

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 168 of 2021

Present

Mr. Justice K.M. Hafizul Alam

-And-

Mr. Justice Abdur Rahman

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Government of Bangladesh, represented by the
Deputy Commissioner, Kushtia.

.... Petitioner

-versus-

Md. Moniruddin Zoaddar and others

.... Respondents

Mr. J.R. Khan Robin, DAG with

Mr. Md. Osman Gani, DAG with

Mr. Ahmed Musanna Chowdhury, AAG with

Ms. Kamrunnahar Tamanna, AAG

....For the petitioner.

Mr. Shasti Sarker, Advocate

...for the respondents

Date of hearing: 26.02.2026 and 05.03.2026

Date of Judgment: 12.03.2026 A.D. Thursday,
27 Falgun, 1432 B.S.

Abdur Rahman, J:

In this *Rule*, arising out of an application under Article 102 of the Constitution, the petitioner has challenged the decision contained in judgment and decree dated 14.11.2016 passed by the learned Additional district Judge, 1st Court, and Arpita Sampatti Pratyarpan Appellate Tribunal, Kushtia in Arpita Sampatti Pratyarpan Appeal No. 48 of 2015 disallowing the appeal upon affirmance of those dated 06.09.2015 passed by the learned Judge of the Arpita Sampatti Pratyarpan Tribunal, Kushtia in Arpita Sampatti Pratyarpan Suit No. 63 of 2012, decreeing the suit (Annexure-D and D 1), for declaring the same to have been passed without lawful authority and is of no legal effect, and/or such other or further order or orders passed as to this court may seem fit and proper.

The facts leading to the issuance of this Rule Nisi in brief are that: the respondents, being the applicants/plaintiffs, filed the Arpita Sampatti Pratyarpan Case stating *inter alia* that Nirada Sundari Dasi and Raju Bala

Das were the tenants of the land of C.S. Khatian No.667 of Mouja Khorda Ailchara of Kushtia Sadar. Nirada Sundari settled the suit land from the said C.S. plot in 1339 BS with Natu Zoaddar alias Rahatullah Zoaddar, and Riman Mollah. Natu Zoaddar died, leaving petitioners No.1-3 and Chher Ali. Chher Ali died, leaving petitioner No.4, and Riman Mollah died, leaving 2 sons, Moksed Ali and Mojahar Ali. Moksed died, leaving petitioners No.5/6. Mojahar died, leaving applicant Nos.7-13. They possessed suit land for a long time peacefully. The suit land was erroneously recorded in the Ka- schedule of Vested Property, and hence the suit for release of the suit land.

The instant petitioner, as the opposite party, contested the case by filing a written objection contending, *inter alia*, that S.A. tenants Nirada Sundari Dasi and Raja Bala Das left for India during the 1965 Indo-Pak war and did not come back, and the said land was listed as vested and non-resident property upon proper scruting. The applicants have no right or title, and the case is liable to be dismissed.

Thereafter, the learned Arpita Sampatti Pratyarpan Tribunal, Kushtia, after concluding the trial, was pleased to deliver the decision vide judgment and decree dated 06.09.2015 (thereafter decree drawn up and signed on 08.09.2015), decreeing the suit with direction.

Being aggrieved by and dissatisfied with the judgment and decree of the Arpita Sampatti Pratyarpan Tribunal, the opposite Party, as appellant preferred Arpita Sampatti Pratyarpan Appeal No.48 of 2015 in Arpita Sampatti Pratyarpan Appellate Tribunal, Kushtia, and the said Appellate Tribunal, after hearing, disallowed the appeal vide impugned judgment and decree dated 14.11.2016 (decree signed on 17.11.2016), affirming the judgment and decree of Arpita Sampatti Pratyarpan Tribunal, Kushtia. Hence, finding no other alternative, the petitioner invoked this writ jurisdiction.

