

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 12327 OF 2014

In the matter of:

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

And

In the matter of:

Mst. Jomela Begum and others
... Petitioners

-Versus-

The Government of Bangladesh, represented
by the Deputy Commissioner, Kushtia and
others.

... Respondents

Mr. Shasti Sarker, Advocate
...For the petitioners

Mr. Mohammad Mohsin Kabir, D.A.G with
Mr. Mostafizur Rahman (Tutul), A.A.G
Mr. Md. Moniruzzaman, A.A.G and
Ms. Sonia Tamanna, A.A.G
...For the respondents.

Heard on: 28.07.2025 and 29.07.2025
Judgment delivered on: 30.07.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule *Nisi* was issued calling upon the respondents to show cause as to why the enlistment of land measuring an area of 0.74 acres under S.A. Khatian No. 151 of Plot Nos. 208 and 205 corresponding to R.S. Khatian No. 81, Plot No. 224 under Mouza- Betbunia, Upazilla- Kumarkhali, District-Kushtia in 'Ka' schedule contained in Memo No. 31.00.0000.040.53.005.2012-509 dated 30.04.2012 published in Bangladesh Gazette on 02.05.2012 (Annexure-I), so far as it relates to the petitioners, should not be declared to have been passed without lawful authority and to be of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts leading to issuance of the Rule are that the land in question belonged to one, Sarat Chandra Sarker, who obtained settlement of the same on 18th Ashar, 1342 B.S. at an annual rental of Taka seven and half and the S.A. record was duly published in the name of said Sarat Chandra Sarker. Thereafter, Sarat Chandra Sarker transferred the land in question to one, Babur Ali Sheikh. Subsequently, on 25.10.1965, Babur Ali sold the land in question to the predecessors of the petitioners by registered deed no. 3635. The father of the petitioners subsequently filed Title Suit No. 131 of 1973 on the back of enlisting the same as vested property against the Custodian of Vested and Non-Resident Property before the learned First Munsif, Kushtia

and the suit was ultimately decreed *ex parte* on 04.12.1974. The Government then preferred a Miscellaneous Case against the judgment and decree, which was also dismissed. Then, one Rahmat Ali Sheikh claimed to have taken lease of the suit land from respondent no. 4 threatened with dispossession on 23.12.1987 when the predecessor of petitioners as plaintiffs instituted Title Suit No. 112 of 1987 before the learned Assistant Judge, Kumarkhali, Kushtia seeking a decree for permanent injunction. Upon hearing on 15.11.1989, the said suit was decreed against the defendant nos. 5 to 7 on 22.11.1989. The petitioners paid land development tax to the Government and obtained rent receipts accordingly.

Subsequently, the petitioners instituted Title Suit No. 288 of 2007 before the learned Assistant Judge, Kumarkhali, Kushtia seeking declaration of title. The learned Assistant Judge, however, decreed the suit *ex parte* on 09.09.2008 on the finding that the suit land is not Vested and Non-Resident Property. In spite of that, the respondents enlisted the land in question in 'Ka' schedule, publishing the same in the Bangladesh Gazette dated 30.04.2012, compelling the petitioner to file an application for exclusion of the property from the list of 'Ka' schedule by 31.12.2013, but of no avail.

Being aggrieved by such enlistment of land in question in 'Ka' schedule under Memo No. 31.00.0000.040.53.005.2012-509 dated 30.04.2012 published in Bangladesh Gazette on 02.05.2012 (Annexure-I), the petitioners approached this Court by filing the instant writ

petition under Article 102 of the Constitution of the People's Republic of Bangladesh wherein the instant Rule was issued.

Mr. Shasti Sarker, the learned Advocate appearing for the petitioners submits that the petitioner should have filed an application for releasing the property from the list of 'Ka' schedule land within 31.12.2013 but the said date has already been expired and having no other alternative efficacious remedy, they filed this writ petition. He further contends that, the decrees declaring title of the petitioners in the scheduled land have been passed prior to the promulgation of Arpita Sampatti Prattarpon Ain.

Mr. Sarker next submits that the petitioners acquired valid right, title, interest and have been in possession in the land in question but the respondents illegally treated the same as vested property and enlisted the land in 'Ka' list.

The learned counsel next argues that it has already been decided that no property can be vested after 23.03.1974 and as such the impugned gazette declaring the land as vested property is illegal and published without lawful authority and is of no legal effect. In support of his contention, the learned Advocate has referred a decision passed in the case of *Aroti Rani Paul vs. Sudarshan Kumar Paul and others*, reported in 56 DLR(AD)(2004)73. With these submissions, the learned counsel finally prays for making the Rule absolute.

