

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

WRIT PETITION NO. 2706 OF 2024

In the matter of:

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

And

In the matter of:

Sarder Shahidullah

... Petitioner

-Versus-

Special District Judge and Bicharak (District and
Sessions Judge), Jononirapotta Bighnakari
Oporadh Domon Tribunal, Khulna and others

... Respondents

Mr. Md. Kamruzzaman, Advocate with
Mr. S.M. Shamim Hossain, Advocate

...For the petitioner

Mr. Niaz Murshed, Advocate with
Mr. Ayesha Morshed, Advocate with
Mr. Rashidul Alam Sagar, Advocate and
Mr. S.M. Abdur Rouf, Advocate

...For the respondent nos.2-4

**Heard on 18.11.2025,
and Judgment on 20.11.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Hamidur Rahman

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 respondents to show cause as to why the judgment and decree dated 09.09.2020 (decree signed on 17.09.2020) passed by the learned Special District Judge and Bicharak (District and Sessions judge) *Jononirapotta Bighnokari OPoradh Domon* Tribunal, Khulna in *Arpita Somprti Prattarpan* Appeal No. 76 of 2018 disallowing the appeal and thereby affirming the judgment and decree dated 22.05.2018 (decree signed on 29.05.2018) passed by the learned Judge (Joint District Judge), *Additional Aripa Sompotti Prortorpon* Tribunal, 2nd Court, Khulna in *Aripa Sompotti Prattarpan* Case No. 3881 of 2012(Annexure-‘B’ and ‘B-1’ and ‘D’ and ‘D-1’ to the writ petition respectively) should not be declared to be without lawful authority and 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, the parties were directed to maintain status quo in respect of possession and position of the suit land for a period of 01(one) year. Record shows, no further extension of that interim order was taken.

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

The present respondent nos. 2-4 as petitioners originally filed a case being *Arpitta Sampotti Protarpon* Case No. 3881 of 2012 for releasing the suit land measuring an area of 1.36 acres of land from ‘Ka’ list enlisted under the provision of section 9 of the *Aripa Shompatti Protarpan* Ain, 2001. The said case was contested by the present respondent no. 6 as defendant no. 1 and after conclusion of trial, the learned judge vide

judgment and decree dated 22.05.2018 decreed the suit on contest against that sole respondent. Challenging the said judgment and decree, the respondent no. 6 as appellant then preferred an appeal being *Aripta Sompotti Protrapan* Appeal No. 76 of 2018 before the learned District judge which was on transfer heard by the learned judge, *Jononirapotta Bighnakari Oporadh Domon* Tribunal, Khulna and the learned judge after hearing the parties to the appeal, vide judgment and decree dated 09.09.2020 dismissed the appeal and thereby affirmed the judgment and decree so passed by the trial court. Challenging the said concurrent judgment and decree passed by the courts below, the present petitioner who is not any party to the suit or appeal, filed the instant writ petition stating *inter alia* that, the petitioner was not made any party to the case in spite of the fact that he got lease of the case land from the government for the Bengali year 1396 on 28.05.1989 and till now by paying revenue to the government has been in possession in the said land however due to filing of *Aripta Sompotti Protrapan* case, the government has not extended the period of lease even though he has not been evicted from the case land despite of the fact that the government has not renewed his lease period. It has further been stated that the petitioner has got vested right in the case land though fact remains, he has not made any party but he is necessary party to the case. However, finding no other alternative, the petitioner has thus compelled to file the instant writ petition challenging the judgment and decree passed by the courts below.

Mr. Md. Kamruzzaman along with Mr. S.M. Shamim Hossain, the learned counsels appearing for the petitioner upon taking us to the writ petition in particular, Annexure-‘E’ thereof, at the very outset submits that,

this petitioner was given lease of the suit property vide lease case no. 5/88-89 as year to year lessee by fixing annual fee at taka 300/- in the year 1396 BS.

The learned counsel by referring to Annexure-‘E’ series further contends that, following the settlement, the government also issued DCR in favour of the petitioner for the Bengali year 1421 BS and 1397 BS to 1420 BS. To supplement the said submission, the learned counsel then contends that, since taking settlement on 28.05.1989, the petitioner has still been possessing the suit land and has been in possession for near about 36 years uninterruptedly and therefore the petitioner acquired title in the suit property under the provision of section 116 of the Transfer of Property Act as of holding over. To fortify the said submission, the learned counsel by referring to the definition clause of *Aripta Sompotti Protrapan* Ain , 2001 in particular, to 2 (৬), (৯) also contends that since the petitioner by the time, has been in possession for continuous 12 years, so the lease given to him has become permanent lease but without impleading the petitioner as party in both the suit and appeal, the learned judge of the courts below has failed to consider the case of the petitioner and decreed the suit which cannot be sustained in law. When we pose a question to the learned counsel whether the petitioner had taken any attempt to make himself as party in the suit or in the appeal, the learned counsel retorts that no step has been taken by the petitioner to impleade himself as a party to the suit and for that obvious reason, he has compelled to file the instant writ petition.

