

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman

And

Ms. Justice Aynun Nahar Siddiqua

Civil Rule No. 166 (Con) (F) of 2015.

Government of Bangladesh and others.

....Petitioners.

-Versus-

Khulna Divisional Ship owners Groups, Khulna.

....Opposite party.

Mr. Mohammad Shahidul Islam, D.A.G with

Mr. Md. Shohidul Islam, A.A.G with

Mr. Md. Jahangir Hossain, A.A.G with

Mr. Mohammad Anwar Hossain, A.A.G

...for the petitioners.

Mr. H.M. Borhan, Advocate

... for the opposite party.

Heard on: 23.08.2026 &

Judgment on: 24.08.2026.

Md. Badruzzaman, J

This Rule was issued calling upon the opposite party to show cause as to why the delay of 767 days in filing the First Appeal against the judgment and decree dated 14.05.2012 passed by the learned Joint District Judge, 1st Court, Khulna, in Title Suit No. 52 of 2003 should not be condoned.

The relevant facts for disposal of this Rule are that the opposite party, as plaintiff, instituted Title Suit No. 52 of 2003 before the learned Joint District Judge, 1st Court, Khulna, seeking declaration of title to the suit property measuring .02 acre against the petitioner-Government. The suit was contested by the present

petitioner, as defendant, by filing a written statement. Upon hearing the parties, the suit was decreed in favour of the plaintiff by the judgment and decree dated 14.05.2012. Being aggrieved by and dissatisfied with the said judgment and decree, the defendant preferred the First Appeal by filing the memorandum of appeal on 26.01.2015, causing a delay of 767 days.

It has been stated in the application for condonation of delay that the petitioner-Government was not aware of the impugned judgment and decree. Upon coming to know about the same, the concerned authority obtained the certified copy of the judgment and decree along with the relevant documents on 26.6.2012. Thereafter, the Additional Deputy Commissioner forwarded the relevant records on 30.12.2012 to the Solicitor Wing of the Government of Bangladesh for taking necessary steps for filing an appeal. The said records were received by the office of the Solicitor on 11.11.2012 and, upon obtaining approval on 16.12.2012, were forwarded to the office of the learned Attorney General who received those on 27.12.2012. Subsequently, Mr. Md. Yusuf Mahmud Morshed, learned Assistant Attorney General, was entrusted on 03.01.2013 with the responsibility of preparing and filing the memorandum of appeal and the same was ultimately filed on 26.01.2015, causing a delay of 767 days. On the said application, the present Rule was issued.

The opposite party filed a counter-affidavit opposing the Rule, contending, inter alia, that the explanation furnished for the delay is not satisfactory and that the petitioner-appellant has failed to offer any reasonable or sufficient explanation for the delay in filing the appeal. It has further been contended that the Government published a Gazette Notification dated 17.05.2012, whereby the suit

property was enlisted in the 'Kha' Schedule of vested properties, appearing at Serial No. 17 at pages 66679, and, as such, the present proceeding has abated by operation of the provisions of section 28Ka of the *Arpita Sampatti Protyarpan Ain, 2001*.

Mr. Mohammad Shahidul Islam, learned Deputy Attorney General, appearing for the Government, submits that the Government machinery functions through various departments and agencies, and, therefore, it is not always possible for the Government to prefer an appeal within the statutory period of limitation. He submits that, having regard to the circumstances explained in the application, the delay in filing the appeal should be condoned.

Learned Deputy Attorney General further submits that section 28(4) of the *Arpita Sampatti Protyarpan Ain, 2001* specifically provides that, notwithstanding the cancellation of the Kha Schedule under sub-section (1), there shall be no legal bar to the Government or any person obtaining any remedy under the prevailing law in respect of any interest or interest-related claim in the property included in the Kha schedule. He submits that this aspect of the matter should be taken into consideration by this Court. He further submits that, since an appeal is a continuation of the original suit, the delay should be condoned so as to afford the petitioner an opportunity to contest the suit on appeal on its merits.

In support of his contention, learned Deputy Attorney General has referred to the decision in *Government of Bangladesh vs. Abdur Sobhan and others*, 73 DLR (AD) 1.

Mr. H.M. Borhan, learned Advocate appearing for the opposite party, submits that the petitioner-Government has failed to

satisfactorily explain the delay in filing the appeal and that there has been gross laches and negligence on the part of the Government.

Learned Advocate further submits that, although the Government contested the suit by filing a written statement claiming the suit property as vested property and publication of the same in the 'Kha' Schedule of the Gazette, the Government's claim in respect of the suit property stood relinquished by operation of law. He submits that, consequently, the present proceeding has abated by virtue of the provisions of section 28Ka(1) of the *Arpita Sampatti Protayarpan Ain, 2001*. He, therefore, submits that the Rule should be discharged.

