

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

Writ Petition No. 12839 of 2012

IN THE MATTER OF;

An application under Article 102(A)(I)(II)
of the Constitution of the People's
Republic of Bangladesh.

AND

IN THE MATTER OF;

Rezia Bibi alias Most. Rezia Khatun Bibi

..... Petitioner

-Versus-

Artha Rin Adalat, Bogra & others

..... Respondents

Mr. Md. Mazibar Rahman with
Mr. Md. Abul Kalam, Advocates

..... For the Petitioner.

Ms. Khalifa Samsun Nahar, Advocate

..... For Respondent No.2

Mr. Md. Shamsur Rahman, Advocate

..... For Respondent No.4

Present:

Mr. Justice Syed Muhammad Dastagir Husain
And

Mr. Justice Md. Faruque (M. Faruque)

Heard on 23.02.2014, 24.02.2014,

25.02.2014, 26.02.2014 and Judgment on:

03.03.2014.

Md. Faruque (M. Faruque), J:

In this writ petition Rule Nisi was issued at the instance of the substituted heirs of the judgment – debtor calling upon the respondents to show cause as to why the proceeding of the Execution Case No. 165 of 1993 filed by Manager, Sonali Bank, Bogra Branch, Bogra (Respondent No.2) in the court of Artha Rin Adalat, Bogra for execution of the decree as contained in Annexure-C to the petition attaching the self-acquired property of the petitioner who is neither a loanee nor grantor nor mortgagor as contained in Annexure-B to the petition shall not be declared to have been made without lawful authority and is of no legal effect.

At the time of issuance of the Rule, Respondent Nos. 1 and 2 were directed not to take any action in any manner to sale the property of the petitioner in auction described in the schedule as contained in Annexure-B to the petition.

The petitioner's case, in short, is that the deed of Heba being No. 3749 dated 24.03.1991 was executed and registered by Md. Banijar Rahman Pramanik in favour of Md. Mofazzal Hossain Pramanik, Md. Nurul Islam Pramanik both are sons of Md. Banijar Rahman Pramanik, Most. Rezia Khatun Bibi, wife of Md. Amzad Hossain Pramanik measuring 4.09 $\frac{3}{4}$ acre as described in the schedule of the said deed and delivered possession of the land described in the schedule to them.

Measuring 1.10 of land of mouza Nimarpara, upazila Shibgonj being DP Khatian No. 389 J.L. No. 241 was duly recorded in the name of the petitioner and it was attested on 05.10.1993 by the Revenue Officer of the Settlement Office, Shibgonj, Bogra and while the petitioner was in possession of the aforesaid scheduled land her husband died and that aforesaid Banijar Rahman Pramanik, father-in-law of the petitioner died after the execution of the registration of the aforesaid heba deed dated 24.03.1991 and the petitioner got the gifted land measuring 1.10 acre of land of Plot Nos. 65/136502/822 and the petitioner has the exclusive possession of the said land by virtue of heba given by Md. Banijar Rahman vide Registered Deed of Heba No.3749 dated 24.03.1991.

Artha Decree Execution No. 165 of 1993 was started against M/s Amzad and Sons and Md. Amzad Hossain in the court of the Respondent No.1 for realisation of outstanding dues of Taka 6,82,348.50 and the said Artha Decree Execution Case could not be completed within the stipulated period of time prescribed in Artha Rin Ain, 1990. After a long lapse of time on 06.04.2004 an application was filed by the Respondent No. 2 for substitution of the heirs of late Amzad Hossain who died on 27.12.2003. By this time the Artha Rin Adalat Ain, 2003 came into force and on the same date an application was filed by Respondent No.2 for

attaching the self-acquired property of the petitioner as aforesaid admittedly which was not mortgaged to the bank and prayer was made by the bank for permission for selling out the said property of the petitioner and prayer was rejected, saying; “ দেখলাম । বিধি সম্মত নহে বিধায় নাকচ করা হলো ।”

With reference to the Order No. 83 dated 09.08.2003 annexed to the supplementary affidavit learned Advocate submits that arising out of the judgment and decree, passed in Artha Rin Suit No. 166 of 1990, Artha Rin Execution Case No. 250 of 1992 was started by the bank and by order dated 09.08.2003 said execution case was disposed of with full satisfaction since no objection was filed by the bank in respect of the report dated 15.07.2003. The reports dated 15.07.2003 and 31.07.2003 are reproduced below:

15.07.2003

অদ্য দাখলী প্রতিবেদন প্রাপ্তির দিন ধার্য আছে। নিলাম ক্রেতা পক্ষ হাজিরা প্রদান করেন নাই। নাজিরের প্রতিবেদনসহ দাখলী পরওয়ানা ফেরৎ পাওয়া গেল। উহা পেশ করা হইল। দাখিলী প্রতিবেদনসহ দখলী পরওয়ানা নথিভুক্ত করা হউক। আগামী ৩১.০৭.২০০৩ তারিখ প্রতিবেদন বিরুদ্ধে আপত্তি (যদি থাকে) দাখিলের নিমিত্ত দিন ধার্য করা হইল। ইতিমধ্যে নাজিরের খরচা এবং টুলি খরচায় উত্তোলনের নিমিত্ত পে-স্লিপ ইস্যু করা হউক।”

