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

WRIT PETITION NO. 12675 OF 2022

In the matter of:

An Application under article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

A.T.M. Ashraful Islam Helal

… Petitioner

-Versus-

Government of the People's Republic of Bangladesh and others

… Respondents

Mr. Mohammad Ahasan, Advocate

…For the petitioner

Mr. Mr. Jyotirmoy Barua, Advocate

…For the respondent no.5

Mr. Mahbubur Rahman Kishore, Advocate

..For the respondent nos. 6 and 7

Heard on 15.07.2026, 16.07.2026
and Judgment on 16.07.2026

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, 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 respondent nos. 2 & 5 to show cause as to why a direction should not be given to dispose of the petitioner's application dated 17.10.2022 (Annexure-'F' to the writ petition) in connection with the loan liabilities of the petitioner and as to why the auction process according to auction notice dated 27.12.2021 (Annexure-'C' to the writ petition) published under section 12(3) of the Artha Rin Adalat Ain, 2003 shall not be declared to have been made without lawful authority on the ground of shockingly low price 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.

At the time of issuance of the rule, operation of the auction process dated 27.12.2021 was stayed for a period of 03 (three) months with a default order to be complied by the petitioner paying entire outstanding dues within a period of 90 days failing which the rule would be discharged with a cost of taka 2,000,00/-. On the date of issuance of the rule, a direction was make upon the respondent, bank to maintain status quo in respect of possession and position of the scheduled property descried in the auction notice when the respondent nos. 2 and 5 that is, Bangladesh Bank and the lending bank were also directed to dispose of the application filed by the petitioner dated 17.10.2022 and 19.102022 which has been annexed as of Annexure-'F' and Annexure-'F-1' respectively to the writ petition, within 60 days even fixing it on 28.02.2023 for submitting report of compliance. Record shows, on 14.06.2023 an application was filed by the petitioner apprising this court that in spite of offering the amount as directed to the creditor bank, it had not received the said amount. In such circumstances, this court then directed the respondent no.5 to accept the money from the petitioner forthwith and to submit report of compliance by 20.06.2023.

However, the said order of stay and status quo are found to have extended from time to time.

The salient facts leading to issuance of the instant rule are:

The present petitioner availed a loan from respondent no. 5 amounting to taka 30,000,00/- vide a sanction letter dated 19.07.2017 but due to outbreak of Covid-19 he could not repay the said loan in time for which outstanding dues against the petitioner stood at taka 42,80,745/-. The bank then published an auction notice on 27.12.2021 fixing holding of auction on 26.01.2022 and the said property was ultimately sold and respondent nos. 6 and 7 auctioned purchased the said property for an amount of taka 70,000,00/-. After the said auction was held and sale deed was registered in faovur of respondent nos. 6 and 7 on 29.06.2022, the petitioner then came up with this writ petition and obtained rule and other interim orders on 09.11.2022.

Mr. Mohammad Ahasan, learned counsel appearing for the petitioner upon taking us to the writ petition at the very outset submits that since the petitioner was not given an opportunity to pay the outstanding dues in spite of having a clear direction made at the time of issuance of the rule, so the petitioner has been compelled to file the instant writ petition when direction was made by this Hon'ble court upon the bank to receive the outstanding dues and the petitioner paid entire outstanding dues as claimed in the auction notice and therefore the property mortgaged with the bank be redeemed to him and the bid amount offered by respondent nos. 5-6 be returned to them.

The learned counsel further contends that, in spite of direction from this Hon'ble court to receive the claim amount the respondent nos. 4 and 5 are reluctant to receive the same and redeem the property in favour of the petitioner, as it is the fundamental rights of the petitioner to hold and enjoy his property as he has already paid all the outstanding dues in favour of the creditor, bank.