We have heard the learned Advocates, perused the impugned judgment and decree, the application filed under section 5 of the Limitation Act, the counter-affidavit filed by the opposite party, and the other materials available on record.

In the case of *Government of Bangladesh vs. Abdur Sobhan and others*, 73 DLR (AD) 1, the Hon'ble Appellate Division, having regard to the fact that the Government machinery functions through various departments and agencies and that it is not always possible for the Government to file a revisional application within the statutory period of limitation, took a lenient view in condoning the delay. Their Lordships, however, specifically observed that such delay may be condoned where the Government has a reasonable prospect of succeeding in the case and the case is not hopelessly devoid of merit. The Hon'ble Appellate Division further held that no separate or different standard should be applied in determining the sufficiency of the cause shown by the Government *vis-à-vis* a private litigant, and that the requirement of showing sufficient cause for

condonation of delay cannot be dispensed with merely because the applicant is the Government.

In the instant case, the impugned judgment and decree was passed on 14.05.2012. After obtaining the certified copy thereof on 26.06.2012 and completing the necessary formalities, the Additional Deputy Commissioner forwarded the relevant records to the Solicitor Wing. Thereafter, the Solicitor Wing forwarded the records to the office of the learned Attorney General, which received the same on 27.12.2012. Subsequently, on 03.01.2013, the learned Attorney General entrusted the concerned Assistant Attorney General with the responsibility of preparing the draft memorandum of appeal. After preparing the draft, the learned Assistant Attorney General presented the appeal for registration on 26.01.2015.

It appears that, after receiving the records by the concerned Assistant Attorney General on 03.01.2013, no explanation has been offered as to why the memorandum of appeal was filed after more than two years, on 26.01.2015. No reasonable cause has also been shown as to why such a long period was required for preparing the draft memorandum of appeal and presenting the appeal for registration. In essence, the explanation furnished for the delay in preferring the appeal is wholly unsatisfactory and does not constitute sufficient cause for condonation of the delay.

On merits of the case, it appears that, admittedly, .02 acre suit property belonged to Sarobindo Nath, and S.A. Khatian No. 316 was prepared and finally published in his name. The plaintiff claimed title to the suit land through the said recorded tenant on the basis of several registered deeds of sale. Moreover, recognizing the plaintiff's ownership, the Government mutated the suit property in his name

and accepted rent from him. On the other hand, the Government, in its written statement and evidence, contended that the suit property had been enlisted as vested property and that it had been published in the list of vested properties.

It appears from the Gazette Notification dated 17.05.2012, annexed as Annexure-2 to the counter-affidavit filed by the opposite party, that the suit property was published at serial No. 17 under Mouza Helatola, Police Station—Khulna Sadar, in the Kha Schedule of vested properties. It is further admitted that the judgment and decree in the original suit were passed on 14.05.2012, that is, prior to the publication of the suit property in the said Gazette notification. Thus, the impugned judgment and decree were passed before the suit property was published in the Kha Schedule of the Gazette of vested properties.

In this regard, the provision of section 28Ka of the *Arpita Sampatti Protayarpan Ain, 2001* is relevant, which is quoted verbatim below:

২৮ক। ‘খ’ তফসিল বিলুপ্তি, ইত্যাদি সম্পর্কিত বিশেষ বিধান।

(১) অর্পিত সম্পত্তি প্রত্যর্পণ (দ্বিতীয় সংশোধন) আইন, ২০১৩ কার্যকর হইবার সঙ্গে সঙ্গে অর্পিত সম্পত্তি সম্পর্কিত ‘খ’ তফসিল বাতিল হইবে এবং উহা এমনভাবে বাতিল হইবে যেন, উক্ত তফসিলভুক্ত সম্পত্তি কখনোই অর্পিত সম্পত্তির তালিকাভুক্ত হয় নাই।

(২) এই আইনের অধীন স্থাপিত ট্রাইব্যুনাল, আপিল ট্রাইব্যুনাল বা বিশেষ আপিল ট্রাইব্যুনাল কর্তৃক উপ-ধারা (১)-এর অধীন বিলুপ্ত ‘খ’ তফসিলভুক্ত সম্পত্তির বিষয়ে ইতোমধ্যে নিষ্পত্তিকৃত যে কোন মামলার রায় বা ডিক্রি বাতিল ও অবৈধ বলিয়া গণ্যহইবে এবং উক্ত ট্রাইব্যুনাল, আপিল ট্রাইব্যুনাল বা বিশেষ আপিল ট্রাইব্যুনালে বিচারাধীন ‘খ’ তফসিলভুক্ত সম্পত্তির বিষয়ে ইতোমধ্যে যে কোন মামলা রায় বা ডিক্রি বাতিল ও অবৈধ বলিয়া গণ্য হইবে এবং এইরূপ

abatement-এর জন্য সংশ্লিষ্ট আদালত কর্তৃক আনুষ্ঠানিক আদেশ প্রদানের প্রয়োজন হইবে না।

