

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

WRIT PETITION NO. 21821 OF 2025

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. Fazlur Rahman

... Petitioner

-Versus-

Bangladesh Bank and others

... Respondents

Mr. Saqeb Mahbub with
Mr. Syed Asifur Rahman and
Mr. Md. Kaisaruzzaman, Advocate

...For the petitioners

Mr. Mohammad Salim Miah, Advocate

...For the respondent No. 2

**Heard on 22.04.2026, 23.04.2026, 26.04.2026
and Judgment on 26.04.2026**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

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 auction notice published in the daily

“Karatoa” on 27.11.2025 by the respondent No. 2 under section 33(7) of the Artha Rin Adalat Ain, 2003 (Annexure-‘C to the writ petition) for selling the mortgaged property of the petitioner as described in the schedule to the auction notice slated to be held on 21.12.2025 should not be declared to have been made without 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.

At the time of issuance of the rule, the operation of the impugned auction notice dated 27.11.2025 was stayed for a period of 04 (four) months. On the same date, the petitioner was directed to pay total outstanding dues to the concerned bank (respondent no. 2) within 04(four) months with a default order that is to say, if the petitioner fails to comply with the said direction, the rule would be discharged.

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

The present respondent no. 2 as plaintiff filed a suit being Artha Rin Suit No. 383 of 1992 against the respondent no. 3 claiming an amount of taka 7,31,300/- and ultimately the said suit was decreed ex-parte. Subsequently, to realize the decretal dues, the bank as decree holder filed an execution case being Artha Executon Case No. 38 of 1996 claiming an amount of taka 11,07,117/-. Since the borrower, judgment debtor that is, respondent no. 3 did not come forward to pay the decretal amount, as mentioned in the said Artha Execution Case, the bank then filed an application to obtain a certificate under section 33(7) of the Artha Rin Adalat Ain, 2003. Accordingly, the learned judge of the Artha Rin Adalat issued certificate under that section. By virtue of that certificate, the bank,

respondent no. 2 then published an auction notice on 27.11.2025 for selling the mortgaged property. It is at that stage, the petitioner who is the third party in the Artha Rin suit as well as the execution case, filed this writ petition and obtained rule, order of stay as well as direction as has been stated hereinabove. However, the respondent no. 3, judgment debtor did not enter appearance to contest the rule. On the other hand, it is the case of the present petitioner that, the property measuring an area of 33.75 decimals of land originally belonged to his late father named, Motiur Rahman Vandary who is an industrialist and his brother. After the demise of Motiur Rahman Vandary, a partition suit bearing no. 64 of 1978 was filed and it was decreed and the petitioner got the property in his separate saham along with his brother and accordingly the said property was recorded in the latest RS khatian no. 316. Then the petitioner mutated his name in the khatian and has been paying rent to the respective *towshil* office and therefore the petitioner acquired indefeasible right, title and possession over the property as has been described in the schedule to the auction notice. It has further been asserted that the said property had earlier put on auction sale on 30.09.2025 when the petitioner participated in it, but as the price quoted by him found to be low, the auction was ultimately cancelled though the respective authority of the bank, gave assurance to the petitioner that the property will eventually be transferred to the petitioner. Having assured, the petitioner was waiting to get the property back. It has further been asserted that, the scheduled property was fraudulently mortgaged by the respondent no. 3 to the bank. But as the respondent no. 2, bank again published auction notice then finding no

other alternative, the petitioner then constrained to file the instant writ petition.

Mr. Saqueb Mahbub along with Syed Asifur Rahman, learned counsels appearing for the petitioner at the very outset submits that, the petitioner has got no other alternative efficacious remedy other than to file the writ petition, challenging the impugned auction notice as after obtaining certificate by the respondent no. 2 under section 33(7) of the Artha Rin Adalat Ain, there has been no occasion for the petitioner to file any Miscellaneous case under section 32 of the Artha Rin Adalat Ain by depositing 10% of the decretal amount.

To clarify the said contention, the learned counsel then argues that since it has already been settled in various judgment by the Hon'ble Appellate Division as well as this division in relation to the provision provided in section 33(9) of the Ain asserting that moment a certificate is issued either under sub section (5) or section (7) of the Artha Rin Adalat Ain 2003, the said execution case will be regarded disposed of and therefore the petitioner has got no other avenue but to file the instant writ petition challenging the impugned auction. The learned counsel by referring to various title documents so have been annexed with the writ petition as Annexure-‘A’ series also contends that those documents clearly demonstrate that finding the petitioner in actual possession over the scheduled property as described in the auction notice, his along with his brother's name have been recorded in latest R.S khatian and thus the petitioner is a genuine owner and possessor in the scheduled property. When the learned counsel was confronted with the submission made by

the learned counsel for the respondent no. 2 that the remedy of the petitioner lies in Order 21 rule 90 as well as Order 21 rule 58 of the Code of Civil Procedure when the learned counsel retorts that since there has been no existence of any execution case at the time of publishing impugned auction notice, as the said notice was published at the instance of respondent no. 2 not by any executing court, so those very provisions have got no manner of application by filing any Miscellaneous case basing on the provision of section 26 of the Artha Rin Adalat Ain, 2003.

