

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)  
**Present**

**Madam Justice Kashefa Hussain  
And  
Madam Justice Kazi Zinat Hoque**

**Writ Petition No. 5011 of 2020**

**In the matter of:**

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

-And-

**In the matter of:**

Shree Jibon Chakroborty

..... Petitioner

Vs.

Government of Bangladesh and others

..... Respondents

Mr. Ashoke Kumar Ghosh, Advocate

.....for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Syeda Sabina Ahmed Moli, A.A.G

with Ms. Farida Parvin Flora, A.A.G.

..... for the respondent Nos. 1-7

**Heard on: 12.01.2023, 15.01.2023 and**

**judgment on: 17.01.2023.**

**Kashefa Hussain, J:**

Supplementary affidavit do from part of the main petition.

Rule nisi was issued calling upon the respondents to show  
cause as to why the impugned enlistment of property under S.A.  
Khatian No. 06 of Plots No. 34, 89, 91, 140, 128, 270, 295, 325, 310,  
38, 163, 144, 145, 147, 366, 86, 88, 4, 46, 72, 105, 361, 357, 385  
corresponding to R.S. Khatian No. 172 of Plots No. 33, 136, 137, 138,  
143, 142, 224, 190, 410, 447, 109, 110, 120, 35, 319, 295, 292, 290,

524, 525, 146, 144, 05, 16, 17, 80, 205, 472, 485 and 506 comprising an area of 20.14 acres under mouza Utra Hazipur, Plice Station-Raygonj, District- Sirajgonj comprising an area of 20.14 acres in the list “Ka” schedule of Arpitta Sampatty vide gazette notification dated 22.03.2012 in serial No. 305 and 306 pages No. 4111 and 4112 respectively of the said list as Arpitta Sampatty vide (Annexure-A) to the writ petition) should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner’s name is Shree Jibon Chakroborty, Sebayet, Shree Shree Laksmi Narayan and Shree Shree gopal Deb Jew Bigraha Utra Hazipur, Raygonj, Sirajgonj.

The respondent No. 1 is Government of Bangladesh, represented by the Secretary, Ministry of land, Secretariat Building, Shahbag, Dhaka, respondent No. 2 is the secretary, Ministry of Law and parliament, Bangladesh Secretariat Building, Shahbag, Dhaka, respondent No. 3 is the Secretary, Ministry of Home Affairs, Bangladesh Secretariat building, Shahbag, Dhaka, respondent No. 4 is Deputy Commissioner, Sirajgong District, Sirajgonj, Bangladesh, respondent No. 5 is Additional Deputy Commissioner, (Revenue), Sirajgonj District, Sirajgonj, Bangaldesh, respondent No. 6 is Assistant Commissioner Land, Raygonj Upazila, Sirajgonj, Bangladesh, respondent No. 7 is Bhumi Shakari Karmakarta Union Utra Hazipur, Raygonj, Sirajgonj, Added Respondent No. 8 is Secretary, Fisheries and Livestock Ministry, Bangladesh Secretariat, Shahbag, Dhaka, Added respondent No. 9 is District Karmakarta,

Fisheries and Livestock Adhidaptor, Sirajgonj and Added respondent No. 10 is Upazila Karmakarta, Fisheries and Livestock Adhidaptor, Raygonj Upazila, Sirajgonj.

The petitioner's case inter alia is that the land under S.A. Khatian No. 06 and Plot No. 34, 89, 91, 140, 128, 270, 295, 325, 310, 38, 163, 144, 145, 147, 366, 86, 88, 4, 46, 72, 105, 361, 357, 385 under mouza Utra Hazipur, Police Station- Raygonj, Sirajgonj, comprising an area of 20.14 acres in 'Ka' schedule Arpitta Sampatty vide gazette notification dated 20.03.2012 in Serial No. 305 and 306 of the said list, for application.

That it is Debottar Property and Debata was owner and possession in 20.14 acres of land and before creation of India and Pakistan, then creation S.A. Parcha, Mouza-Utra Hazipur, under police Station-Raygonj, Sirajgon, but changed the name though this is Debottor property.

That after creation of Bangladesh from East Pakistan the R.S. parcha was created and the land owner had written Bangladesh Sarker and Deputy Commissioner of Sirajgonj on behalf of Bangladesh Sarker. It is wrong because this is Debottar property and there is a Mandir present there.

That Sebayet is the Superintendent on behalf of Debata. Accordingly to C.S. Parcha, S.A. Parcha and R.S. Parcha information slip it is clearly written whether this property is Debattor property.

That none cannot transfer any Debattor property to other persons. On the other hand government is not owner of this Debottor

property. Because this land is gifted to the Debata. So its owner cannot be changed by the government.