(৩) উপ-ধারা (১)-এর অধীন বাতিলকৃত 'খ' তফসিলভুক্ত কোন আবেদনে বা নালিশে জেলা কমিটি, বিভাগীয় কমিটি বা কেন্দ্রীয় কমিটিতে যে কোন পর্যায়েই থাকুক না কেন উহা স্বয়ংক্রিয়ভাবে বাতিল হইয়া যাইবে।

(৪) উপ-ধারা (১)-এর অধীন 'খ' তফসিল বাতিল হওয়া সত্ত্বেও উক্ত তফসিলভুক্ত সম্পত্তিতে সরকার বা কোন ব্যক্তির কোন স্বত্ত্ব বা দখল সম্পর্কে প্রচলিত আইনের অধীন প্রতিকার লাভে কোন আইনি বাধা থাকিবে না।

(৫) ধারা ২০ক বিলুপ্ত হওয়া সত্ত্বেও উক্ত ধারার অধীন গঠিত কোন বিশেষ আপিল ট্রাইব্যুনালে 'খ' তফসিলভুক্ত সম্পত্তি সম্পর্কিত কোন মামলা বিচারাধীন থাকিলে উহা এমনভাবে বাতিল হইবে, উক্ত ট্রাইব্যুনাল বিলুপ্ত হইয়া নাই এবং উক্ত মামলার প্রাপ্ত ডিক্রি ধারা ২(খ)-এর উদ্দেশ্য পূরণকল্পে প্রাপ্ত ডিক্রি হইবে।

Section 28A of the *Arpita Sampatti Protyarpan Ain, 2001*, introduced by the *Arpita Sampatti Protyarpan (Second Amendment) Ain, 2013*, contains special provisions regarding the abolition of the Kha Schedule. Under sub-section (1), upon commencement of the 2013 amendment, the Kha Schedule stood abolished, and the properties included therein are to be treated as if they had never been included in the list of vested properties.

Sub-section (2) provides that any judgment or decree already passed by a Tribunal, Appellate Tribunal or Special Appellate Tribunal in respect of such property shall stand cancelled and be deemed invalid, while pending proceedings shall abate automatically without any formal order of abatement. Under sub-section (3), any application or complaint relating to such property pending before the District Committee, Divisional Committee or Central Committee shall likewise stand automatically cancelled.

Sub-section (4), however, makes it clear that abolition of the Kha Schedule does not, by itself, determine the title or possession of

the property in favour of any particular person. It preserves the right of the Government or any individual to seek an appropriate remedy under the existing law in respect of any right, title or interest in the property. Sub-section (5) provides for the continuation of certain proceedings pending before a Special Appellate Tribunal constituted under the former section 20 ka, notwithstanding the abolition of that Tribunal.

The effect of section 28A of the *Arpita Sampatti Protyarpan Ain, 2001*, therefore, is that a property included in the Kha Schedule on the Gazette loses its character as vested property and is deemed never to have been included in the vested-property list. However, such cancellation does not, by itself, confer title upon any private claimant; the title, possession or other rights in respect of the property may still be determined in accordance with the prevailing law. The provision also preserves the right of the Government or any person to seek an appropriate remedy under the prevailing law in respect of any right, title or interest in the property.

In the instant case, the suit property was admittedly included in the Gazette under the Kha Schedule of the vested properties. Consequently, by virtue of section 28A(1) of the *Ain, 2001*, such inclusion stood abolished, and the property is to be treated as having never been included in the list of vested properties. The Government has failed to establish any independent source of title to the suit property other than its inclusion in the vested-property list. Accordingly, following the abolition of the Kha Schedule, such inclusion can no longer constitute a legal basis for the Government's claim to any right, title or interest in the suit property and the

Government remains no room to establish any such right, title or interest in accordance with the other prevailing law.

In the circumstances, we are of the view that the Government has failed to demonstrate a reasonable prospect of success on merits. The explanation furnished for the delay is also wholly unsatisfactory and does not constitute sufficient cause for condonation of the delay of 767 days.

In view of the foregoing discussion, we find no merit in this Rule.

Accordingly, the Rule is discharged, without any order as to costs.

Let a copy of this judgment be communicated to the Court below forthwith.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)