

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No.11926 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:

Md. Shamsul Haque

.....Petitioner

-Versus-

The Government of Bangladesh and others

.....Respondents

Ms. Sanjida Khanam with

Mr. Md. Ehsan Habib Advocates

...for the petitioner

Mr. A.S.M. Abdur Razzaque, Advocate

...for the respondent No.3 & 4

Mr. Shah Monjurul Hoque with

Mr. Md. Golam Rabbani and

Mr. Syfuzzaman, Advocates

...For the respondent No.5

Heard on: 06.06.2023

Judgment on: 30th of August, 2023

Present

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A.K.M. Rabiul Hassan

Abu Taher Md. Saifur Rahman, J:

This Rule was issued on an application filed by the petitioner under Article 102 of the Constitution 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 dated 28.09.2022 (**Annexure-‘H’**) in connection with the loan liabilities of the petitioner.

At the time of issuance of the Rule, this Court was pleased to stay all further operations of the auction process according to the auction notice dated 17.05.2022 (**Annexure- ‘C’**) for **3 (three)** months from the date subject to pay the entire outstanding loan amount within the period of **90 (ninety)** days failing which the Rule shall be discharged with the cost of **Tk. 5,00,000/-** (Taka Five Lac) and also gave a further direction upon the respondent Nos. 2 and 4 to dispose of the petitioner's application dated 28.08.2022 and 13.09.2022 as contained in **Annexure- ‘H’ and ‘D’** to the writ petition within 60 (sixty) days from receipt a copy of this order in accordance with law.

This Court was also pleased to give a direction upon the parties to maintain the status quo in respect of the position and possession of the scheduled property as mentioned in the auction notice and fixed the date on 28.02.2023 for submitting the report of compliance.

For disposal of the Rule, the relevant facts may briefly be stated as follows:

In this writ petition, the petitioner has obtained the loan facilities from respondent No. 4, Uttara Bank Limited amounting to **Tk. 1,80,00,000/-** (Taka One Crore and Eighty Lac) which was lastly rescheduled vide its sanctioned letter dated 13.12.2019. It is further

stated that due to the COVID-19 situation, the petitioner's business has been severely affected and accordingly failed to pay the regular installments in time. Under the aforesaid circumstances, the respondent bank all of a sudden and beyond the knowledge of the petitioner published the auction notice dated 17.05.2022 for the realization of the unpaid dues amounting to Tk. 2,26,72,077.65/- (Taka Two crore, Twenty-six lac, Seventy-two thousand, Seventy-seven and Sixty-five paisa). As per said auction notice, the auction was held on 13.06.2022 beyond the knowledge of the petitioner and subsequently executed two registered deeds being Nos. 7456 dated 18.09.2022 and 7456 dated 18.09.2022 in favour of the auction purchaser respondent No. 5. It is further stated that subsequently, the petitioner came to know from the local people regarding the aforesaid auction sale. Thereafter, the petitioner went to the office of the respondent bank and wanted to know about the auction sale. Thereafter, the respondent bank vides its office letter dated 20.09.2022 informed the petitioner regarding the aforesaid auction sale and requested to hand over the mortgaged property in favour of the auction purchaser. Thereafter, the petitioner filed an application dated 28.09.2022 to the respondent bank and stated that the petitioner did not know anything about the auction sale and now willing to pay the entire unpaid dues to the respondent bank which is not disposed of as yet. The petitioner further contended that the mortgaged property is a commercial cum residential area, which were sold out only at the consideration amounting to Tk.1,19,30,000/- (Taka One crore Nineteen

lac and Thirty thousand) which is a very shockingly low price. Being aggrieved the petitioner has preferred this application before this Court, challenging the aforesaid auction process as being shockingly low price and obtained the instant Rule, stay, and direction.

Md. Ehasan Habib, the learned Advocate for the petitioner at the very outset submits that as per the Court's order dated 25.10.2022, the petitioner has already deposited the entire outstanding loan amount in favour of the respondent bank. He further contended that the mortgaged property is a very valuable commercial-cum-residential property wherein one filling station has been established. At present, the market value of the said property is more than Taka.10 Crore, which was sold out in connivance with the auction purchaser only at the consideration amount of Tk. 1,19,13,000/- which is very shockingly low price. He further contended that though the auction was held but it was not handed over to the auction purchaser as yet. The petitioner is still in possession of the said mortgaged property.

Mr. ASM Abdur Razzaque, the learned Advocate for respondent No. 4, Uttara Bank Limited submits that as per the Court's order dated 25.10.2022, the respondent bank has received the unpaid dues as mentioned in the auction notice from the petitioner. However, the respondent bank has already sold out the mortgaged property to the auction purchaser respondent No. 5 and executed the two registered deeds in favour of the auction purchaser respondent No. 5 but did not

hand over the possession of the said property to the auction purchaser as yet.

Heard the submissions of the learned Advocate for both sides and perused the instant writ petition along with materials on record thoroughly.

In the instant writ petition, the petitioner mainly challenging the auction process initiated by the respondent bank according to the auction notice dated 17.05.2022 under section 12(3) of the Artha Rin Adalat Ain, 2003 as being very shockingly low price.