That the petitioner sent a legal notice through his advocate dated on 09.03.2020 but the respondents did not answer. That on behalf of deity someone filed a Tribunal case No. 505 of 2013 before the Arpitta Sampatty Tribunal Sirajgonj but the suit was abated for the law of Arpitta Sampatty Ain. The petitioners was inter alia aggrieved by the gazette notification of enlistment of property in the 'Ka' list. Hence the petitioner filed the instant Writ Petition.

Learned Advocate Mr. Ashoke Kumar Gosh appeared on behalf of the petitioner while learned Deputy Attorney General Mr. Noor Us Sadik Chowdhury with Ms. Syeda Sabina Ahmed Moly, A.A.G, Ms. Farida Parvin Flora, A.A.G. appeared for the respondent No. 1-7.

Learned Advocate for the petitioner submits that the enlistment of the petitioner's property in the S.A. Khatian and enlistment in the 'Ka' schedule as an Arpitta Sampatty vide gazette notification dated 21.03.2012 such enlistment in 'Ka' schedule property is without unlawful authority. He submits that the enlistment of the property as a vested property is absolutely unlawful given that the property is a Debattor property. He contends that the original owner of the property executed a উইল subject to probate. He agitates that pursuant to will was followed Probate Case No. 1 of 1933. He submits that the original owners of the family was always in possession of the said Debattor property by way of উইল and duly the উইল was determined by way of Probate Case No. 1 of 1933. He submits that therefore the property is

not a vested property and such gazette notification must be declared unlawful.

He next assails that the tribunal wrongly dismissed the Vested Property Case No. 505 of 2013 and wrongly declared that the suit was abetted due to the law of Arpitta Sompatta Ain. He submits that such declaration of abatement of the suit is completely erroneous and therefore the judgment of the tribunal also is not sustainable.

Controverting the contention of the added respondent No. 8-17 the learned advocate for the petitioner draws our attention to the counter affidavit filed by the petitioner. Therefrom he points out that against the rule issuing order in the instant writ petition the added respondent filed CPLA No. 144 of 2020 against the ad interim order. He takes us to the order in CPLA No. 144 of 2020.

Relying on his submissions he concludes that the enlistment of the property in the 'Ka' list by way of gazette notification dated 22.03.2012 such enlistment ought to be declared unlawful and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned advocate for the added respondent No. 8-10 opposes the Rule. He submits that the issue arising out of the instant writ petition basically are disputed matters of fact and is not amenable in writ jurisdiction. He further contends that the petitioner ought to have resorted to the vested property appellate tribunal before invoking writ jurisdiction. He submits that while the appellate tribunal is sitting writ petition cannot be entertained. He concludes his submissions upon assertion that the Rule bears no merits and ought to be discharged for ends of justice.

On the other hand learned Assistant Attorney General Sayeda Sabina Ahmed Molly substantively supports the submissions of the added respondents. She submits that these are disputed matter of facts and cannot be settled here. She also submits that moreover the petitioner ought to have availed the forum of the appellate tribunal before resorting to writ jurisdiction.

We have heard the learned counsels from both sides, perused the materials before us. Truly enough whether the property is a Debattor property or whether it is liable to be declared as vested property in the 'Ka' list are totally disputed matters of fact and which cannot be examined into in writ jurisdiction.

There are no allegations of procedural illegality by the tribunal nor are there any allegations of any procedural illegality by any other concerned authority. In the absence of any allegation of procedural illegality we are not in a position to look into such disputed factual matters.

Moreover it appears that the petitioner did not avail the forum of the Vested Property Appellate Tribunal against the order of the tribunal in Vested Property Tribunal Case No. 32 of 2012 and 505 of 2013. We are of the considered view that irrespective of issues, being issues of law and facts whatsoever without availing the proper forum which is the forum of vested property appellate tribunal, writ petition cannot be entertained here presently.

The learned advocate for the petitioner ought to have filed an appeal before the Vested Property Appellate Tribunal against the order of abatement whatsoever passed by the tribunal. Such being the

position, we are of the considered view that ends of justice will be best served if the petitioner is allowed to avail the forum of vested property appellate tribunal if he is so advised.

Under the facts and circumstances we are inclined to dispose of the Rule with directions and observations.

In the result, the Rule is disposed of with direction and observations. The petitioner if so advised is at liberty to file appeal in the Vested Property Appellate Tribunal. If the petitioner files an appeal the Vested Property Appellate Tribunal in that event is directed to condone the delay following the provisions of Section 14 of the Limitation Act and admit the appeal.

The order of status-quo granted earlier by this court is hereby recalled and vacated.

Communicate this judgment at once.

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**(Kashefa Hussain, J)**

I agree.

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**(Kazi Zinat Hoque, j)**

Shokat (B.O)