাইব্যুনাল কোন আবেদন ধারা ২৩(৩) এর অধীনে খারিজ করিলে সেই আদেশের বিরুদ্ধে আপীল করা যাইবে না।

(৪) উপ-ধারা (২) এ উল্লিখিত সিদ্ধান্ত বা রায় প্রদানের ৪৫ (পঁয়তাল্লিশ) দিনের মধ্যে আপীল দায়ের করিতে হইবে এবং এই সময়সীমা বৃদ্ধি করার ক্ষেত্রে [Limitation Act, 1908](#) (IX of 1908) এর Section 5 প্রযোজ্য হইবে না।

(৫) আপীল ট্রাইব্যুনাল উভয় পক্ষকে শুনানীর সুযোগ প্রদানপূর্বক আপীল দায়েরের ৩০০ (তিনশত) দিনের মধ্যে উহার রায় প্রদান করিবে:

তবে শর্ত থাকে যে, কোন অনিবার্য কারণে উক্ত মেয়াদের মধ্যে কোন আপীল নিষ্পত্তি করা সম্ভব না হইলে, আপীল ট্রাইব্যুনাল কারণ লিপিবদ্ধ করিয়া অতিরিক্ত ৬০(ষাট) দিনের মধ্যে আপীল নিষ্পত্তি করিতে পারিবে:

আরও শর্ত থাকে যে, উল্লিখিত বর্ধিত সময়ের মধ্যেও যদি যুক্তিসঙ্গত কোন কারণে কোন আপীল নিষ্পত্তি করা সম্ভব না হয়, তাহা হইলে আপীল ট্রাইব্যুনাল উহার কারণ লিপিবদ্ধ করিয়া আবেদনটি নিষ্পত্তির জন্য সর্বশেষ আরো ৩০(ত্রিশ) দিন সময় বর্ধিত করিতে পারিবে।

(৬) কোন পক্ষকে শুনানী অন্তে আপীল ট্রাইব্যুনাল আপীল মঞ্জুর বা নামঞ্জুর করিয়া সিদ্ধান্ত প্রদান করিলে উহার ভিত্তিতে ৭ (সাত) দিনের মধ্যে একটি ডিক্রী প্রস্তুত করিবে এবং প্রয়োজনীয় ব্যবস্থা গ্রহণের উদ্দেশ্যে অবিলম্বে উক্ত রায় ও ডিক্রির অনুলিপি ট্রাইব্যুনাল ও জেলা প্রশাসকের নিকট প্রেরণ করিবে।”

From a plain reading of the aforesaid provisions of Section 18, it is obvious that Sub-section 4 of Section 18 only makes inapplicable the provision of Section 5 of the Limitation Act, 1908, not the whole Limitation Act, nor the discretion of the Appellate Tribunal. Accordingly, the provisions of Section 18(4) of

the said Act shall not be a bar to the exercise of the power of judicial review.

Now to examine the objective view of whether the provisions of Section 18(4) are a rigid, stringent or absolute one. If we consider the provisions of Section 18(1) and 18(3), which denote the exclusion of the parties to prefer an appeal, whereas the provisions of Section 18(4) and 18(5) are procedural matters of the Appellate Tribunal. The provisions of Section 18(5) specifically endorsed that the Appellate Tribunal shall, after affording an opportunity of hearing to both parties, dispose of the appeal by delivering its judgment within 300 (three hundred) days from the date of filing of the appeal. Provided that, where, for any unavoidable reason, it is not possible to dispose of the appeal within the aforesaid period, the Appellate Tribunal may, for reasons to be recorded in writing, dispose of the appeal within a further period not exceeding 60 (sixty) days. Provided further that, if, for any reasonable cause, the appeal cannot be disposed of even within the said extended period, the Appellate Tribunal may, for reasons to be recorded in writing, extend the time, as a final extension, by a further period not exceeding 30

(thirty) days for disposal of the appeal. So, the Appellate Tribunal must conclude the formalities and deliver the judgment within 390 days, i.e., not more than 1(one) year and 25 (twenty-five) days. Whereas the appeal of Respondent 4-5 was filed in 2017, being Appeal No. 131 of 2017, and the judgment was passed on 28.07.2022, i.e., more or less after 5 years of filing it. This clearly indicates that the Act itself does not provide for any consequence for the abatement of an appeal after the specified time, and the Appellate Tribunal exercises its discretion, considering the said provisions as directory.

