

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

**WRIT PETITION NO. 12785 of 2021**

**IN THE MATTER OF:**

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

**IN THE MATTER OF:**

S.M. Arifuzzaman alias Arifur Rahman Sarder and others.

..... Petitioners

versus

Government of Bangladesh and others

.....Respondents.

And

Mr. Sherder Abul Hossain, Advocate with Mr. Mizanur Rahman, Advocate

..... for the Petitioners.

Mr. Nowraz M.R. Chowdhury, DAG with

Mrs. Afroza Nazneen Akhter, AAG with

Ms. Anna Khanom (Koli) AAG

..... For the Respondents

*Heard on: 07.11.2023, 14.11.23,  
03.12.2023, 12.12.2023.*

**Judgment on 15.01.2024.**

**Present:**

Mr. Justice Md. Jahangir Hossain

and

Mr. Justice S.M. Masud Hossain Dolon

**S.M. Masud Hossain Dolon, J:**

In this application under article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi has been issued calling upon the respondents to show cause as to why inaction of the respondent Nos. 1-7 to show cause on or before the impugned judgment and decree dated 18.09.2016 passed by the learned Additional District

Judge, 2<sup>nd</sup> Court, Bagerhat in Arpita Sampatti Appeal No. 03 of 2014(Annexures-G and G-1) allowing the appeal partially and thereby setting aside the judgment and decree dated 25.02.2014 passed by the Arpita Sampatti Prattarpan Additional Tribunal No. 2, Bagerhat in Arpita Sampatti Prattarpan Tribunal Case No. 584 of 2012 (Annexure-G) should not be declared to have been passed without lawful authority and is of no legal effect and as to why the respondents should not be directed to release the scheduled property of the petitioners from the 'ka' schedule (in Serial No. 156 and 157) to Bangladesh Gazette published on 08.04.2012 under Fakirhat Upazila, Bagerhat and /or pass such other or further order or orders as to this court may seem fit and proper.

Fact relevant for disposal of the Rule are that the petitioners and their father as plaintiff filed Arpita Sampatti Prattarpan Tribunal Case No. 584 of 2021 under section 10(4) of the Arpita Sampatti Prattarpan Ain, 2001 for releasing the schedule property from the Ka Schedule (in Serial No. 156 and 157) to Bangladesh Gazette, published on 08.04.2012 under Fakirhat Upazilla, Bagerhat stating in brief inter alia, that the land under District Bagerhat, Police Station Fakirhat, No. 3 Noldha Mouza under S.A Khatian No. 1770 was recorded in the name of Lalit Mohan, Shishir Chandra and Jeetendra Nath Dutt who sold out measuring .49 acres land to the plaintiff No. 4 (father of the plaintiff No. 1 to 3, instant petitioners) vide Registered Saf Kabala deed No. 11865 dated 24.06.1981. Subsequently Bissheswar Mondol executed and

registered Will on 14.12.1974 in favor of his wife Sati Rani. As per the will Sati Rani preferred Miscellaneous Case No. 46 of 81 which was subsequently renumbered as 173 of 81 and got probate over the aforesaid property vide Judgment dated 10.05.1882. Sati Rani subsequently appointed the plaintiff No. 4 as his constituted Attorney vide General Power of Attorney No. 13929 dated 06.07.1982 upon receipt of information about lease case No. 1(F) 83/84 the aforesaid Attorney of Sati Rani preferred Title Suit No. 311 of 84 before 2<sup>nd</sup> Munsif Court, Bagerhat which was subsequently transferred to the Court of Additional Assistant Judge 1, Bagerhat which was subsequently transferred to the Court of Additional Assistant Judge-1, Bagerhat and renumbered as Title Suit No. 610 of 90 and got decree on 28.08.1994 against government and others defendants. Thereafter Sati Rani sold out 2.26 acres of land to the petitioner No. 1 vide Saf Kabala Deed No. 382 dated 31.01.1987, 2.65 acres to Sheikh Abdur Rahman vide Saf Kabala Deed No. 384 dated 31.01.1987, 2.10 acres of land to Ayesha Khatun vide Saf Kabala Deed No. 3045 dated 24.11.1986. Subsequently Amena Khatun gifted 1.42 acres of land to the petitioner No. 1 vide Registered Deed of Gift No. 2009 dated 24.07.1985, Subsequently after death of Amena Khatun, the petitioner Nos. 1 to 3 and their father inherited the property of Amena Khatun and thereby the plaintiffs owned and possessed a total of 9.35 acres of land, out of which 7.22 acres of land has been listed as vested property in the ka Schedule to

Bangladesh Gazette, published on 08.04.2012 under Fakirhat Upazilla, Bagerhat.

