

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

**Writ Petition No. 3664 of 2020**

-AND-

**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. Ali Haider Shah

....Petitioner

-Versus-

The Government of Bangladesh and others

.... Respondents

Mr. Md. Golam Rabbani, Advocate

....for the petitioner

Mr. Md. Faruk Hossain, Advocate

.....for the respondent No.5

Heard on: 03.11.2022, 05.01.2023 & 09.02.2023

Judgment on: 29.08.2023

**Present:**

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A.K.M. Rabiul Hassan

**Abu Taher Md. Saifur Rahman, J:**

This Rule was issued on an application filed by the petitioner under Article 102 of the constitution, calling upon the respondent Nos. 1 to 6 to show cause as to why the impugned proceeding of auction notice under section 12(3) of the Artha Rin Adalat Ain, 2003 for selling the mortgaged properties of the petitioner published by respondent No.7 in the Daily Naya Diganta dated 20.08.2019 where in auction was held on 03.09.2019 without following the mandatory provision of sections 33(1) and

48 of the Artha Rin Adalat Ain, 2003 and as well as the sale deed No. 2648/19 dated 26.09.2019 (**Annexure - 'B' and 'C'**) should not be declared to have been made 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.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the petitioner is the proprietor of S. A. Traders, who has obtained the loan facilities from respondent No. 5, Islami Bank Bangladesh Limited amounting to Tk.5,00,000/- (Taka Five lac) in 2009 which was subsequently enhanced up to the amount of Tk.40,00,000/- (Taka Forty Lac). As against the aforesaid loan, the petitioner, respondent No. 7 Shah Ali Osman and Rahima Begum (who died on 20.12.2009) mortgaged their properties in favour of the respondent bank. Subsequently, as per the terms of the sanctioned letter, the petitioner failed to adjust the aforesaid loan amount in time. Thereafter, to recover the outstanding loan amounting to Tk.49,93,741/- (Taka Forty Nine Lac Ninety Three Thousand Seven Hundred and Forty One) the respondent No. 5 published the auction notice dated 20.08.2019 in the Daily Naya Diganta. Later on, in pursuance of the aforesaid auction notice, the auction was held on 30.09.2019 in violation of the mandatory provision of section 33(1) of the Artha Rin Adalat Ain, 2003. Being aggrieved, the petitioner has preferred this application before this Court and obtained the Rule only.

Mr. Md. Golam Rabbani, the learned Advocate for the petitioner submits that without complying with the provision of section 33(1) of the Artha Rin Adalat Ain, 2003, the auction notice was published, and, as such, the impugned auction process under section 12(3) of the Artha Rin Adalat Ain, 2003 is illegal and not sustainable in law.

Mr. Md. Faruk Hossain, the learned Advocate for respondent No. 5 submits that after complying with all legal formalities the possession of the auction properties has already been handed over to the auction purchaser and, as such, the petitioner has no ground at all to challenge the impugned auction process under section 12(3) of the Artha Rin Adalat Ain, 2003 under the writ jurisdiction and, as such, the instant Rule has is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the instant writ petition along with other materials on record thoroughly.

In the instant writ petition, the petitioner challenging the auction process under section 12(3) of the Artha Rin Adalat Ain, 2003, which was held on 03.09.2019.

During the hearing on being asked Mr. Golam Rabbani, the learned Advocate for the petitioner concedes that the petitioner's mortgaged property has already been sold out through auction and handed over to the auction purchaser as well.

Since the possession of the auctioned property has already been handed over to the auction purchaser, the instant Rule has become infructuous and, as such, it is not necessary to examine the other merits of the case.

Under the given facts and circumstances of the case and the reasons as stated above, we do not find any substances of this Rule.

As a result, the Rule is discharged.

Communicate this judgment and order to the respondents at once.

**A.K.M. Rabiul Hassan, J:**

I agree.