By reason of necessity, we need to examine the provisions of Section 14 of the Limitation Act, 1908, which are reproduced below:

"14. (1) In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of

jurisdiction, or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or **other cause of a like nature, is unable to entertain it.**"

[Emphasis supplied]

From the above provisions, it may be postulated that the Court or Tribunal has the discretion to assess the wrong forum and other causes in a like manner. Generally, litigants rely on Advocates who are recognized as officers of the Court or Tribunal. The Advocates may be reluctant to file suit or appeal on time, or wrongly count the time to file suit or appeal. In that case, to alleviate the sufferings of the litigants, a reasonable time may be condoned by the discretion of the Court or Tribunal if satisfied by the causes of a like nature are found as denoted in

the aforesaid provisions of Section 14 of the Limitation Act, 1908.

However, the case in our hand demonstrates that the Appellate Court refused the Appeal 111 of 2017 on the ground of a 4(four) day delay, as it was barred by law. Whereas, both the Tribunals vehemently overlooked the filing of the suit of the Respondents 4 and 5, who filed the V.P. case 17 of 2014 on 11.03.2014 (Annexure-A1 to the Supplementary Affidavit of Respondent 4), which was beyond the time, i.e. 31.12.2013, as per the provision of Section 10(1) of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১). The best reasons are unknown to us.

However, we deem it appropriate to respond to the purposes of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১), regarding the identification of the "real owners, heirs 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 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 squarely falls within the jurisdiction of the competent civil court for proper adjudication.

In the aforesaid premises, we noticed that 193 decimals of S.A. Khatian Nos. 33 and 368 have been included in the vested property (VP) list through V.P Case No. 136/74-75, so it is apparent that the instant V.P Case was initiated after 23.03.1974. The learned Tribunal found grounds to release 155 decimals of the respondents' land through V.P. Case 17 of 2014, and those finding confirmed by the learned Appellate Tribunal in V.P. Appeal 131 of 2017. At the same time, the learned Tribunal rejected the claim in V.P. case 158 of 2013, preferred by the petitioners, which was left unheard in V.P. Appeal 111 of 2017 due to the time bar.

Bearing in mind the aforementioned scenario, we are of the view that the inclusion of the instant suit property was after 23.03.1974, which was beyond the sanctioned period; accordingly, **where an act, order, decree, proceeding, or**

transaction is patently void *ab initio*, being a complete nullity in the eye of law and devoid of any legal efficacy from its very inception, no question of limitation can arise in respect thereof. A void act neither creates nor extinguishes any right, title, interest, obligation, or liability capable of attracting the operation of any statutory period of limitation. Since the law treats such an act as non-existent (*void ab initio pro non scripto habetur*), the passage of time cannot breathe life into that which was legally dead from the beginning. Consequently, the bar of limitation, founded upon the existence of a legally cognizable cause of action or enforceable legal relationship, cannot operate to validate, perpetuate, or protect an act that is inherently void. In other words, limitation cannot run upon a nullity, nor can the efflux of time cure an incurable defect of jurisdiction or legality. So, in any matter that is patently *void ab initio*, the limitation period cannot run thereon.

Upon a careful consideration of the aforesaid facts and the governing law, we are constrained to hold that the V.P. Appeals 111 of 2017 and 131 of 2017 were heard by different judges, with similar properties in the original suits, violating the

provisions of Section 20(4) of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১), and without considering the period of initiation of the V.P. case. However, the 4(four) days' delay in filing V.P. Appeal No. 111 of 2017 is hereby condoned, and the judgment and order dated 18.07.2018, passed by the learned Appellate Tribunal in the said appeal, is herewith declared to have been passed without lawful authority and is of no legal effect, and the matter is sent back on remand for hearing the appeal on merit.

Accordingly, the Rule is disposed of with the above observations and directions.

There is no order as to costs.

The learned Judge, Arpita Sampatti Pratyarpan Appeal Tribunal, Rajbari, is hereby directed to dispose of the V.P. Appeal 111 of 2017 as per the above observations and proposition of law, within the period as prescribed in Section 18(5) of the অর্পিত সম্পত্তি প্রত্যর্পণ আইন, ২০০১ (সংশোধিত-২০১১), from the date of receipt of a copy of this judgment and order, without fail.

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

The office is directed to communicate this judgment and order forthwith.

(*Abdur Rahman, J*)

Bhishmadev Chakrabortty, J:

I agree

(Bhishmadev Chakrabortty, J)