The respondent No. 4 appeared in the aforesaid suit and filed written statement denying the statement of facts and also stating that the owners of the suit property i.e. Bissheswar, Bim Kumar and Mahendra left the country during 1965 Pakistan India War and had been living in India, as such the Government listed the properties as vested under the Enemy Property (Custody and Registration) Act, 1965 and subsequently leased out vide lease case N. 1(F) 83/84 and that the plaintiff, with a view to grab the property filed the instant case.

During trial petitioner produce one witness in support of pleadings and exhibited documents and the defendant was not cross examined him. Upon hearing the parties the learned Arpita Sampatti Prottarpan Tribunal dismissed the suit and thereby directed the plaintiff to deposit the deficit court fess within 21 days. Against this order petitioner preferred an appeal under section 18 of the Arpita Sampatti Prottarpon Ain, 2001 before the Arpita Sampatti Prottorpan Appellate Tribunal who after hearing the parties allowed appeal in part releasing 4.86 acres of land out of 7.22 acres of land under Khatian No. 1795,1698,1688,1042 and 1770. Against this order petitioner filed the instant writ petition and obtained Rule.

Mr. Sherder Abul Hossain, the learned Advocate appearing for the petitioner submits that the petitioners prayed for release of 7.22

acres of land under District Bagerhat, Upazila Fakirhat, Mouza Naldha S.A. Khatian No. 1795, 1689,1646,1042,1769,1688,2015, 1770, 2003, 2014 and 518 which they obtained ownership from Bissheswar Bandopadhay, Bimkumar Datta and Mohendra Kumar Shen. The property of Bissheswar Bandopadhay have been enlisted in the Gazette as Serial No. 156 and the property of Bimkumar Datta and Mohendra Kumar Shen have been enlisted in the Gazette as Serial No. 157. The Appellate Tribunal decided that the petitioners have proved the Title in 1.85 acres in S.A. Khatian No. 1795, .59 acres in S.A. Khatian No. 1689, 1.47 acres in S.A. Khatian No. 1688, .46 acres in S.A. Khatian No. 1042 and .49 acres in S.A. Khatian No. 1770 i.e. in 5 Khatian total 4.86 acres of land released in favour of the petitioner and the Arpita Appellate Tribunal further found that the petitioners obtained ownership from Bissheswar Bondopadhay and as the property of Bissheswar Bondopadhay under S.A. Khatian No. 518 and 2003 have not been enlisted in the Arpita Gazette.

Learned Advocate further submits that the Arpita Sampatti Prottorpan Appellate Tribunal at the time of passing impugned judgment and decree had not been discussed at all about the property stated in the serial No. 3,5 and 7 of the Schedule to the plaint i.e. the .28 acres of property in S.A. Khatian No. 1646, .11 acres of land in S.A. Khatian No. 1769 and .07 acres of land in S.A. Khatian No. 2015 in total .46 acres of land which are enlisted in Serial No. 156 of the Arpita

Gazette and kept those property undecided and thereby acted without lawful authority and as such the impugned judgment and decree so far related with these property is without lawful authority and is of no legal effect.

He further submits that the petitioners proved their title accrued from Bessheswar Bondopadhyay in respect of 5.32 acres but the Arpita Tribunal decided only 4.86 acres and left out .46 acres of land beyond its decision and acted beyond its lawful authority and as such the Arpita Appeal Tribunal passed the impugned judgment and decree without having its lawful authority and is of no legal effect so far the .46 acres of land. He further submits that when the Government tried to lease out the suit land treating as vested property through V.P. Case No. 01(F)83-84 then the predecessor of the petitioners filed Title Suit No. 311 of 1984 praying for declaration of title, further declaration that the enlisting the suit property as enemy property is illegal not binding upon the plaintiffs and for perpetual injunction against the Government by restraining the Government from leasing out the same in the Court of 2<sup>nd</sup> Munsif, Bagerhat which was subsequently transferred to the Court of Additional Judge 1 Bagerhat and thereafter the suit was decreed on 28.08.1995 and that decree is subsisting till today as per provision of Section 6 of the Arpita Sompatti Prottarpon Ain 2001 provided a negative list of the property which cannot be included in the list of

vested property. Learned Advocate lastly submits that considering all the aforesaid legal position Rule may kindly be absolute.