The learned counsel further contends that, as per the direction of this Hon'ble court made at the time of issuance of rule, the petitioner offered to pay total outstanding dues but the respondent no. 2 declined to receive the said amount, as tendered which denotes the petitioner has very respect to comply with the direction of this Hon'ble court but it is the respondent bank for whose reluctance, the direction could not be complied with but still the petitioner is ready to pay the said amount, if this Hon'ble court directs to the bank afresh to receive the same and then prays for make the rule absolute.

By contrast, Mr. Mohammad Salim Miah, learned counsel by filing an application for discharging the rule very robustly opposes the contention taken by the learned counsel for the petitioner and submits that since the petitioner is neither a borrower nor a judgment debtor, so there has been no scope on the part of the bank to receive the outstanding dues from him as directed at the time of issuance of the rule.

The learned counsel further contends that, the petitioner has no *locustandi* to file the instant writ petition since under section 32 of the

Artha Rin Adalat Ain remedy to a third party has been set out by filing a Miscellaneous Case depositing 10% of the decretal amount but without doing, so the petitioner cannot seek any relief by filing a writ petition.

The learned counsel also submits that the petitioner has also got alternative efficacious remedy under Order 21 rule 90 as well as Order 21 rule 58 of the Code of Civil Procedure to seek redress but without doing so, the petitioner cannot file this writ petition. The learned counsel further submits that, even the petitioner can avail the remedy by filing a suit under section 91 of the Transfer of Property Act and therefore the writ petition cannot be entertained. In reply to the submission made by the learned counsel for the petitioner the learned counsel for the respondent no. 2 then contends that, since fraud has been alleged by him (the petitioner) in mortgaging the property by the respondent no. 3, so it has become a disputed question of fact and on that count as well this writ petition is also not maintainable. However, in support of his submission, the learned counsel placed his reliance in the decision reported in 64 DLR (HC) 281 and takes us to paragraph no. 3 and submits that similar point has been raised in the said cited decision and the proposition settled therein is equally 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 respondent no. 2.

Together, we have also gone through the writ petition, application for discharging the rule as well as the application filed by the petitioner dated 09.02.2026 seeking direction upon the respondent no. 2 to accept

the pay order offered by the petitioner (Annexure-'F-1). At the same time, we have also perused the provision so delineated in section 32 of the Artha Rin Adalat Ain, 2003 as well as the provision provided in order 21 rule 90 as well as order 21 rule 58 of the Code of Civil Procedure. There has been no gainsaying of fact that the petitioner is a third party in the Artha Execution case and what procedure will follow if any claim is made by a third party during the proceedings of an execution case, has clearly been set out therein the Ain as well. But it is admitted position that when the impugned auction notice was published there had been no existence of any execution case ever pending before any Artha Rin Adalat and thus the provision of section 32 of the Artha Rin Adalat Ain will not be applicable to the petitioner. Now let us examine the second point so raised by the learned counsel for the respondent no. 2 that basing on the provision of section 26 of the Artha Rin Adalat Ain, the petitioner could avail the opportunity to the provision of Order 21 rule 90 as well as Order 21 rule 58 of the Code of Civil Procedure by filing a Miscellaneous Case. But the petitioner would have encountered the same fate, when admittedly there had been no existence of any execution case at the time of publishing impugned auction notice. So invariably those very 2 (two) provisions cannot be invoked by the petitioner to get his redress. Against the above backdrops, we are of the considered view that the petitioner was only equally efficacious remedy to file the instant writ petition against the impugned auction notice which is well maintainable. Furthermore, against the title documents so have been produced in support of acquiring title over the scheduled property described in the auction notice and annexed

with the writ petition, the respondent no. 2 has not filed any counter-affidavit or controverted the assertion through filing any cogent document . Rather, in the affidavit-in-opposition, we rather find that it has simply been asserted that soon after obtaining certificate under section 33(7) of the Artha Rin Adalat Ain, mutation was made in the name of the respondent no. 2. But fact remains, the latest record in respect of the scheduled property stands in the name of the petitioner which was prepared in the year 2020 that is, after the alleged mutation. Furthermore, on going through the decision cited by the learned counsel for the petitioner, we find no nexus of the observation made therein with the legal point involved in the instant writ petition and thus the said decision is totally inapplicable here, as in section 32 it has specifically been mentioned the words “উদ্ধৃত জারি মামলায়” when admittedly no execution case was ever pending when the impugned auction notice was published having any scope for the petitioner to invoke section 32 of the Artha Rin Adalat Ain. Even so, as per the direction of this court, the petitioner had offered total outstanding dues to the respondent no. 2 which was not accepted. Since the petitioner acquired the scheduled property whose name the latest record has been prepared (Annexure-‘A’ series to the writ petition) and the whereabouts of the respondent no. 3 cannot be traced, so for that obvious reason it prima facie proves that the petitioner is the owner of the scheduled property for which he is willing to pay total the outstanding dues but the respondent no. 2 for the reason best known to it, very unreasonably declined to receive that public money.

In the above panorama, we find ample substance and merit in the rule.

Accordingly, the rule is made absolute however without any order as to costs.

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

However, the respondent no. 2 is hereby directed to receive the amount which has been annexed as of Annexure-‘F-1’ to the application for direction dated 09.02.2026 filed by the petitioner within a period of 01(one) month from the date of receipt of the copy of this order. If the respondent-bank no. 2 has got any further claim towards the respondent no. 3, the same can be settled mutually by the bank with the petitioner.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.