The learned counsel further contends that though after 10 months of completion of auction sale, the petitioner filed the instant writ petition challenging the propriety of the auction sale, yet this Hon'ble court may pass necessary order upon respondent, creditor, bank to redeem the property in his favour and pay back the bid amount to the auction purchasers. In support of his such submission, the learned counsel then referred decisions reported in 12 LM (AD) 683, 12 LM (AD) 242. The learned counsel by referring to a decision reported in 18 ADC 569 as well as 17 ADC 869 also contends that on similar situation, the Appellate Division in those two judgments held that even if property sold in auction, the borrower can retain such property by paying solutiam as determined by the court to the auction purchaser. Relying on those two decisions, the learned counsel then contends a proper direction may kindly be given by this Hon'ble court so that the petitioner can get back his property as he already paid back total outstanding dues to the creditor, bank. The learned counsel also contends that since the petitioner had no knowledge about the total auction process it thus construe, the creditor, bank in collusion with the auction purchasers sold out the mortgaged property in their favour and therefore a clear case of fraud has been there in the auction only to deprive the petitioner in getting back his property. On those scores the learned counsel finally prays for making the rule absolute.

By contrast, Mr. Jyotirmoy Barua, learned counsel appearing for the respondent no. 5 by filing an affidavit-in-opposition vehemently opposes the contention of the learned counsel for the petitioner and at the very outset submits that since it has already been settled by the Hon'ble Appellate Division and this court as well in a series of decisions that challenging the auction proceeding initiated under section 12(3) of the Artha Rin Adalat Ain, there has been no legal avenue to file a writ petition and therefore the rule issued and interim orders passed are liable to be discharged and vacated.

The learned counsel further contends that, though it has been alleged by the petitioner that he had no knowledge about the auction process but by taking us to Annexure-'X' series in particular, X-5 to the affidavit-in-opposition also contends that, though there has been no provision under section 12(3) of the Artha Rin Adalat Ain to issue prior notice upon the borrower before auction sale, yet with those letters and notice it rather falsifies alleged case of the petitioner.

In regard to the allegation that in spite of taking attempt to pay the outstanding dues to the respondent, bank it had not received the amount, the learned counsel then retorts that in Annexure-'K' to the application for extension of order of stay where it has clearly been asserted by the respondent no. 5 that, the said payment had been tendered in the account of respective manager of the bank, which is unusual because the manager was supposed to receive the amount against the loan account of the borrower herein petitioner and therefore the said allegation totally unreasonable and untrue.

With regard to the provision of solutium, the learned counsel contends that though there has been a provision to give solutium to the auction purchaser but moment any property is sold out through auction, there is no scope for the borrower to pray for solutium. However, in support of his submission, the learned counsel also placed his reliance in the decision reported in 63 DLR (AD) 160 and by reading paragraph no. 7 thereof, the learned counsel further submits that in case of any illegality or irregularity in an auction sale, the same cannot called in question-which is entirely aligned with the provision provided section 12(8) of the Artha Rin Adalat Ain, 2003.

The learned counsel finally contends from the writ petition it is found that soon after auction was held, the bank has also registered a sale deed in favour of the auction purchasers, respondent no. 6-7 and meantime they also mutated their name in the *khatian* so an indefeasible title has been accrued in faour of the auction purchasers having no scope to challenge the auction process now. With those submissions, the learned counsel finally prays for discharging the rule.

In line with the submission so placed by the learned counsel for the respondent no. 5 one Mr. Mahbubur Rahman Kishore, learned counsel appearing for the respondent nos. 6 and 7 also contends that since the sale deed has already been executed and registered in favouor these respondents and by the time mutation has also been made in their name so there has been no scope for the petitioner to challenge the propriety of the auction sale. The learned counsel by refuting to the submission placed by the learned counsel for the petitioner who contended that the petitioner has got the right to hold his mortgaged property-contends that in the same vein those respondents have also by selling their personal property, purchased the property through auction and therefore the right to property will equally operate in favour the respondent nos. 6 and 7.

