

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

Writ Petition No. 12761 of 2023.

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Gour Prashad Roy

.....Petitioner

-Versus-

Judge, Arpita Sampatti Prottorpon Appeal Tribunal,
Habigonj and others.

.....Respondents

Mr. Md. Kamrul Alam (Kamal), Advocate with
Mr. Ranabir Kr. Paul Chowdhury, Advocate with
Ms. Shahana Sayed, Advocate

.....For the petitioner

Mr. Dider Alam Kollol, Advocate with
Mr. Sharmin Rubayat Islam, Advocate

.....For the Res. Nos. 2, 3(a)-3(c), 4, 5 & 6.

Mr. Akhtar Hossain Md. Abdul Wahab, DAG with
Mr. Sultan Mahmood Banna, DAG with
Ms. Khandaker Asma Hamid, AAG with
Mr. S.M. Emamul Musfiqur, AAG with
Mr. Md. Mashiur Rahman (Riad), AAG with
Mr. Md. Meheub Hossain, AAG

..... For the respondents

Present

Justice Fatema Najib

And

Justice A.F.M. Saiful Karim

Heard on 18.02.2026.

Judgment on 24.02.2026.

A.F.M. Saiful Karim , J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh Rule was issued on 16.10.2023 in following terms:-

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the judgment and decree dated 13.03.2023 decree signed on 14.03.2023 passed by the "অর্পিত

সম্পত্তি প্রত্যর্পন অতিরিক্ত আপীল ট্রাইব্যুনাল-১ হবিগঞ্জ" in অর্পিত সম্পত্তি প্রত্যর্পণ আপীল No. 09 of 2014 allowing(Sic) the appeal and affirming the judgment and decree dated 28.05.2014 decree signed on 02.06.2014 passed by the "অর্পিত সম্পত্তি প্রত্যর্পণ ট্রাইব্যুনাল-১, হবিগঞ্জ" in অর্পিত সম্পত্তি প্রত্যর্পণ Case No. 23 of 2012 decreeing the case should not be declared to have been passed without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper."

Facts necessary for disposal are that অর্পিত সম্পত্তি প্রত্যর্পণ Case No. 23 of 2012 was filed before the "অর্পিত সম্পত্তি প্রত্যর্পণ ট্রাইব্যুনাল-১, হবিগঞ্জ" by the present respondent No. 2 to 6 as plaintiffs against the Deputy Commissioner, Habiganj as defendant No. 1. Advocate Mohammad Ali Pathan, the then Commander of "বাংলাদেশ মুক্তিযোদ্ধা সংসদ" Habiganj District Unit Command, Habiganj was added as defendant No. 2 by the Tribunal vide order dated 20.01.2013 and during continuation of the case the defendant No. 2, Mohammad Ali Pathan, died on 23.11.2019 and in absence of the Commander the present petitioner as Ex-Deputy Commander is representing the "বাংলাদেশ মুক্তিযোদ্ধা সংসদ" Habiganj District Unit Command, Habiganj and he has filed the present petition

being duly authorized by the সংসদ through resolution of the above mentioned "মুক্তিযোদ্ধা সংসদ".

The respondent Nos. 2 to 6 as plaintiffs instituted অর্পিত সম্পত্তি মামলা নং-২৩/২০১২ against the Custodian of Vested Properties i.e the Deputy Commissioner, Habiganj and the predecessor of the petitioner, Mohammad Ali Pathan, before the "অর্পিত সম্পত্তি প্রত্যাপন ট্রাইব্যুনাল-১, হবিগঞ্জ" and after hearing the learned Tribunal decreed the case against the defendants and directed to release and return the case property in favour of the plaintiffs by judgment and decree dated 28.05.2014. Against the said judgment and decree the Deputy Commissioner, Habiganj and Mohammad Ali Pathan jointly as Appellants instituted অর্পিত সম্পত্তি প্রত্যাপন আপীল No. 09 of 2014 before the অর্পিত সম্পত্তি প্রত্যাপন আপীল ট্রাইব্যুনাল, হবিগঞ্জ" and on hearing the aforesaid appeal was disallowed affirming the judgment and decree dated 28.05.2014 passed in অর্পিত সম্পত্তি মামলা নং-২৩/২০১২.

