

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Md. Aminul Islam.**

**Civil Revision No.585 of 2014.**

Syed Shamsul Alam and others.

.....Petitioners.

Vs.

Deputy Commissioner, Dhaka and others.

..... Opposite-Parties.

Mr. Zulfiqur Ahmed, Advocate.

..... for the petitioners.

Mr. Shah Newaz, A.A.G.

.....for the opposite-parties.

**Heard on: 17.07.2023 and**

**Judgment on: 19.07.2023.**

This Rule was issued calling upon the opposite-parties to show cause as to why the order dated 01.01.2014 Passed by the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka in Civil Revision No.356 of 2010 abating the Civil Revision under section 13 of the Arpita Sompatti Protarpan Ain, 2001 (Amendment-2011), should not be set-aside and or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the plaintiffs in short is that the plaintiffs as petitioners instituted a Suit No.182 of 2005 in the Court of Senior Assistant Judge, 6<sup>th</sup> Court, Dhaka for permanent injunction. The suit land originally belongs to Debendro Nath Boshak, Bojendro Mohan Boshak, and Radha Sham Boshak in equal share. Debendro Nath Boshak died leaving behind only son Mongo

Mohon Boshak; Bojendro Mohon Boshak and Radha Sham Boshak died without any issue and hence the suit land devolved on Mongo Mohan Boshak alone. S.A. Khatian was prepared and published in the name of Mongo Mohan Boshak. Mongo Mohon Boshak in order to sell out the suit land entered into an agreement for sale with Syed Alimullah, the Predecessor of the petitioners on 06.10.1959 on consideration of Tk.7000/-. Thereafter, Syed Alimullah paid Tk.7000/- to Mongo Mohan Boshak and requested to execute a sale deed but Mongo Mohon refused to do so. Thereafter, Syed Alimullah filed in Title Suit No. 104 of 1963 in the then Court of 1<sup>st</sup> Sub-ordinate Judge, Dhaka for specific performance of Contract. The suit was decreed on 25.11.1963 and Syed Alimullah filed in Title Execution Case No. 41 of 1966 and got the sale deed which was registered on 19.06.1968 through Court. During the R.S operation the suit land was recorded in the name of Syed Alimullah. Syed Alimullah died on 12.02.1975 leaving behind the plaintiffs-petitioners as his heirs. The plaintiffs-petitioners mutated their names in the record of rights vide Mutation Case No. 49C-1/76-77 dated 13.07.1976 and have been enjoying the suit land on payment of rent to the Government. The plaintiffs-petitioners have also mutated their names in the Dhaka City Corporation and have been paying holding Taxes regularly. The plaintiffs-petitioners have constructed building on the suit land and inducted tenant therein. The petitioners have been possessing and enjoying the suit land exercising right and title over the suit

land. The plaintiffs-petitioners have also taken connection of Electricity, Wasa and Gas line in the suit property. The petitioners have come to know from a reliable source that some interested quarter have been trying to motivate the defendants to lease out the property in order to dispose to the plaintiff-petitioners with a view to grave the suit property. Hence, the plaintiffs case.

The defendants as opposite-parties appeared before the learned trial Court filing a written statements denying all material allegations in the plaint. The suit land is a vested property and the Government is the owner of the schedule property. Therefore, the plaintiffs have no right, title and possession over the suit land.

During pendency of the suit, the defendants filed an application on 27.09.2010 under Order VI Rule 17 of the Code of Civil Procedure for amendment of the written statement and after hearing both the parties the learned trial Court allowed the aforesaid application on 08.11.2010.

Being aggrieved by and dissatisfied with the order dated 08.11.2010 the plaintiffs as petitioners filed in Civil Revision No. 356 of 2010 under section 115(1) of the Code of Civil Procedure before the learned District Judge, Dhaka.

During pendency of the Civil Revision, on 24.11.2013 the defendants opposite-parties filed an application under section 13 (Ka) of the Arpita Sompatti Prottarpan Ain, 2001 (Amendment 2011) praying for abatement of

the Civil Revision. The learned District Judge transferred the same to the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka for hearing and disposal. On 01.01.2014 the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka after hearing both the parties allowed the aforesaid application and the suit was abated.