The learned counsel by referring to the proviso of section 12(8) of the Artha \Rin Adalat Ain also contends that since there has been a clear provision providing equally efficacious remedy to the borrower against any illegality or irregularity committed in the process of auction sale, so there has been no scope to challenge the propriety of auction sale which has already been set at rest registering a sale deed in their favour. On those scores the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the petitioner and that of the learned counsel for the respondent no. 5 and respondent nos. 6 and 7. Together, we have gone through the writ petition, the impugned auction notice, Annexure-'C' as well as the affidavit-in-opposition filed by the respondent no. 5 and the application for discharging the rule filed by the respondent nos. 6 and 7. At the very outset we would like to take into account of the rule issuing order and subsequent orders. On going through the interim part of rule issuing order, we find there a default version where it has been very explicitly asserted that if the petitioner fails to pay total outstanding dues within 90 days, the rule would be discharged and stay vacated. It is admitted position, the petitioner has failed to pay the said amount within that stipulated time frame. Since there has been consequential effect in the rule issuing order, so moment the petitioner had failed to pay the amount there would have no efficacy of the rule let alone any interim order or direction passed at the time of issuance of rule. On going through the subsequent order dated 14.06.2023 the same rule issuing bench though had directed the bank to accept the money from the petitioner **at once,** but by that order, earlier order where a consequential effect has been outlined had not been set aside or modified. So, until and unless earlier order is set aside, the consequence set out at the time of issuance of rule will follow, in other words, on the expiry of 90 days, there was no existence of the rule and interim part thereof. In spite of that, from the record, we find that the rule exists and the order of stay and that of status quo have been extended. So it is our considered view that on the expiry of direction passed at the time of issuance of the rule, there has been no existence of the rule so as to order of stay and status quo.

Regardless, we have examined the grounds couched in the writ petition but not a single sentence of assertion made therein with regard to any illegality or irregularity committed in the entire process of the auction sale held on 26.01.2022. If that is the case, then how a writ petition can lie even keeping aside the mandatory provision provided in section 12(2(3) and (8) of the Artha Rin Adalat Ain, 2003. If we go through the provision of section 12 (8) of the Artha Rin Adalat Ain, we find therein that if any irregularity is found to have committed, the aggrieved borrower has been provided with alternative remedy which has been settled in 63 DLR (AD) 160. Though the learned counsel for the petitioner very robustly asserts that the said remedy set out to the proviso of section 12(8) of the Ain is not equally efficacious remedy, but we are not at one with the said submission as until and unless the said provision is in place in the statute the court can do nothing rather go by that very provision. Furthermore, this court vide another decision reported in 68 DLR 255 also took similar view on that very point where one of us a party to the said judgment (Md. Mozibur Rahman Miah, J as author Judge). It is the contention of the learned counsel for the petitioner that since the petitioner already paid the total outstanding dues to the creditor bank so the bank should take proper step redeeming the property in his favour. But it is totally beyond the provision provided in section 12(8) of the Artha Rin Adalat Ain, 2003 as by this time by operation of law, right title of the property has already been accrued to the auction purchasers, respondent nos. 6 and 7.

Though the learned counsel for the petitioner has asserted the scope of solutium in that case, but we take the submission of the learned counsel for the respondent no. 5 in the affirmative. Then again, the learned counsel for the petitioner has cited a series of decision, but we don't find those to be applicable in the facts and circumstances of the instant case and goes beyond the decision reported in 63 DLR (AD) 160.

Regard being had to the above facts and circumstances, we don't find any merit in the rule as discussed and observed hereinabove.

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

The order of stay and status quo granted at the time of issuance of the rule and subsequently extended from time to time stands recalled and vacated.

However, the respondent no. 5 is hereby directed to return the balance amount deposited by the respondent nos. 5-6 to the petitioner on deducting from the outstanding dues forthwith.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.

Kawsar/**A.B.O.**