On the other hand, respondents No. 1-2 and 4 to 15 made appearance, filing an affidavit-in-opposition stating *inter alia* that Nirada Sundari Das and Raju Bala Dasi were the tenants of the land of C.S. Khatian No.667 of Mouja Khorda Ailchara of Kushtia Sadar. Nirada Sundari settled the suit land from the said C.S. plot in 1339 BS with Natu Zoaddar alias Rahatullah Zoaddar, and Riman Mollah. Natu Zoaddar died, leaving petitioners No.1-3 and Chher Ali. Chher Ali died, leaving petitioner No.4, and Riman Mollah died, leaving 2 sons, Moksed Ali and Mojahar Ali. Moksed died, leaving petitioners No.5/6. Mojahar died, leaving applicant Nos.7-13. The suit land was erroneously recorded in the Ka-schedule of Vested Property. During the course of trial, the applicants, by adducing oral and documentary evidence, successfully established their right, title, and possession over the suit property. Consequently, the learned Arpita Sampatti Pratyarpan Tribunal, Kushtia, upon due consideration of the evidence on record, rightly delivered the judgment and decree dated 06.09.2015 in favour of the applicant-

respondents. Thereafter, the Arpita Sampatti Pratyarpan Appellate Tribunal, Kushtia, by the impugned judgment and decree dated 14.11.2016 (decree signed on 17.11.2016), dismissed the appeal and affirmed the judgment and decree of the Tribunal below. In such circumstances, the Rule is liable to be discharged.

Learned Deputy Attorney General, Mr. J.R. Khan Robin, appearing on behalf of the petitioner, has submitted that it appears from the judgment and decree of the Pratyarpan Tribunal that the respondents-applicants paid rent and produced dakhilas (exhibit-1 series), and admittedly, the scribe of dakhila was the uncle of P.W.2. As stated in the plaint, the land was given pattan in 1339 BS; if it is so, there would have been many more dakhilas. Moreso, the dakhilas produced were written by the uncle of P.W.2, which leads one to believe that the said dakhilas are not genuine, but rather manufactured, and as such, the impugned judgment and decree, having been passed relying on manufactured

dakhilas, needs to be declared to have been passed without lawful authority and is of no legal effect.

Learned Deputy Attorney General has further submitted that both Tribunals below have observed that the applicants failed to dismiss government contention regarding the departure of Niroda Sundari and Rajubala for India during the 1965 Indo-Pak war, and as such, the impugned judgment and decree are passed without lawful authority and are of no legal effect.

Learned Deputy Attorney General has earnestly submitted that both the Tribunals below passed the impugned judgment and decrees without considering whether the applicants could prove their possession by legal and corroborating evidence, and if they have ever attempted to pay rent, and as such, the impugned judgment and decree are passed without considering the facts and law, which cannot be sustained.

However, the learned Counsel for the respondents submitted that the instant respondents as applicants

submitted all the required documents to prove the chain of title and possession, and the opposite party failed to controvert the claims by cross-examining the witness. The learned Arpita Sampatti Pratyarpan Tribunal, Kushtia, upon due consideration of the evidence on record, rightly delivered the judgment and decree dated 06.09.2015 in favour of the applicant-respondents. Thereafter, the Arpita Sampatti Pratyarpan Appellate Tribunal, Kushtia, also affirmed those vide judgment and decree dated 14.11.2016 (decree signed on 17.11.2016) by dismissing the appeal.

Learned Counsel further submitted that the concurrent findings as to facts adopted by the learned Tribunal and Appellate Tribunal, thus ousted the power of this Court under judicial review. Accordingly, the Rule is liable to be discharged.

We have heard the learned Deputy Attorney General for the petitioner and the learned Counsel for the respondents, 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 6th September 1965 to 23rd 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 the 10th April, 1971, Laws of Continuance Enforcement Order, 1971 was promulgated purporting to keep in force all the Pakistani laws which were in force in the then East Pakistan on or before 25th March, 1971, which were not in conflict with the proclamation of Independence. Bangladesh was not a successor state of Pakistan, but rather established itself by pursuing a war of liberation against Pakistan. Immediately after liberation, on 26th 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 Pakistan Government became vested in the People's Republic of Bangladesh. Accordingly, all Government properties, including but not limited to Khaas land, river, Enemy Properties listed under the 1965 and 1969

Ordinance, etc., 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.