The case of the respondent Nos. 2 to 6 *inter alia*, is that, before preparation of S.A record some of the co-sharers of the land executed a "স্মারণলিপি" on 04.12.1955 covering the case land along with land of Munshiganj District; that C.S record was not made in greater Sylhet District due to which no plot number of land was mentioned and only boundary of land was mentioned in "স্মারণলিপি"; that subsequently during S.A record operation the case property was recorded in the name of the predecessor of the plaintiffs namely Saroj Kumar Datta; that Saroj Kumar Datta filed Title Suit No. 258 of 1973 before the 3rd Munsef Court,

Habiganj praying for declaration of title and the suit was decreed on 08.12.1976 (decree signed on 15.12.1976); that Ranjit Kumar Rishi and others filed Title Suit No. 63 of 1985 before the 3rd Munsef Court, Habiganj impleading Saraj Kumar Datta and others as defendants challenging the decree passed in Title Suit No.258 of 1973 subsequently, name of 'Munsif' was converted to 'Assistant Judge'. However suit was decreed vide judgment and decree dated 07.05.1991 cancelling decree passed in Title Suit No.258 of 1973 and thus earlier decree dated 08.12.1976 passed in Title Suit No.258 of 1973 was declared null and void. Saroj Kumar Datta challenging the said decree dated 07.05.1991 passed in Title Suit No.63 of 1985 filed Title Appeal No. 134 of 1991 before the learned District Judge, Habiganj which was transferred to the learned Additional District Judge, Habiganj and during pendency of the Appeal Saroj Kumar Datta died and his heirs were substituted in place of the Appellant on 22.02.2003 and subsequently the Title Appeal No. 134 of 1991 was allowed vide judgment and decree dated 04.08.2004 (decree signed on 11.08.2004). As a result the judgment and decree dated 07.05.1991 passed in Title Suit No. 63 of 1985 was set aside and judgment and decree passed in Title Suit No. 258 of 1973 is affirmed and thus the title of heirs of Saroj Kumar was established; that during pendency of Title Suit No. 63 of 1985 Deputy Commissioner claimed that case land is Vested Property and it was included in "Ka" list of the Vested Property and that Deputy Commissioner granted lease of the said Vested Property vide V.P Case No. 275/75-76. Though in Title Suit No.

258 of 1973 filed by Saroj Kumar Datta, the Deputy Commissioner, Sylhet was made defendant No. 12 but the Deputy Commissioner did not claim the property in question was vested property. The land was subsequently included in the Vested Property list at the instances of vested quarter with *mala fide* intension. Hence the plaintiffs filed the present suit praying for releasing the suit land from V.P List.

The Deputy Commissioner, Habiganj contested the case Title Suit No.63 of 1985 by filing a written statement denying the case of the plaintiffs alleging inter alia that the suit land covered in S.A Khatian No. 2765, S.A Plot No. 3132 under Mouza Sultan Mahmudpur was owned by Jago Bandhu Datta, Dino Bandhu Datta, Saroj Kumar Datta, Sunil Datta, Subimol Datta, Muhit Datta and Shambhu Datta all sons of Sadananda Datta and S.A record was correctly made in their names; that during the war of 1965 the S.A recorded tenants left this Country and went to India and as a result the property was come under control and possession of the Government and subsequently the property was included in the "Ka" list and it was leased out vide V.P Case No. 45/1986 and the plaintiffs have got no title and possession over the suit land and hence the suit is liable to be rejected.

The defendant No. 2 Mohammad Ali Pathan on behalf of "বাংলাদেশ মুক্তিযোদ্ধা সংসদ" Habiganj District Unit Command, Habiganj also contested the said suit by filing a separate written statements. The statement of the defendant No.2 is similar to Deputy Commissioner. After inclusion of the case land in 'Ka' list the defendant no.2 got lease of the case land. After

hearing the parties, the learned Tribunal decreed the suit and directed to release the suit land from V.P List vide judgment and decree dated 28.05.2014.

