

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

WRIT PETITION NO. 8515 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:

Most. Nehar Begum

... Petitioner

-VS-

Arpito Sampotti Appellate Tribunal,
Barishal and Additional District Judge, 1st
Court, Barishal and others

... Respondents

Mr. Md. Jahid Hossain Dolon, Advocate

... For the Petitioner

Mr. Subrata Chowdhury, Senior Advocate

... For the respondent Nos. 5-6

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Md. Bashir Ullah

Heard and Judgment on: 19.07.2023

Md. Bashir Ullah, J.

On an application under Article 102 of the Constitution of the
People's Republic of Bangladesh, this Rule was issued calling upon
the respondents to show cause as to why the judgment and decree
dated 17.02.2022 passed by the Arpita Sampatti Protarpon Appellate
Tribunal, Barishal and Additional District Judge, 1st Court, Barishal in
Arpita Sampatti Protarpon Appeal No.16 of 2021 and the inaction and
failure of the respondent Nos. 3-5 in taking step upon disposal of the
application of the petitioner dated 13.05.2022 (Annexure F, F-1 and

F-2) should not be declared to have been done without lawful authority and is of no legal effect and/or pass such other of further order or orders as to this Court may seem fit and proper.

This Court, on 31.07.2022, issued a Rule and passed an interim order of stay.

The respondent Nos. 5 and 6 filed an application for discharging the Rule on the grounds stated therein.

The present respondent Nos. 5 to 6 as plaintiffs instituted Abomuktir Case No. 12 of 2012(Ujirpur) before the learned Arpito Sampatti Protarpon Tribunal and 1st Joint District Judge Court, Barishal for releasing the property in question recorded under J.L. 93, Mouza- Uttar Komolapur pertaining to S.A. Khatian no. 15, Plot No. 76 under Upazila-Ujirpur, District- Barishal, measuring 1.28 acres of land of 'Ka' schedule of the vested property gazette notification published on 07.05.2012 as vested property. Subsequently, the said case was transferred before the Court of Assistant Judge and Vested Property Restoration Tribunal, Ujirpur and renumbered as V.P. 33/15 (Ka) and thereafter Arpito Case No. 09 of 2015. The respondent No. 2, the Deputy Commissioner and the Custodian of Arpita Sampatti, Barishal contested the suit by filing written statement. After hearing the Tribunal by judgment and decree dated 31.01.2021 dismissed the suit. Being aggrieved, the plaintiffs preferred Arpita Sampatti Prottarpon Appeal No. 16 of 2021 before the Arpita Sampatti Prottarpon Appellate Tribunal, Barishal. After hearing the parties the Appellate Tribunal allowed the appeal on 17.02.2022. Being

aggrieved the petitioner filed the instant writ petition and obtained Rule and order of stay.

Mr. Md. Jahid Hossain Dolon, learned Advocate appearing on behalf the petitioner submits that the petitioner obtained lease of .27 decimals of land out of said .64 decimals land by order dated 03.06.2010 in VP Case No. 41 of 1978 and one Bharati Rani Acharya wife of late Arun Kumar Acharya obtained lease of rest .37 decimals of land. The petitioner paid lease money to the Government through Duplicate Carbon Receipt (DCR) regularly.

The learned advocate further submits that the petitioner is in possession of the disputed land since long. Hence, the petitioner has obtained a vested interest in the suit land.

Mr. Subrata Chowdhury, learned Senior Advocate appearing on behalf of the respondents 5-6 submits that the petitioner is a lessee of the property and he has no locus standi to file the instant writ petition. He next submits that the petitioner has no right, title and possession over the land in question and the writ petition is not maintainable. In support of his contention he referred to the decisions passed in *Aroti Rani Paul vs Sk Paul*, reported in 56 DLR (AD)(204) 73 and *Fahmida Begum & others vs. Government of Bangladesh and others*, reported in 25BLT (HCD) 292.

Heard the submissions of the learned Advocate for both sides and perused the records and referred decisions.

It appears from the records that admittedly the writ petitioner was lessee of the property in question. He took lease of the property

from the government and paid lease rent through Duplicate Carbon Receipt (D.C.R) Nos. 204496, 0491020, 024936, 0294884, 0185690, 0189115 and 0189991. As lessee of the property, he has no *locus standi* to file the instant writ petition. In this regard it was decided in ***Aroti Rani Paul vs. Sudarshan Kumar Paul and others***, 56 DLR (AD) 73:

“...it is the defendant Nos. 6-8, being lessees of the Vested Property for one year, cannot have any *locus standi* to challenge the decree or prefer an appeal against such decree. It is for the Vested Property Authority to challenge the decree. We therefore, hold that the defendant Nos.6-8 being year to year lease holders had no *locus standi* to prefer any appeal before the appellate Court as well as in the High Court Division and, as such, the learned Single Judge of the High Court Division having failed to consider this aspect of the case, committed an error of law which resulted in an error in the decision causing failure of justice.”

In view of the above ratio of our apex Court, in ***Fahmida Begum and others vs. Government of Bangladesh and others***, 25 BLT 292, it is decided by this Division that since the petitioners claim themselves as year to year lessees of the property in question, the writ petition is not maintainable on the ground of *locus standi*.

Considering the facts and circumstances of the case in hand as well as decisions mentioned above, we have no hesitation to hold that the instant writ petition is not maintainable. Hence, the application for discharging the Rule is allowed.

In view of the settled principle of law, we find no illegality in the judgment dated 17.02.2022 passed by the Arpita Sampatti Protarpon Appellate Tribunal, Barishal and Additional District Judge, 1st Court, Barishal. We are not inclined to direct the Government to dispose of Annexure-F, F1 and F2 dated 13.05.2022.

In the result, the Rule is discharged.

The interim orders of stay and status quo stand vacated.

Zafar Ahmed, J.

I agree.