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

Writ Petition No. 15074 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:

Mohammad Monjurul Islam
... Petitioner
-Versus-

Government of Bangladesh and others
…Respondents

Mr. A.M. Mahbub Uddin, Senior Advocate with
Mr. Saqeb Mahbub, Advocate
…For the petitioner
Mr. Mohammad Abdul Baset, Advocate
…For the respondent No. 4

Judgment on: 20.08.2026

Present:

Mr. Justice Sardar Md. Rashed Jahangir
And
Mr. Justice Md. Ziaul Haque

Sardar Md. Rashed Jahangir, J:

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued on 05.12.2024 as follows:

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned auction notice dated 18.11.2024 (Annexure-D) and amended 20.11.2024 auction notice dated (Annexure-D-1) both published in the "Daily Naya Diganta" invited by the

> respondent Nos. 3-4 under Section 12(3) of the Artha Rin Adalat Ain. 2003 so far it relates to the auction of the 03 (three) flats of the third party-flat purchaser-petitioner as appended in Schedule-08 of the said auction notice scheduled to be held on 09.12.2024 shall not be declared to have been made without any lawful authority and is of no legal effect, and/or such other or further order or orders passed as to this court may seem fit and proper."

For effective disposal of the Rule, we do not see any necessity to enter into the detail facts, save and except, the respondent No. 4, bank on 18.11.2024 published an auction notice inviting bid from the eligible persons for purchasing the mortgaged property scheduled to be held on 09.12.2024. Before holding the auction on 05.12.2024 after hearing the petitioner, this Court was pleased to issue a Rule Nisi and stayed operation of the auction notice dated 18.11.2024 (amended auction dated 20.11.2024 (Annexure- 'D' and 'D-1'). As a result, the auction cannot be taken place.

Mr. A.M. Mahbub Uddin, learned Senior Advocate appearing with Mr. Saqeb Mahbub, learned Advocate for the petitioner submits that the respondents without having any separate authority for selling the mortgaged property invited the auction to sell the property.

He next submits that under section 12(3) of the Artha Rin Adalat, 2003, it is contemplated that "কোন আর্থিক প্রতিষ্ঠান, বিবাদীর নিকট হইতে কোন স্থাবর সম্পত্তি বন্ধক রাখিয়া অথবা অস্থাবর দায়বদ্ধ রাখিয়া ঋণ প্রদান করিলে এবং বন্ধক প্রদান বা দায়বদ্ধ রাখার সময় বন্ধকী বা দায়বদ্ধ সম্পত্তি বিক্রয়ের ক্ষমতা আর্থিক প্রতিষ্ঠানকে প্রদান করা হইয়া

থাকিলে, উহা বিক্রয় না করিয়া এবং করিয়া, অথবা বিক্রয়ের চেষ্ট করিয়া ব্যর্থ না হইয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।”

Meaning thereby, there would be a separate instrument executed by the borrower in favour of the lender-Bank authorizing to sell the mortgaged property without intervention of the Court. Having no such given authority through separate instrument the respondent-Bank has no authority to publish auction notice.

In support of his submission, he referred the case of Most. Delwara Begum Vs. Bangladesh and others, reported in 25 BLD(HCD) 600.

On the other hand, Mr. Mohammed Abdul Baset, learned Advocate appearing for the respondent No. 4 submits that due to the interim order of this Court, the auction could not be taken place on the scheduled date and after expiry of the scheduled date the notice has no effectiveness and no auction can be held on the basis of the notice and as such, the Rule as has been issued has become infructuous.

Heard learned Advocates of both the parties, perused the writ petition together with the annexures and the cited judgment.

On examination, it appears that the auction notice was published on 18.11.2024 (Annexure- ‘D’) and subsequently it was amended on 20.11.2024 (Annexure- ‘D-1’) in the daily ‘Naya Diganta’ for selling the mortgaged property in auction on the authority of section 12 of the Artha Rin Adalat Ain, 2003. The proposed auction scheduled to be held on 09.12.2024. Before holding the auction on 05.12.2024 the petitioner moved before this Court and obtained the Rule Nisi together with the

interim order of stay. The auction could not be taken place and after expiry of t he scheduled date the auction notice lost it's effectiveness.

Accordingly, the subject matter of the Rule has become infructuous.

Although, learned Advocate on behalf of the petitioner raised some legal questions as to the authority of holding auction but those questions should be considered on a proper petition.

Since, the auction notice lost it's effectiveness, thus, dealing with those questions shall be a futile exercise and nothing more.

Accordingly, the Rule is discharged as being infructuous.

No order as to cost.

The order of stay granted at the time of issuance of the Rule is hereby by recalled.

Communicate the order at once.

Md. Ziaul Haque, J:

I agree.