The learned counsel also contends that, though the respondent nos 2-4 by filing an affidavit-in-opposition asserted that a lessee cannot be made any

party as he lacks any *locustandi* to challenge the impugned judgment but in response to that the learned counsel contends that the said contention cannot be sustained, because those respondents also claimed to acquire the case land by lease, admitting the same as vested property yet that very fact has not been taken into consideration by the learned judge of the courts below when this Hon'ble court, may examine the record to find the said loopholes and set aside the judgment and decree so passed by the courts below. With those submissions, the learned counsel finally prays for making the rule absolute on setting aside the concurrent judgment and decree passed by the courts below.

On the contrary, Mr. Niaz Murshed, the learned counsel appearing for the respondent nos. 2-4 by filing an affidavit-in-opposition very robustly opposes the contention taken by the learned counsel for the petitioner and put his entire emphasis on the point of maintainability of the instant writ petition and contends that, since the petitioner himself claimed to be a lessee from the government, so he has no *locustandi* to file the instant writ petition.

The learned counsel next contends that, suppression of fact has also been made by the petitioner in filing the instant writ petition and on that very point as well, the writ itself cannot be entertained. To fortify the said contention, the learned counsel by taking us to Annexure-3 to the affidavit-in-opposition submits that, during proceeding of the *Aripta Sompotti Protrapan* case, the petitioner filed an application for adding him as party and the learned judge of the trial court vide order dated 01.07.2013 rejected the same holding that as a lessee, the petitioner has got no scope to be impleaded as party in the suit. Further, the learned counsel contends that,

after rejecting the said application for addition of party, the very petitioner also filed a case being *Aripta Sompotti Protrapan* Case No. 2933 of 2012 for releasing the suit property from 'Ka' list and ultimately the said suit was also dismissed on the point of maintainability vide judgment and order dated 21.05.2015, still those very vital facts have clearly been sidetracked in the entire writ petition and therefore the petitioner is not entitled to get any equitable relief in this writ petition.

The learned counsel by taking us to Annexure-'10' to the affidavit-in-opposition also contends that, following the judgment passed by the *Arpita Shampattee* appellate tribunal, the office of the Deputy Commissioner vide letter dated 14.05.2012 started taking preparation to release the property in favour of the respondent nos. 2-4 under the provision of section 11 of the Ain, 2001. However, in support of his such submission, the learned counsel then placed his reliance in the decision reported in 56 DLR (AD) 73 and take us through paragraph no. 17 thereof and submits that it has already been settled in the said decision even before promulgating *Aripta Sompotti Protrapan* Ain, 2001 in a proceedings challenging the propriety of any property to be a vested property, a lessee reserves no locus standi to challenge any decree passed in a suit and the said analogy is squarely applicable in the facts and circumstances of the instant case and 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 respondents. Together, we have very meticulously gone through the writ petition, the affidavit-in-opposition and the document so have been appended therewith the writ

petition vis-à-vis affidavit-in-opposition. Since the learned counsel appearing for the respondent nos. 2-4 just agitate the point of maintainability, so we are not inclined to dwell on the factual aspect involved in the instant writ petition. Though the learned counsel for the petitioner put his entire emphasis on the application of provision 116 of the Transfer of Property Act in acquiring title and possession in the suit land but the learned counsel for the respondent nos. 2-4 by giving reference to the provision of section 3 and section 4 of the *Aripta Sompotti Protrapan* Ain, 2001 contends that in view of the overriding provision as well as limited application of the Code of Civil Procedure Ain so provided in those two sections, there has been no scope to make application of any provision of any other law including section 116 of the Transfer of Property Act applicable in the instant case, let alone adjudicating instant writ petition. We are totally at one with the said submission placed by the learned counsel for the respondents given the above specific provision. Furthermore, on going through the writ petition in particular annexure-‘E’ to the same, we clearly find that, the petitioner was given lease as yearly basis initiated in the year 1396 BS by issuing settlement on 28.05.1989 having no scope to make any application of the provision of section 2 (१) of the *Aripta Sompotti Protrapan* Ain. Furthermore, section 2 to (१), (२) speaks about the period of lessee for 12 years but admittedly the petitioner was given lease only for 1 year to be renewed on its expiry. Furthermore, since it has already been settled by our apex court that a lessee under the government has got no locustandi to challenge any decree passed by a trial court or appellate court initiated in a case filed for releasing vested property so there has been no scope for the

petitioner even to file the instant writ petition. On top of that, we find a classic case of suppression of fact by the petitioner as the writ petitioner has stated that he has not given any opportunity to implead himself as party in the *Aripta Sompotti Protrapan* case filed by the respondent nos. 2-4 which is totally untrue as evident from the order passed by the learned judge of the *Aripta Sompotti Protrapan* Tribunal in order dated 01.07.2013 so initiated by the respondent nos. 2-4 as plaintiffs. Furthermore, the petitioner himself had also filed a suit for releasing the self-same property by filing case being *Aripta Sompotti Protrapan* Case No. 293 of 2012 which was rejected on the point of maintainability on 25.05.2015. So how such untrue statement can be made by the writ petitioner, is totally incomprehensible to us because the relief uses to provide in a writ petition is an equitable relief so the petitioner should have come with clean hand. Overall, we don't find any iota of merit in the rule which is also not maintainable.

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

The order of status quo granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order along with the lower court records be communicated to the respondents forthwith.

Md. Hamidur Rahman, J.

I agree.