On perusal of the auction notice dated 17.05.2022 (Annexure – C), it transpires that the respondent bank sold out the petitioner's mortgaged property as mentioned in the auction schedule which reads as follows:

Schedule

- i) Registered mortgage of 47.00 (13.00 + 14.00 + 20.00) decimal land with Filling Station and Market (7505 sft building) under Mouza Nilphamari (within Polashbari Union) JL No.SA-24, BS – 39, Khatian No.CS-191, 150, 11, SA-199, 153, 11, DP-1545, 1624, Mutation – 533, 521, Plot No.SA-3841, 3842, 3844 owned by Md. Shamsul Haque (Propiretor).
- ii) Registered mortgage of 65.00 decimal Agricultural cum Residential land under Mouza Nilphamari Bazar (within Nilphamari Pouroshova) JL No. SA-37, BS – 45, Khatian

No.CS-646, SA-782, DP-82, Mutation – 3392, Plot No.SA-1623 owned by Md. Shamsul Haque (Propiretor).

iii) Registered mortgage of 34.00 (15.00 + 19) decimal Agricultural cum Residential land under Mouza Haroa (within Nilphamari Pouroshova) JL No. SA-37, Khatian No.CS-162/1, 1443, SA-156, 1362, DP-711, 512, Mutation – 3049, Plot No.SA-1856, 1875 owned by Md. Shamsul Haque (Propiretor).

iv) Registered mortgage of 107.00 (15.00 + 92.00) decimal Agricultural cum Residential land under Mouza Haroa (within Nilphamari Pouroshova) JL No.SA-35, Khatian No.CS-323, SA-804, 806, Mutation – 1300, Plot No.SA-336, 338 owned by Most. Josna Khatun (wife of Shamsul Haque (Propiretor).

On perusal of the aforesaid schedule of the mortgaged property, it transpires that the respondent bank sold the petitioner's mortgaged property measuring an area of 253 decimals of land along with 7505 square feet of commercial building and a filling station thereon only at the consideration of Tk.1,19,30,000/- (Taka One Crore Nineteen Lac Thirty Thousand), which is unbelievable. Under the given circumstances, we have no hesitation to say that the petitioner's aforesaid mortgaged property has been sold out at the very shockingly low price. As per the contention of the learned Advocate for the

petitioner, the present market value of the said property is more than Taka.10 Crore. We have to keep in mind that the shockingly low price is deemed to be a fraud and malafide.

Recently we have been noticing in good number of cases that whenever, the borrower failed to pay the total outstanding dues, the lender bank sold the mortgaged property at a low price and then they resorted to other proceedings with a view to recovering the balance outstanding amount to cover up their misdeeds. We have been noticing that the officials of the respondent bank in connivance with the auction purchasers, sell the mortgaged property at the low price that results in multifariousness of proceedings. These illegal practices should be checked otherwise the banks will be burdened with heavy outstanding loan liabilities for the laches and corrupt practices by its officials.

During the hearing on being asked, the learned Advocate for respondent Nos. 4 and 5 find difficulties to overcoming the issue of shockingly low prices regarding the aforesaid mortgaged properties are concerned.

At this stage, we proposed to the auction purchaser through his learned counsel as to whether the auction purchaser is ready to accept the entire auction amount along with 10% solacium before we proceed to set aside the sale. Both the learned counsel later on accepted our proposal.

Moreover, the learned Advocate Mr. ASM Abdur Razzaque for the respondent bank submits that they have no objection if the respondent bank gets the entire unpaid dues from the petitioner.

The main purpose of the Artha Rin Adalat Ain, 2003 is to realize the money. Since the petitioner has already deposited the entire unpaid dues to the respondent bank as directed by this court and the property has been sold out at a very shockingly low price, we are of the view that justice would be done, if the aforesaid auction process according to the auction notice dated 17.05.2022 under section 12 (3) of the Artha Rin Adalat Ain, 2003 is set aside. Our this view gets support from the decisions in the case of Jahangir Kabir Chowdhury vs Bangladesh Government and Others reported in 22 BLC (AD) 139 and in the case of Denim Attires Ltd. and Ors. vs Iffat Obaid and Ors. reported in 26 BLC (AD) 340.

Accordingly, under the given facts and circumstances of this case, the following orders and directions are given:

- (1) The bank shall accept the entire unpaid dues as deposited by the writ petitioner against the amount claimed by the respondent bank (the claim as mentioned in the auction notice dated 17.05.2022 as contained in **Annexure-‘C’** to the writ petition).
- (2) The bank shall return the auction money to the auction purchaser respondent No. 5.

(3) The petitioner is directed to pay 10% solatium over the auction money along with the cost of two registration deeds being Nos. 7456 dated 18.09.2022 and 7457 dated 18.09.2022 in favour of the auction purchaser respondent No. 5 within the period of **60 (sixty)** days from the date of receipt a copy of this order.

(4) The sale deed Nos. 7456 dated 18.09.2022 and 7457 dated 18.09.2022 executed by the bank in favour of the auction purchaser respondent No. 5 is hereby declared to be void. The concerned sub-registrar is also directed to make the note that by virtue of the Court order passed by this Court, the aforesaid deeds have been canceled to the concerned office volume.

(5) The bank shall make redemption of the mortgaged properties in favour of the writ petitioner.

(6) The bank shall return all the original title deeds and related documents of the mortgaged properties to the writ petitioner which he has submitted to the bank.

With the aforesaid observation and direction, the Rule is disposed of.

Communicate the judgment and order at once.

A.K.M. Rabiul Hassan, J,

I agree.