Mr. Nawroz M. R. Chowdhury the learned Deputy Attorney General on behalf of the respondent submits the instant writ petition filed the application before the Tribunal and subsequently, in Appellate Tribunal. Therefore, they waived their entitlement under section 6 of the Act and the Gazette notification in the year of 1986. He further submits that the application under section 25 of the Act, it is admitted that there are two mistake in the two different Saf-kabala deed. Moreover, in the schedule 2, Daag No. 2323 is not in the VP list. Regarding other schedules there are lot of Daags but the petitioner demands a portion among the said Daag which is not determined in Appellate Tribunal. Therefore, it cannot be determined in the writ jurisdiction as these are matter of fact. He lastly submits that the title of the petitioner which has been alleged by the petitioner is a disputed question of fact and it has been concluded by the Arpita Sampatti Prattarpan Appellate Tribunal, Bagerhat. The issue which has been alleged by the petitioners is not possible to settle under the writ jurisdiction, that being the position, this writ is not maintainable at all. As it has settled principle of law that disputed question of fact would not be decided in writ jurisdiction and as such the Rule may be discharged for ends of justice.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition along with supplementary affidavit, affidavit in opposition. It appears that the writ petitioners filed the case before the learned Arpita Sampatti Prattarpan Additional Tribunal No. 2, Bagerhat under section 10(4) of the Vested Property Return Act, 2001 for released the Ka scheduled property from the Vested Property Return List.

It is claimed by the writ petitioners that the land in S.A. Khatian Nos. 1795, 1688, 2003, 1646, 1689, 1769, 2015, 1042, 2014, 518 was recorded in the name of Bisheswar Bandapadhai. 0.49 acre of land in SA Khatian No. 1770 was recorded in the name of Lalit Mohon, Shishir Chandra and Jeetendra Nath Dutta. Said Bisheswar while in possession transferred the property in favour of his wife Satirani by executing Will. Subsequently, Satirani by filing Miscellaneous Case No. 173 of 1981 before the learned Subordinate Judge (now Joint District Judge), got probate of the said property vide judgment and order dated 10.05.1082. She thereafter appointed Shahadat Ali Sarder as her attorney vide Power of Attorney No.13929 dated 06.07.1982. Jeetendranath and Kishori Lal transferred their .49 acre of land in S.A. Khatian No. 1770 to Shahadat Ali Sarder vide Kabala No. 11865 dated 24.06.1981. By dint of power of attorney Shahadat Ali Sarder transferred 2.26 acres of land to Arifuzzaman vide Kabala No.382 dated 31.01.1987, 2.65 acres of land to Abdur Rahman vide Kabala No.383



dated 31.01.1987, 1.85 acres of land to Amena Khatun vide Kabala No. 384 dated 31.01.1987 and 2.10 acres of land to Ayesha Khatun vide Kabala no. 3045 dated 24.11.1986. Amena Khatun thereafter transferred her 1.42 acres of land to Arifuzzaman vide deed of gift No.2009 dated 24.07.1995. Abdur Rahman transferred 2.65 acres of land to Arifuzzaman vide deed of gift No.2008 dated 24.07.1995. Ayesha Khatun died leaving behind two sons, one daughter and her husband who are applicants No. 1, 2, 3 and 4 and they inherited 2.10 acres of land left by Ayesha Khatun. The property of the applicant Nos. 1 to 4 thereafter was enlisted in the Vested Property Return List and as such, they filed the case under section 10(4) of the Vested Property Return Act, 2001 for release of their property in their favour.

The learned Judge of Arpita Sampatti Prattarpan Additional Tribunal No. 2, Bagerhat after hearing the parties dismissed the same against which writ petitioners filed the appeal before the Arpita Sampatti Prattarpan Appellate Tribunal and Additional District Judge, 2<sup>nd</sup> Court, Bagerhat who after hearing the parties, allowed the appeal in part.

The Appellate Tribunal came to the findings that the plaintiffs filed the case for release of the property from the Vested Property Return List appertaining to SA Khatian Nos. 1795, 1689, 1646, 1042, 1769, 1688, 2015, 1770, 2003, 2014 and 518. It also found that out of those khatians, Khatian Nos. 2003 and 518 which was recorded in the

name of Bim Kumar Dutta and Mohendra Kumar Sen were enlisted as Vested Property Return List and as such, the plaintiffs are not entitled to get release of the land of those two khatian Nos. 2003 and 518. Further the appellate Tribunal also found that the land of S.A Khatian No. 2014 was not enlisted in the Vested Property Return List and as such, they cannot pray for release of the land of that SA Khatian No.2014.