Being aggrieved by and dissatisfied with the order dated 01.01.2014 the plaintiffs as petitioners preferred in Civil Revisional application under section 115(4) of the Code of Civil Procedure before this Court and obtained the present Rule with ad-interim order of stay for a period of 1 (one) year. The petitioners extended the order of stay for time to time and on 09.02.2017 the order of stay extended till disposal of the Rule. However, at the time of issuance of the Rule, inadvertently, the leave was not granted but the opposite-parties did not raise any objection regarding granting leave. Therefore, the Rule is disposed of on merit.

Mr. Zulfiqur Ahmed, the learned Advocate appearing on behalf of the petitioners and he submits that the learned Additional District Judge has failed to appreciate the provision laid down in section 13 of the Arpita Sompatti Prottarpan Ain, 2001,(Amendment 2011) is applicable to a suit in which title is claimed by someone but the present suit is a suit for permanent injunction and in such a suit the paramount consideration is possession of the party and thereby committed an error of law resulting in an error in the impugned order occasion failure of justice. He further submits that the

schedule “Kha” of the Arpita Sompatti Protarpan Ain, 2001 of the Act has been repealed on 20.11.2013 and hence the provision of section 13 of the said Ain is not applicable in the present case and thereby committed an error of law resulting in an error in his decision occasioning failure of Justice. Therefore, the Rule is liable to be made absolute.

Mr. Shah Newaz, the learned Assistant Attorney General appeared on behalf of the Government opposite-parties and he submits that the suit land is a vested property. The Government is the owner of the schedule property. The suit land was finally published “Ka” list serial No. 693 and 725 of the vested property and the Government is in possession of the schedule land. Therefore, the suit is barred by law as well as the suit is abated. Hence, the Rule is liable to be discharged.

Scrutinizing the application, impugned order, others paper and documents, it is obvious to note that the admittedly, the schedule property is a vested property as “Ka” list property and the land was finally published “Ka” list serial No. 693 and 725 of the vested property. The defendants-opposite-parties filed an application praying for abatement of the Civil Revision under section 13(Ka) of the Arpita Sompatti Prottarpan Ain, 2001 (Amendment-2011) before the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka and who heard the application and the same was allowed vide order dated 01.01.2014. On the other hand, the petitioners filed a Suit before the Court of Tribunal for declaration that the Suit property is not vested

property. Admittedly, the Suit property is a vested property and the petitioners challenged the said published “Ka” list of the vested property and he filed a Tribunal Case before the Court of Tribunal, Dhaka though the aforesaid Tribunal Case is now still pending and thus the petitioners may be got only remedy in the Court of Tribunal. The petitioners are totally misconception of law. Therefore, the plaintiffs did not entitle to get any remedy in the instant case.

From plain reading under section 13(1) “Ka” “Kha” of the Ain which runs as follows:

১৩।(১)(ক) [প্রত্যপর্ণযোগ্য সম্পত্তির তালিকা] সরকারী গেজেটে প্রকাশের তারিখে উক্ত মামলায় উক্ত সম্পত্তি যতটুকু জড়িত ততটুকু বাবদ মামলাটি আপনা আপনি abated হইয়াছে বলিয়া গণ্য হইবে;

(খ) এইরূপ abatement এর জন্য সংশ্লিষ্ট আদালত কর্তৃক আনুষ্ঠানিক আদেশ প্রদানের বাধ্যবাধকতা থাকিবে না, এবং উক্ত তারিখের পর এইরূপ সম্পত্তির বিষয়ে উক্ত আদালত প্রদত্ত কোন আদেশ (আনুষ্ঠানিক abatement আদেশ ব্যতীত) এর কার্যকারিতা থাকিবে না;

Therefore, the suit is totally barred by law. Accordingly, the suit is abated.

I have perused the impugned judgment and order and relevant documents, material on record and suffice it to say that the learned Additional District Judge, 8<sup>th</sup> Court, Dhaka did not commit any error of law resulting in an error in the decision occasioning failure of justice by which requires no interference by this Court. In view of the above facts and

circumstances I'm inclined to dispose of the Rule as well as the leave was not granted in the instant Rule.

In the result, the Rule is disposed of with above observation.

There will be no order as to cost.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate the judgment and order at once.

*Md. Abadul Haque/ Bench Officer.*