It is pertinent to note that Title Suit No.63 of 1985 was re numbered as Title Suit No.23 of 2012 after transferring the same to Joint District Judge, First Court (অর্পিত সম্পত্তি প্রত্যর্পন, ১ম ট্রাইবুনাল), হবিগঞ্জ।

Against the said judgment and decree dated 28.05.2014 passed in অর্পিত সম্পত্তি প্রত্যর্পন case No.23 of 2012 the defendants i.e Deputy Commissioner, Habiganj and "বাংলাদেশ মুক্তিযোদ্ধা সংসদ" Habiganj District Unit Command, Habiganj jointly filed অর্পিত সম্পত্তি প্রত্যর্পন আপীল No. 09 of 2014 before the "অর্পিত সম্পত্তি প্রত্যর্পন অতিরিক্ত আপীল ট্রাইবুনাল, হবিগঞ্জ" who after hearing the parties and perusing the records disallowed the Appeal affirming the judgment and decree passed by the "অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইবুনাল-১, হবিগঞ্জ" dated 28.05.2014.

The Government prepared "list of "অর্পিত সম্পত্তি" and such land of Habiganj District was published in Notification on 08.02.2012 and subsequently another list of "অর্পিত সম্পত্তি" was published in Gazette Notification on 30.04.2012 wherein the suit land was included in Serial No. 96 which shows that the suit land is included in "Ka" list of "অর্পিত সম্পত্তি".

Being aggrieved by the judgment and order passed by the Arpito Samppati Prottorpon Appellate Tribunal finding no other alternative efficacious remedy the petitioner filed the instant writ petition.

The Respondent Nos. 2, 3(a)-3(c), 4-6 contested the Rule by filing affidavit-in-opposition. Respondent's case, as it is stated in the affidavit-in-opposition, is that the predecessor of the plaintiffs Saroj Kumar Datta was the S.A. recorded owner of the suit land in whose name Plot No. 3132 under S.A Khatian No. 2765 was prepared (Exhibit-5) but some other names were inserted in the said Khatian along with Saroj Kumar Datta due to which he filed Title Suit No. 258 of 1973 which was decreed on 15.12.1976 (Exhibit-1kha) but as challenging the said decree Title Suit No. 63 of 1985 was filed by one Ranjit Kumar Rishi and others and the said suit was decreed by setting aside the decree passed in Title Suit No.258 of 1973. Saroj Kumar Datta preferred Title Appeal No. 134 of 1991 which was eventually allowed by setting aside the judgment and decree passed in Title Suit No. 63 of 1985 and thereby the judgment and decree passed in Title Suit No. 258 of 1973 prevailed. The Government was made party in those cases.

The Government did not take any legal action against the judgment passed in অর্পিত আপীল ট্রাইবুনাল নং-৯/২০১৪.

With these averments the respondent prays for discharging the Rule Nisi.

At the very outset, Mr. Kamrul Alam (Kamal), the learned Advocate appearing for the petitioner submits that the learned "অর্পিত সম্পত্তি প্রত্যাপন আপীল ট্রাইবুনাল, হবিগঞ্জ" has acted illegality in dismissing the appeal and affirming the judgment and decree passed by the learned "অর্পিত সম্পত্তি প্রত্যাপন অতিরিক্ত ট্রাইবুনাল-১, হবিগঞ্জ" in অর্পিত সম্পত্তি মোকদমা

নং-২৩/২০১২ in view of the fact that it is evident from the record that the plaintiffs tried to establish their case as Bangladeshi Citizen and in this regard they submitted Citizenship Certificate where they have got no present address and they also made some false statements in respect of description and title source of land but in fact they left this Country during the war 1965 and the case land correctly included in the V.P list and this vital points have not been considered by the learned Appellate Tribunal and as such the impugned Judgment and decree is liable to be declared to have been passed without any lawful authority and is of no legal effect for the ends of justice.

