

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Abdur Rahman

Writ Petition No.10207 of 2023

Khaleda Pervin

..... petitioner

-Vs-

Bangladesh and others

..... respondents

Mr. Md. Ashek-E-Rasul, Advocate

.....for the petitioner

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Mustafizur Rahman Mukul, Mr. Ashraful Alam and Mr. Ruhani Siddique, Assistant Attorney Generals.

..... for respondent 3

Judgment on 21.05.2023

Bhishmadev Chakrabortty, J:

The Rule *Nisi* was issued calling upon the respondents to show cause as to why inclusion of the land measuring an area of 0.0404 acres appertaining to CS *Khatian* 7396, CS plot 765 corresponding to SA *Khatian* 1934, SA plots 3335 and 3336; RS *Khatian* 614, RS plot 5108, City *Khatian* 6600, City plots 16007 and 16097 of Mouza-Dhaka under police station, Kotwali at present Bangshal, Dhaka in the ‘Ka’ schedule of Arpita Sampatti Parttarpan Ain, 2001 (the Ain, 2001) published in the Bangladesh Gazette Additional issue dated 06.05.2012, so far it was related to the petitioner at serial 209 in page 41475 should not be declared to have been done without lawful authority and of no legal effect and why the respondents should not be directed to release the case

land measuring an area of 0.0404 acres appertaining to CS *Khatian* 7396, CS plot 765 corresponding to SA *Khatian* 1934, SA plots 3335 and 3336; RS *Khatian* 614, RS plot 5108 and City *Khatian* 6600, City plots 16007 and 16097 of Mouza-Dhaka under police station-Kotwali at present Bangshal, Dhaka and/or pass such other order or further order or orders to this Court may seem fit and proper.

The material facts for disposal of the Rule as stated in the writ petition, in brief, are that the suit land under CS *Khatian* 7396, plot 765 originally belonged to Abdul Karim Bepari and during his possession and enjoyment it was rightly recorded in his name in RS *Khatian* 614. He transferred the land to one Amjad Hossain on 02.03.1989 through heba deed 580. Amjad Hossain transferred the same to Mohua Hossain, Moumita Hossain and Mousumi Hossain through deed of gift 21 dated 04.01.1993. Mohua Hossain, Moamita Hossen and Mousumi Hossen through registered deed 5498 dated 08.11.2018 transferred the land to the petitioner and 3 (three) others namely Md. Saifuddin Chowdhury, Mahbub Alam and Md. Sanaullah. After purchase the petitioner and others have been possessing the same by constructing a multistoried building as homestead and shops without any interruption from any quarters and CS, SA and RS *Khatians* were correctly published in the name of predecessors in interest of the petitioner. But subsequently the Government published a Gazette Notification on 06.05.2012 as contained in Annexure-B to the writ petition enlisting the petitioner's aforesaid private property as Arpita Sampatti under the Ain, 2001. After knowing about the enlistment of the land in two SA plots, the petitioner filed an application to respondent 3, Deputy

Commissioner, Dhaka on 07.02.2023 (Annexure-C) for releasing the property. On the basis of aforesaid application, Deputy Commissioner, Dhaka directed the Assistant Commissioner (Land), Kotwali Circle to make an inquiry. The Land Assistant Officer, Kotwali Land Office inquired into the matter and submitted a report in favour of the petitioner on 23.02.2023 (Annexure-E). On its continuation, the Kanungo, Kotwali Revenue Circle, Dhaka submitted report to the AC Land on 02.03.2023 (Annexure-F). As per the application of the petitioner and the aforesaid two reports the Deputy Commissioner, Dhaka wrote to the Secretary, Ministry of Land to release the property from the list of Arpita Sampatti. But respondent 2, the Senior Assistant Secretary, Ministry of Land rejected the petitioner's application disregarding the reports and the letter of the Deputy Commissioner. Respondent 2 in the letter dated 16.04.2023 (Annexure-H) stated that there is no scope to release the property from the list since it has been gazetted as Arpita Sampatti and the list has been published.