It also appear that the petitioners claimed that the learned Arpita Sampatti Prattarpan Appellate Tribunal was not adjudicated the property stated in the serial No. 3, 5 and 7 of the Schedule to the plaint i.e. the .28 acres of property in S.A. Khatian No. 1646, .11 acres of land in S.A. Khatian No. 1769 and .07 acres of land in S.A. Khatian No. 2015 in total.46 acres of land which are enlisted in Serial No. 156 of the Arpita Gazette in which the petitioners accrued title from the Bissheswar against which writ petition filed and praying for the release of the said land.

The plaintiff has clearly mentioned that .11 acres of land in Khatian No. 1739, .07 acres of land in Khatian No. 2015 and .28 acres of land in Khatian No. 1646 in total .46 acres of land which has been mentioned and submitted supporting documents in the lower court record and it has duly exhibits but the learned Arpita Sampatti Appellate Tribunal did not take them into consideration. It is to be noted here that in the document dated 31/03/1987, S.A. Khatian No.

1646 is correct, but in the document dated 24/07/95, S.A. Khatian No. 1648 has been wrongly written instead of S.A. No. 1646. But the dag numbers are correct.

Therefore, the above mentioned  $.11 + .07 + .28 = .46$  acres of land, regarding which the documents related to Exhibit 8, 7(Kha) .06 have not been discussed during the trial due to overlooking. As such since the property named Bissheswar was not considered as VP in the judgment of the learned lower appellate court, the schedule of land listed in Nos. 05, 07 and 03 of the original plaint and due to the fact that this are proper documents in support of the ownership of the petitioner.

We have also found that in Serial No. 156 and 157 of the Bangladesh Gazette were enlisted as vested property at first on 15.01.1984 and tried to lease out vide V.P. Case No. 01(F)83-84 which is evident from the Gazette. The Enemy Property Ordinance-1969 was repealed in the year of 1973 and the vested Property Act was promulgated in the year of 1974 and section 4 of the Vested Property Act 1974 provided that the property which was earlier enlisted as Enemy Property under the provision of Emergency Ordinance-1966 and Enemy Property Ordinance of 1969 will be treated as Vested Property and as the suit land was not in the list of Enemy Property has no scope to enlist as vested property.

Despite that the Government was tried to lease out the said property than the predecessor of the petitioners filed Title Suit and prayed for declaration of title which was decreed and the decree is subsisting till today being Title Suit No. 610 of 1990. As per provision of Section 6 of the Arpita Sompatti Prottarpon Ain-2011 provided a negative list of the property which cannot be included in the list of vested property. As per provision of Section 6 of the Arpita Sompatti Prottarpon Ain-2011 provided a negative list of the property which cannot be included in the list of vested property. The provision of Section 6(Ka) runs as follows:-

“৬। প্রত্যর্পণযোগ্য সম্পত্তির তালিকায় নিম্নবর্ণিত সম্পত্তি অন্তর্ভুক্ত করা যাইবে না, যথাঃ-

(ক) কোন সম্পত্তি অর্পিত সম্পত্তি নহে মর্মে এই আইন প্রবর্তনের পূর্বে যথাযথ আদালত চূড়ান্ত সিদ্ধান্ত প্রদান করিয়া থাকিলে সেই সম্পত্তি ”

Upon plain reading of the Ain we have perused that if, before the commencement of this Act, a final decision has been rendered by an appropriate court that any property is not a vested property then later that property can no longer be called as vested property. In the present case the suit property was decreed by the competent court on 28.08.1995 and the decree is subsisting till today in Title Suit No. 610 of 1990 before the promulgation of Arpita Sompatti Prottarpon Ain-2001. So, the suit Property cannot be enlisted as Vested Property.

In view of the discussion made above we are of the view that the Arpita Sampatti Tribunal committed an error of law in the impugned

order resulting in an error in the decision occasioning failure of justice and as such the impugned Judgment and decree dated 25.02.2014 passed by the learned Arpita Sampatti Prattarpan Additional Tribunal No. 2, Bagerhat in Arpita Sampatti Prattarpan Tribunal Case No. 584 of 2012 (Annexure-G) is without lawful authority and is of no legal effect.

Thus, we find merit in this Rule.

In the result, the Rule is made absolute without any order as to cost. The respondents are directed to release the schedule property of the petitioner from the Ka schedule (in Serial No. 156 and 157) to Bangladesh Gazette published on 08.04.2012 under Fakirhat Upazilla, Bagerhat within 60(sixty) days from the date of the receipt of this judgment.

Communicate the order.

Md. Jahangir Hossain, J:

I agree