

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

Writ Petition No. 14574 of 2022.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Nazrul Islam.

..... Petitioner

-Versus-

Bangladesh represented by the Secretary,
Ministry of Finance and others.

. . . Respondents.

Mr. Kazi Mohammad Joynal Abedin, Advocate

. . . For the petitioner.

Mr. Md. Sadat Alam, Advocate

. . . For the respondent No.3.

Mr. Mohammad Jahirul Islam, Advocate

. . For the respondent No.5.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 07.12.2023 and Judgment
on 10.12.2023.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondent No.2, Bangladesh Bank to show cause as to why a direction should not be given to exercise its jurisdiction as contemplated under sections 45 and 49(1)(Cha) of the Bank Companies Act, 1991 to dispose of the petitioner's application and 21.11.2022 (Annexure-F) in connection with the loan liabilities of the petitioner and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The petitioner availed credit facilities from the respondent-Bank and eventually classified due to default in making the repayment. In the circumstances, the Bank published auction notice on 27.08.2022 fixing the tender opening date on 20.10.2022. In the auction process, the respondent No.5 became highest offerer at Tk. 94,5000/- and bid was accepted. Thereafter, the petitioner filed this writ petition and obtained the present Rule Nisi.

After placing the writ petition and other materials on record Mr. Kazi Mohammad Joynal Abedin, learned Advocate for the petitioner submits that the auction was published in a local newspaper and not widely circulated. He further submits that at the time of issuance of the Rule Nisi, this Court directed the petitioner to repay the liability pursuant to which the petitioner in the meantime paid Tk. 89,22,531.74. He also submits that auction sold property is the only homestead of the petitioner.

On the other hand, Mr. Md. Sadat Alam, learned Advocate for the Bank although concedes that the petitioner made the payment of entire notice amount but before filing the writ petition the property was sold in auction in accordance with section 12(3) of the Artha Rin Adalat Ain, 2003 (the Act, 2003) and there was no illegality in the auction process and the balance auction money has been transferred to the petitioner's account.

Mr. Mohammad Jahirul Islam, learned Advocate for the respondent No.5 (auction purchaser) also contends that the auction purchaser paid entire bid money amounting to Tk. 94,5000/- and in the meantime the transfer deed has been registered wherein the property has been described as nal land.

We have gone through the writ petition, affidavit in opposition and other materials on record.

From the auction notice it is apparent that the Bank having the registered deed of the mortgage regarding the property and registered power of attorney put the mortgaged property in auction and thus in due process the property was sold to the highest offerer by registering the transfer deed. In the circumstances, there is no illegality in the auction process.

However, it is admitted fact that taking interim order from this Court the petitioner paid the entire dues referring to which learned Advocate for petitioner submits that the auction may be cancelled giving compensation to the auction purchaser in terms of the complete justice. But we find that there is no illegality in selling the property and as such we can not interfere with the auction process. Further, this Court does not have any legal sanction to do complete justice.

Regard being had to the above, we do not find any merit in this Rule.

In the result, the Rule is discharged without any order as to cost

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.