He strenuously submits that the learned "অর্পিত সম্পত্তি প্রত্যর্পন আপীল ট্রাইব্যুনাল, হবিগঞ্জ" has acted illegally in disallowing the appeal and affirming the judgment and decree passed by the learned "অর্পিত সম্পত্তি প্রত্যর্পন ট্রাইব্যুনাল, হবিগঞ্জ" in not applying its judicial mind and arrived in decision being misconceived on facts and law and the case land was earlier given lease to one Monjur Ali Mir and he continued possession and thereafter the Government terminated the said lease and established the "মহকুমা নির্বাচন অফিস, হবিগঞ্জ" and after some years it was granted settlement to "জেলা মুক্তিযোদ্ধা কমান্ড ও ইউনিট, হবিগঞ্জ" and at present the said office has been continuing possession as lessee by renewing the lease time to time but this vital point of fact has not been considered and hence the petitioner has been prejudiced and as such the impugned Judgment and decree is liable to be declared to have been passed without any lawful authority and is of no legal effect for the ends of justice.

Mr. Dider Alam Kollol, learned Advocate appearing for the Respondent Nos. 2, 3(a)-3(c), 4-6 submits that the writ petitioner have/had no *locustandi* to file this writ petition as admittedly the Writ Petitioner is lessee under the government and thus the instant writ petition is not maintainable and as such the rule is liable to be discharged.

He also submits that it is settled principle of law that there was no legal scope to enlist any property as vested property after 23.04.1974 and therefore, the Rule Nisi is liable to be discharged.

He lastly submits that both the court below upon due appreciation of fact passed the judgment against the government which remains in force.

Heard the learned counsel of both sides. Perused the application of writ, documents annexures annexed thereto.

Admittedly, the land in question was included in the "Ka" list as vested property. The alleged owners claiming the land in question by way of inheritance filed Arpito Sampatti Prottarpon Suit No. 63 of 1985 which was re-numbered as Arpito Sampatti Prottarpon Suit No. 23 of 2012 against the Government represented by the Deputy Commissioner, Hobigonj and the custodian of Arpito Sampatti and the said suit was decreed by judgment and decree dated 28.05.2014. The Deputy Commissioner along with the present writ petitioner jointly filed Arpito Sampatti Prottarpon Appeal No. 09 of 2014 which was disallowed vide judgment and decree dated 13.03.2023 by the Appellate Tribunal. The Government did not take any legal step against the said Judgment.

Admittedly, the Writ petitioner took lease from the Government vide VP case No45 of 1986 and have been possessing the same.

It is pertinent to mention here that it is well settled principle of law enunciated by our apex Court on numerous occasions is that all actions, decisions regarding listing any property as vested property after 23.03.1974 as illegal which has been re-endorsed by the Hon'ble Appellate Division vide judgment and order dated 02.06.2022 passed in Civil Petition for Leave to Appeal No. 23 of 2018.

It is our view that since the Government contested the case before the tribunals below and as a lessee of the Government the petitioners has no separate right or claim and the lessee stands on the foot of the Government and that neither the Government nor the Vested Property Authority challenged the decree passed by Arpito Samppati Prottarpon Appellate Tribunal and the petitioner being lessee of the vested property have no *locus standi* to challenge the decree.

We are also of the view that as the property in question of the instant writ petition has been included in the list of vested property vide V.P. Case No. 45 of 1986 i.e after 23.04.1974 and thus the said inclusion in the 'Ka' list is unlawful.

In view of the above discussion we find that the petitioner has no *locus standi* to file this writ petition and in the impugned judgment there is no illegality as well and therefore there is nothing in the impugned judgment to interfere.

As such, we find no merit in this Rule.

In the result, the Rule is discharged without any order of cost.

The order of stay granted earlier by this Court is hereby vacated.

Let a copy of this judgment be immediately transmitted to the respondents for information and necessary action.

A.F.M. Saiful Karim, J:

Fatema Najib, J:

I agree.

Fatema Najib, J: