

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

Civil Revision No. 2049 of 2012

Md. Mothar Hossain being dead his heirs:

1(a) Layla Jibon and others petitioners

-Versus-

Md. Fazlul Haque being dead his heirs:

1(a) Mosammat Kohinoor Begum and others

..... opposite parties

With

Civil Revision No. 3359 of 2014

Government of the People's Republic of
Bangladesh petitioner

-Versus-

Md. Fazlul Haque being dead his heirs:

1(a) Mosammat Kohinoor Begum and others

..... opposite parties

Mr. Purnindu Bikash Das with Mr. Dipayan Saha,
Advocates for the petitioners

(In CR 2049 of 2012)

Mr. Md. Ahsan Ullah, Deputy Attorney General
with Ms. Anjuman Ara Lima and Mr. Mohammad
Saiful Islam Miajee, Assistant Attorney Generals

..... for the petitioner

(In CR 3359 of 2014)

No one appears for the opposite parties

Judgment on 11.12.2025

Bhishmadev Chakrabortty, J:

Since both the Rules have arisen out of the same exaction case, parties thereto are almost same and common question of fact and law are involved in each, these have been heard together and are being disposed of by this judgment.

The Rule in Civil Revision 2049 of 2012 was issued calling upon the opposite parties to show cause as to why order of the Joint District Judge, Court 3, Dhaka passed on 25.06.2012 in Miscellaneous

Case 16 of 2012 rejecting the case filed under Order 21 Rule 58 of the Code of Civil Procedure (the Code) arising out of Title Decree Execution Case 02 of 2006 now pending in the aforesaid Court should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The Rule in Civil Revision 3359 of 2014 was issued calling upon the opposite parties to show cause as to why order passed by the abovesaid Court on the same day in Miscellaneous Case 19 of 2011 arising out of the same execution case now pending in the same Court should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the Rules, all further proceedings of the execution case were stayed for a limited period which were subsequently extended till disposal of the Rules.

Facts relevant for disposal of the Rules, in brief, are that Md. Fazlul Haque, the predecessor of opposite parties 1(a)-1(g) to the Rules instituted Title Suit 276 of 1992 in the aforesaid Court against opposite parties 2-11, the defendants for specific performance of contract in respect of the 'Kha' schedule suit land measuring .0358 acres out of .0768 acres of Touzi 1921, CS Khatian 7335, CS Plot 237, SA Khatian 1681, SA Plot 2933 of Municipal Holding 41, Mitford Road, Dhaka. In the plaint he contended that he entered into an agreement to purchase of the suit property with one Nurul Islam

who got it by a registered *kabala* from Jaharana Khatun. The suit was decreed *ex parte* on 26.07.1994 accordingly the plaintiff filed Title Execution Case 02 of 2006 for executing the decree. The petitioners of Civil Revision 2049 of 2012 filed an application therein for adding them as parties which was rejected. Against which the petitioners approached this Court with a revisional application and a Bench of this Division by its order dated 23.06.2011 disposed of the application with findings that the petitioners can file an application to the concerned Court for investigation of their claim and objections. Thereafter, the petitioners approached the executing Court and filed Miscellaneous Case 16 of 2012 under Order 21 Rule 58 of the Code in the execution case for releasing the schedule property from schedule of the execution case. The Joint District Judge rejected the said miscellaneous case summarily being not maintainable by the judgment and order under challenge in the aforesaid revision. In the similar way the petitioner Government of Civil Revision 3359 of 2014 filed an application to the executing Court which was registered as Miscellaneous Case 19 of 2011 stating same reason in the application like the previous one which was also rejected by the executing Court taking a similar view against which the government approached this Court and the aforesaid Rule was issued and an interim order was passed.

Mr. Purnindu Bikash Das, learned Advocate for the petitioners in Civil Revision 2049 of 2012 takes us through the materials on record particularly the supplementary affidavit dated 24.11.2025 and submits that Jahanara Begum claimed the suit land by way of an exchange deed of 1971 from the Sabayet of the debottar property. The said exchange deed was challenged by the government in Title Suit 84 of 1993 in the Court of Assistant Judge, Dhaka praying declaration that the deed of exchange executed on 22.09.1971 and registered on 24.09.1971 in the name of Jahanara Khatun is void, fraudulent and also cancellation of the same. In that suit this petitioner was added as co-plaintiff. The suit was decreed by the trial Court while the defendant preferred appeal before the District Judge which was allowed. The plaintiffs then moved in this Court by filing civil revision in which the Rule was issued and subsequently it was made absolute with the finding and observations that the suit property is debottar property and the same shall continue till the deity is removed from the suit land. Against which defendant Jahanara move to the Appellate Division in Civil Appeal 183 of 2009. The Appellate Division finally dismissed the appeal and affirmed the judgment and decree passed by the High Court Division in the civil revision with some observations and directions. Opposite party 1 herein obtained decree in this suit for specific performance of contract on the selfsame property against one Nulrul Islam who alleged to have purchased it

from Jahanara and as such the execution case on such a decree cannot run.

Mr. Das further submits that apart from the above fact, the suit property has been gazetted at serial 21 of JL 1, Kotwali in the 'Ka' list of Arpita Sampatti against which wife of plaintiff Fazlul Haque, opposite party 1(a) herein filed Arpita Sampatti Prattarpan Tribunal Case 3242 of 2012 in the concerned Tribunal for releasing the land which the Tribunal dismissed by the judgment and decree passed on 18.08.2004. Since Fazlul Hoque obtained an *ex parte* decree against Nurul Islam and others who alleged to have got the suit land from Jahanara whose claim has been declared illegal by the Appellant Division and the property has been listed as vested property subsequently Arpita Sampatti and the execution case is pending on it, the proceeding of the execution case shall be abated as per the provisions of section 13 of the Arpita Sampatti Prattarpan Ain, 2001 (Ain, 2001). Although the present petitioners as lease of the Government (admitted by the Government) filed the application under Order 21 Rule 58 of the Code but the fact remains the Government has obtained a decree against Jahanara and the suit property has been enlisted in the 'Ka' schedule of the gazette of Arpita Sampatti, the application filed by the petitioner in the miscellaneous case would have been treated as an application under section 151 of the Code or under section 13 of the Ain, 2001 and the learned Judge could have

released the property from the schedule of the decree applying his inherent jurisdiction and by not doing so, committed error of law resulting in an error in such decision occasioning failure of justice in rejecting the miscellaneous cases being not maintainable. The judgment and order passed by the Joint District Judge, Court 3, Dhaka is therefore required to be interfered with by this Court in this revision. He refers to the case of Mohammad Ali Bepary and others vs. Garupranjan Chakraborty and others, 14 MLR (AD) 218 and relied on the principle laid therein that a suit for specific performance of contract is not maintainable when the suit property is enlisted as enemy or vested property. Since the property in question has been enlisted as Arpitta Sampatti and it has been gazetted in 'Ka' schedule, therefore, the decree passed in the aforesaid suit for specific performance of contract is not a decree in the eye of law and as such the execution case arising out of it cannot run because of its abatement.

Mr. Md. Ahsan Ullah, learned Deputy Attorney General on the other hand adopts the submissions of Mr. Das and further submits that admittedly the Government obtained a decree against Jahanara who claimed the suit property by way of exchange from the Sebayet of the deity executed in the year 1971. The deed of exchange was declared fraudulent by the trial Court which was affirmed upto the Appellate Division in Civil Appeal 183 of 2009. Since admittedly the

property has been enlisted as vested property and now in the 'Ka' list of Arpita Sampatti, all proceedings arising out of the same shall be abated. This Court even under inherent jurisdiction of section 151 of the Code can pass order as it deem fit and proper. The Rules, therefore, would be made absolute and the execution case be abated.

No one appears for the opposite parties in both the Rules, although it is found that one Mr. M.A. Mannan Bhuiyan, learned Advocate filed vokatnama in both the Rules on behalf of opposite parties. It is further found that copies of the applications and supplementary-affidavits have duly been served upon him but none turned up at the time of hearing of the Rules. Previously in one occasion, Mr. Md. Faruque Ahmed, learned Advocate for the opposite parties mentioned this item and reported that there is a review petition pending before the Appellate Division against the judgment passed in Civil Appeal 183 of 2009. But, thereafter, none turned up to make any submission or to oppose the Rules. Therefore, it is taken up for disposal on merit in the absence of opposite parties.

We have considered the submissions of Mr. Das and the learned Deputy Attorney General and gone through the materials on record. It appears from the documents lying with the record including the judgment passed by the trial Court Title Suit 84 of 1993, the judgment and order passed by the High Court Division in Civil Revision 4353 of 1999 and the judgment of the Appellate Division passed in Civil

Appeal 183 of 2009 that the government instituted the aforesaid Suit challenging the exchange deed dated 22.09.1971 registered on 24.09.1971 through which one Jahanara claimed title in the suit property by way of exchange from Sebayet of the deity. The trial Court decreed the suit and declared the exchange deed fraudulent and collusive. Against which the defendant of that suit preferred appeal before the District Judge which was allowed. The judgment passed in the appeal was challenged by petitioner of the above Civil Revision 2049 of 2012 in Civil Revision 4353 of 1999 before the High Court Division upon which Rule was issued and finally it was made absolute. The judgment and decree passed by the Appellate Court was set aside and those of the trial Court was restored with some observations and directions that the suit property is debottar property. Against which Jahanara Khatun who claimed the suit property by way of exchange went to the Appellate Division in Civil Appeal 183 of 2009 which was ultimately dismissed on 16.03.2021 and the judgment passed by the High Court Division in the aforesaid civil revision was affirmed with some observations and directions that since the Sebayet herself alienated the debottar property in breach of trust, a prospective Sebayet under the terms of the endowment deed or the worshipers of hindu community or any member of the executant of the endowment deed or local elites of the hindu family may take shelter under provision of section 92 of the Code of Civil Procedure to protect and

administer the property if he/they so decide. Therefore, the previous owner of the defendant of the present suit has no title in the suit land by way of exchange and as such the present decree for specific performance of contract obtained against subsequent purchaser and the execution case to enforce it cannot run any more. All these are product of fraudulent activity to grab the property.

Apart from the above fact, it is found that the suit property was enlisted as vested property in VP Case No. 18 of 1978 and subsequently it has been enlisted in the 'Ka' list of Arpita Sampatti gazette at serial 25 JL 1 of Kotawali annexure-D to the main application and annexure-G to the supplementary affidavit. It is a fact that the property has been enlisted in the 'Ka' list of the gazette published in May, 2012. Fazlul Hoque filed suit for specific performance of contract and obtained the decree and execution case is pending but his heirs filed Arpita Sampatti Prattarpan Tribunal Case 3242 of 2012 in the Tribunal, Dhaka against the Government and others. The Tribunal dismissed the aforesaid case on contest by the judgment and decree passed on 18.08.2024 annexure-H to the supplementary affidavit. It further appears from Annexure-I, the information slip submitted in Civil Revision 2049 of 2012 that yet the plaintiffs of that case did not prefer any appeal against it. So at the end of the day, it is found that as per the decision of the Appellate Division passed in Civil Appeal 183 of 2009 the suit property is

debottar property and as per the gazette notification published in 2012 it is Arpita Sampatti in the 'Ka' list of the official gazette. As per the provisions of section 13 of the Ain, 2001 all suits and proceeding in respect of a suit land which has been enlisted in the 'Ka' list of Arpita Sampatti shall be abated.

In view of the above position of facts and law prevailing in this particular case, we find no reason on the part of the Joint District Judge Court, 3, Dhaka to proceed with the execution case which has been filed to execute the decree passed in a suit for specific performance of contract by one Fazlul Hoque against Nurul Islam. Whether the property in question is still debottar property as per the judgment delivered by the High Court Division affirmed by the Appellate Division in aforesaid civil appeal is to be decided later on. But since it has been enlisted in 'Ka' list of the Arpita Sampatti, its management and control is with the Government.

Therefore, we find that although in the Rules two specific orders of two separate miscellaneous cases arising out of Execution Case 02 of 2006 have been challenged but the proceeding of the execution case cannot run any more particularly in view of the provisions of law laid in section 13 of the Ain, 2001.

In view of the above position, we find substance in the submissions of the learned Advocate for the petitioners in Civil

Revision 2049 of 2012 and the learned Deputy Attorney General in Civil Revision 3359 of 2014.

Therefore, both the Rules are disposed of. The proceedings of Execution Case No.02 of 2006 now pending in the Court of Joint District Judge, Court 3, Dhaka and the judgment through which it arose are to be treated as *non est* being those abated by operation of the law.

Communicate this judgment and order to the Court concerned.

Murad-A-Mowla Sohel, J.

I agree.