The petitioner was totally unaware about the enlistment of the property in the Official Gazette. It at first came to her knowledge in the month of February, 2023 from the local tahsilder. Upon proper inquiry in the Tahsil Office, she was notified about the enlistment of the case land but in the meantime the time for filing any case in the Arpita Sampatti Tribunal under section 10 of the Ain, 2001 expired. Due to the fact which was beyond her knowledge she failed to approach before the Tribunal. She then moved in this Court invoking writ jurisdiction and obtained this Rule.

Respondent 3 filed affidavit-in-opposition denying the facts stated in the writ petition, particularly in paragraphs 8 and 14 he stated the fact that the

government has interest in the property of holding number 50 of Tanti Bazar, Kotwali, Dhaka which was enlisted as Enemy Property, thereafter Abandoned Property and now as Arpita Sampatti and they have no claim on the property of SA plots 3335 and 3336 situated at 50 Mitford Road, Kotwali now Bangshal and the Rule, therefore, may disposed of with necessary order.

Mr. Md. Ashek-E-Rasul, the learned Advocate for the petitioner submits that the petitioner has residential and commercial building situated in holding 50 of Mitford Road, Kotwali now Bangshal. Through deeds, *khatians* and other related documents annexures 'A' series she has proved that she and 3 other purchasers have interest in the holding consisting of two SA plots 3335 and 3336. The reports of the Government officials including respondent 3 (Annexures-E to G) clearly prove that the aforesaid plots have been wrongly enlisted in the gazette of Arpita Sampatti. Respondent 3 wrote to the Government for its release and did raise no objection in the affidavit-in-opposition of its release from the list, but respondent 2 rejected the petitioner's application ignoring the reports only on the ground that it has been gazetted which cannot be released. Since the fixed time of filing case in the Arpita Sampatti Tribunal has expired long ago, the petitioner had no other alternative but to invoke writ jurisdiction of this Court. The Rule, therefore, would be made absolute.

Mr. Mohammad Imam Hossain (Tarek), learned Deputy Attorney General on the other hand submits that as per the version of respondent 3, the Deputy Commissioner, Dhaka and the affidavit-in-opposition filed by him they have no claim over holding No.50 of Mitford Road, Kotwali now Bangshal

consisting of SA plots 3335 and 3336. They have interest over holding No.50 of Tanti Bazar consisting of SA plots 6335 and 6336. This Rule, therefore, may be disposed of with necessary direction upon the concerned authority to that effect.

We have considered the submissions of the learned Advocate for the petitioner and the learned Deputy Attorney General, gone through the writ petition, annexures appended thereto, the affidavit-in-opposition and the impugned gazette notification published in respect of SA plots 3335 and 3336 of holding No.50, Tanti Bazar. Although this is not a case of declaration of title but it appears from Annexure-A series (A-A8), i.e., the documents of title in respect of the plots, the *khatians* and rent receipts that petitioner's title and possession over the suit land has been established. The petitioner stated that they have residence and commercial shops therein. In the affidavit-in-opposition the contesting respondent 3 did not raise any objection against those. In the gazette notification Annexure-B to the writ petition, we find that the property of holding No.50 Tanti Bazar of SA *Khatian* 3415 consisting of plots 3335 and 3336 has been gazetted as Arpita Sampatti which was earlier declared as Enemy Property in EP Case 916 of 1960 and its owner was Gopal Chandra Dey who left for India. The Government claims the property of holding number 50 of Tanti bazar which was enlisted as Enemy Property and has been possessing through lessee. The petitioner's property is situated at 50 Mitford Road, Kotwali now at Bangshal, Dhaka consisting of the aforesaid SA plots 3335 and 3336 of SA *khatian* 1934. In the report, Annexure-E submitted by Assistant Land Officer, Kotwali, Dhaka (respondent 5), it is found “সার্বিক