Per contra, Mr. Mohammad Mohsin Kabir, the learned Deputy Attorney General appearing for the respondents submits that Title Suit No. 112 of 1987 was filed for permanent injunction and where no title

was declared in favour of the petitioners. He further submits that the R.S. record in respect of the suit land was prepared in the name of the Government and the same has not been challenged by the petitioners so the petitioners acquired no title over that. He also submits that the land in question is vested property since 8.8.1968 and the decision passed in the case of *Aroti Rani Paul vs. Sudarshan Kumar Paul and others* (supra), is thus not applicable in the instant writ petition. With these submissions the learned Deputy Attorney General prays for discharging the rule.

We have considered the submissions advanced by the learned counsel for the petitioners and the learned Deputy Attorney General for the respondents and perused the writ petition, supplementary affidavit, the relevant documents and the decision referred carefully.

From the materials on record, it appears that the land in question belonged to one, Sarat Chandra Sarker who transferred the same to one Babur Ali Sheikh. Subsequently, Babur Ali sold the land in question to the plaintiffs on 25.10.1965 by registered deed no. 3635. While the S.A. record was published in the name of Sarat Chandra Sarker, the father of the petitioners filed Title Suit No. 131 of 1973 against the Custodian of Vested and Non-Resident Property and the learned First Munsif, Kushtia decreed the suit *ex parte* on 04.12.1974. Against the decree, the Custodian of Vested and Non-Resident Property filed Miscellaneous Case No. 9 of 1985 which was also dismissed on 25.05.1987. When one Rahmat Ali Sheikh and the respondents tried to lease out the suit land, the predecessors of the petitioners instituted Title Suit No. 112 of

1987 seeking a permanent injunction and obtained decree on 15.11.1989.

Subsequently, the predecessor of the petitioners instituted Title Suit No. 288 of 2007 before the learned Assistant Judge, Kumarkhali, Kushtia for declaration of title. The learned Assistant Judge, Kumarkhali, Kushtia decreed the suit *ex parte* on 09.09.2008. Neither the Government nor the vested property authority preferred any appeal challenging the said decree. So, the decree remains unchallenged. Despite the above, the Ministry of Land without considering the judgment and decree passed by the competent Courts published Gazette notification by Memo No. 31.00.0000.040.53.005.2012-509 dated 30.04.2012 on 02.05.2012 enlisting the suit land in ‘Ka’ list which is illegal and is of no legal effect as it is hit by the provisions of Section 6 of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১। The relevant portion of the said section is reproduce below:

কতিপয় সম্পত্তি প্রত্যাপনযোগ্য সম্পত্তির তালিকায় অন্তর্ভুক্তি নিষিদ্ধ:

“৬। প্রত্যাপন সম্পত্তির তালিকায় নিম্ন বর্ণিত সম্পত্তি অন্তর্ভুক্ত করা যাইবে না। যথা;- ক) কোন সম্পত্তি অর্পিত সম্পত্তি নহে মর্মে এই আইন প্রবর্তনের পূর্বে যথাযথ আদালত চূড়ান্ত সিদ্ধান্ত প্রদান করিয়া থাকিলে সেই সম্পত্তি।”

It also appears from Annexure-A series to the writ petition that the petitioners mutated their names in respect of the suit land in the record of right and paid land development tax for the years 1394, 1395, 1396, 1397, 1398, 1399 and 1400, B.S. to the Government which ultimately nullifies the Government’s claim that the suit land is vested property and enlistment of the same as ‘Ka’ schedule property.

Moreover, it has already been decided by the Appellate Division in the case of *Aroti Rani Paul vs. Sudarshan Kumar Paul and others* (Supra) that, the Law of the enemy property died with the repeal of Ordinance No. 1 of 1969 on 23.03.1974 and no further vested property case can be started thereafter.

So, given the facts and circumstances and *ratio* mentioned above, we are of the view that the impugned gazette dated 30.04.2012 (Annexure-I to the supplementary affidavit), so far as it relates to the land claimed by the petitioners, has been passed and published without lawful authority and we thus find merit in this Rule.

Accordingly, the rule is made absolute without any order as to costs.

The enlistment of land in 'Ka' schedule in respect of 0.74 acres under S.A. Khatian No. 151 of Plot Nos. 208 and 205 corresponding to R.S. Khatian No. 81 of Plot No. 224 and 225 of Mouza- Betbunia, Upazilla- Kumarkhali, District- Kushtia published under Memo No. 31.00.0000.040.53.005.2012-509 dated 30.04.2012 in Bangladesh Gazette on 02.05.2012 (Annexure-I to the writ petition), so far as it relates to the petitioner are hereby declared to have been made without lawful authority and to be of no legal effect.

The Respondents are hereby directed to take necessary steps in releasing and excluding the said property from 'Ka' list enlisted under Memo No. 31.00.0000.040.53.005.2012-509 dated 30.04.2012 published in Bangladesh Gazette on 02.05.2012 within 60 days from the date of receipt of the copy of this judgment.

Communicate the judgment and order to the respondents forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Ariful Islam Khan
Bench Officer