However, if we look into **the purpose 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 ***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 consider as void inclusion, per se.

Now the case in our hand unveiled that, the judgment and decree passed by the learned Judge of the Arpita Sampatti Pratyarpan Tribunal, Kushtia passed in Arpita Sampatti Pratyarpan Suit No, 281 of 2013 decreeing the suit on contest directed the defendant to release 0.49 acres of scheduled land in favour of the plaintiffs/applicants within 30 days. Thereafter, the defendant Deputy Commissioner preferred an appeal being No. 48 of 2015 before the Arpita Sampatti Pratyarpan Tribunal, Kushtia and after hearing the said appeal learned Appellate Tribunal vide its judgment dated 14.11.2016, disallowed the appeal by affirming the judgment and decree of the learned Arpita Sampatti

Pratyarpan Tribunal, Kushtia. Learned Appellate Tribunal specifically stated that, “এমতাবস্থায় উভয় পক্ষের সাক্ষ্য-প্রমাণ বিশ্লেষণে প্রতীয়মান হয় যে-রেসপনডেন্ট/দরখাস্তকারীগণ মৌখিক ও দালিলিক সাক্ষ্য প্রমাণ উপস্থাপনের মাধ্যমে নালিশী জমিতে ওয়ারিশ সূত্রে তাহাদের স্বত্ত্ব অর্জনের বিষয়টি প্রমাণ করিতে সক্ষম হইয়াছে। ফলে উক্ত সম্পত্তি ভ্রমাত্মকভাবে অর্পিত সম্পত্তির তালিকাভুক্ত করা হইয়াছে মর্মে প্রতীয়মান হয়।”

On shifting the judgments and decrees of the learned Appellate Tribunal and the Arpita Sampatti Pratyarpan Tribunal, Kushtia, it is found that both the Tribunals concurrently found that the suit property was enlisted erroneously. In the instant writ, respondents successfully proved their pedigree, right, title, and interest as well as possession of the suit property by adducing and producing proper evidence and documents.

Upon a careful consideration of the aforesaid facts and the governing law, we are of the considered opinion that both the learned Arpita Sampatti Pratyarpan Tribunal and the Appellate Tribunal, having concurrently adjudicated in

favour of the release of the suit property, did not commit any manifest illegality or legal infirmity in their respective decisions. Accordingly, we discern no tenable ground to warrant interference with such concurrent findings. In the result, the Rule, being devoid of substance, is liable to be discharged.

Accordingly, the Rule is discharged without any order as to costs.

The petitioner is hereby directed to give effect to and implement the judgment and decree dated 06.09.2015 (decree signed on 08.09.2015) passed by the learned Judge, Arpita Sampatti Pratyarpan Tribunal, Kushtia, in Arpita Sampatti Pratyarpan Suit No. 281 of 2013 (arising out of Release Case No. 63 of 2012), whereby the suit was decreed, and which was subsequently affirmed by the judgment and decree dated 14.11.2016 delivered by the learned Additional District Judge, 1st Court, and Arpita Sampatti Pratyarpan Appellate Tribunal, Kushtia, in Arpita Sampatti Pratyarpan Appeal No. 48 of 2015 dismissing the appeal, within a period

of 60 (sixty) days from the date of receipt of a copy of this judgment and order, without fail.

In default of compliance, the petitioner shall be liable to suffer the consequences as contemplated under Section 32 (Ga) of the অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (সংশোধিত-২০১১).

The office is directed to send down the SCR (if any) along with a copy of the judgment and order forthwith.

(Abdur Rahman, J)

K.M. Hafizul Alam, J:

I agree.

(K.M. Hafizul Alam, J)