মন্তব্যঃ নথীতে সংযুক্ত দলিল, খতিয়ান, গেজেটের কপি পর্যালোচনায় প্রতীয়মান হয় গেজেটে বর্ণিত ২০৯ নং ক্রমিকে ইপি কেস নং-৯১৬/৬০ এর দাগের কলামে ভুল বশত এস এ-৬৩৩৫ ও ৬৩৩৬ এর পরিবর্তে এস এ-৩৩৩৫ ও ৩৩৩৬ লিপিবদ্ধ হয়েছে। যাহা করণিক ভুল মর্মে প্রতীয়মান হয়। সরকারি স্বার্থ সংরক্ষণ, সুষ্ঠু ভূমি ব্যবস্থাপনা এবং প্রশাসনিক জটিলতা নিরসন কল্পে গেজেটে উল্লেখিত ৩৩৩৫ ও ৩৩৩৬ নং এস এ দাগের পরিবর্তে ৬৩৩৫ ও ৬৩৩৬ নং এস এ দাগ সংশোধন হওয়া আবশ্যিক।” The similar opinion we find in the report of respondent 3, the Deputy Commissioner Annexure-G dated 29.03.2023 which was sent to the concerned Ministry. But respondent 2 did not consider the same and refused to do so through Annexure-H dated 16.04.2023 on the finding “অর্পিত সম্পত্তি প্রত্যাপন আইন, ২০০১ (২০০১ সনের ১৬ নম্বর আইন) ধারা ৯ ও ধারা ১০ মোতাবেক নতুন কোন দাগ অর্পিত সম্পত্তির তালিকায় তালিকাভুক্ত কিংবা অবমুক্তির কোন সুযোগ নেই। তাছাড়াও কারনিক ভুল সংক্রান্ত এ মন্তবালয়ের ২৯.০৭.২০২১ খ্রি. তারিখের ৩৪৩ নং পরিপত্রে অর্পিত সম্পত্তি সংশোধনের যে ব্যাখ্যা আছে তাতে আলোচ্য সম্পত্তি সংশোধনের সুযোগ নেই।”

It appears that the petitioner claimed that their land of SA *khatian* 1934 consisting of plots 3335 and 3336 has been wrongly gazetted in the official gazette of Arpita Sampatti published in the year 2012 at serial 209 of page 41475 mentioning holding 50 Tanti Bazar including the aforesaid plots only. On perusal of the record and considering the submissions of the learned Advocate for the petitioner as well as the learned Deputy Attorney General and the affidavit-in-opposition filed by respondent 3 supporting it, we can safely hold that the petitioner’s property consisting of SA plots 3335 and 3336 which is in SA *Khatian* 1934 of Mouza-Dhaka, police station-Kotwali now Bangshal has been included in the aforesaid gazette at serial 209, page 41475 wrongly. It could have been for the same holding number as published in SA *khatian* 3415

(as printed) for SA plots 6335 and 6336. It appears a gross mistake on the part of the Government as agreed by respondent 3. But the property has been gazetted and the prescribed time for filing case was over and as such there was no scope for the petitioner other than invoking writ jurisdiction of this Court. Because only SA plots 3335 and 3336 owned by the petitioner have been included therein wrongly.

In the premises above, we find merit in this Rule. Accordingly, the Rule is made absolute.

The inclusion of land measuring an area of .0404 acres published in the Bangladesh Gazette additional issue dated 06.05.2012, so far it relates to SA plots 3335 and 3336 is hereby declared to have without lawful and of no legal effect. The respondents are directed to delete SA plots 3335 and 3336 measuring an area of .0404 acres from the aforesaid list of Arpita Sampatti enlisted at serial 209 of page 41475 in the official gazette published on 06.05.2012.

Communicate this judgment and order to the concerned.

Abdur Rahman, J.

I agree