“31.07.2003

নিলাম ক্রেতা হাজিরা প্রদান করিলেন। নথি পেশ করা হইল।

আগামী ০৯.০৮.২০০৩ তারিখ প্রয়োজনীয় আদেশ।”

Thereafter by order No. 83 dated 09.08.2003, aforesaid report dated 15.07.2003 was accepted and the Artha Decree Execution Case No. 250 of 1992 was disposed of with full satisfaction of the Court below and the aforesaid order No. 83 dated 09.08.2003 reads as follows:

“09.08.2003

ডিক্রীদার পক্ষ হাজিরা প্রদান করিলেন। নথি পেশ করা হইল।
দাখিলা প্রতিবেদন বিষয়ে কোন পক্ষই কোনরূপ পদক্ষেপ গ্রহণ করেন নাই। নথি প্রয়োজনীয় আদেশের জন্য পেশ করা হইল।
দাখিলী প্রতিবেদন প্রকৃত নথি পরীক্ষা করিলাম। কোন আপত্তি দাখিল না করায় গত ১৫.০৭.২০০৩ তারিখের দাখিলী প্রতিবেদন গৃহীত হইল।

অতএব

আদেশ

অত্র ডিক্রীজারী মামলা এখানে পূর্ণ সন্তুষ্টির সাথে নিষ্পত্তি করা গেল।”

The learned Advocate for the petitioner submits that the very mortgaged land of the borrower Md. Amjad Hossain, husband of the petitioner on the basis of the decree of the aforesaid suit was sold in Artho Rin Execution Case No. 250 of 1992 and thereby such order of full satisfaction was passed in the aforesaid Artha Rin Execution Case. He submits that admittedly the petitioner is neither loanee nor guarantor or mortgagor for the loan of her husband Md. Amjad Hossain, now dead. Admittedly, her property was never mortgaged with the bank for satisfaction of the loan amount of her

husband in any manner and therefore he submits that the self-acquired property of the petitioner could not be attached to the subsequent Artha Decree Execution Case No. 165 of 1993 arising out of Artha Rin Suit No. 167 of 1990 and the Artha Rin Adalat had no capacity to pass any order to allow the bank for selling out the petitioner's property. The very sale has been made illegally without any lawful authority and on that ground the petitioner obtained the instant Rule and the order of stay.

It may be mentioned here that one Md. Rezaul Karim who purchased the self-acquired property of the petitioner in auction has become added respondent No.4.

Learned Advocate for the Respondent No. 2 bank by filing affidavit-in-opposition submits that the writ petition is not maintainable and the petitioner is not entitled to get any relief. The learned Advocate submits that Md. Amjad Hossain, proprietor of M/s Amjad and sons and husband of the petitioner, applied to Respondent No. 2 Sonali Bank Limited, Bogra Branch, Bogra for the loan and as per request of the borrower, the Respondent No.2 Bank sanctioned a project loan of Taka 5,47,450/- in favour of Md. Amjad Hossain under sanction letter dated 21.01.1980 and working capital loan of taka 1,36,435/- was sanctioned vide sanction letter No. 5896 dated 07.12.1984 and thus the total loan amounting to taka 6,83,885/- was obtained by the borrower from Sonali Bank,

Corporate Branch, Bogra and for securing the payment of the said liabilities property of the petitioner's husband under khatian No. C.S.28, Plot No. 301 with an area of 11 decimals and under khatian No. 63, Plot No. 294 having an area of 19 decimals, that is, on the total 30 decimals of land was mortgaged to the aforesaid bank.

The learned Advocate for the bank submits that the aforesaid mortgaged land of Md. Amjad Hossain was sold on 30.09.2002 in auction to the highest bidder with the price of taka 6,05,000/- . The learned Advocate for the bank submits that two execution cases being Artha Execution Case No. 250 of 1992 and Artha Execution Case No. 165 of 1993 were filed by the bank for realisation of taka 11,26,600.55 as on 20.05.1993 for the project loan and taka 1,60,747.95 as on 23.09.1982 for the working capital loan respectively. Learned Advocate for the bank submits that the mortgaged lands of the borrower Amjad Hossain were sold on 09.08.2003 through the Execution Case No. 250 of 1992 for an amount of taka 6,05,000/- and the said amount was later on adjusted from the outstanding dues of the borrower for the working capital loan in connection with the Artha Execution Case No. 250 of 1992 for taka 1,60,747.95 and the remaining balance amount of taka 4,44,252.05 was partly adjusted from the outstanding dues of the project loan of the borrower in connection with Artha Execution Case No. 165 of 1993 out of 11,26,500.55 and that outstanding

dues remained for taka 6,82,348.50. It is admitted by the bank that the petitioner is neither loanee nor guarantor nor mortgagor of the borrower's loan. The learned Advocate for the bank submits that since no other property was available for adjusting the outstanding dues after selling out the mortgaged land of the borrower, as such his widow's property was attached by court's Order No. 81 dated 15.07.2009 and the same has been sold in auction.

The auction purchaser added as Respondent No. 4 by filing affidavit-in-opposition submits that the Respondent No. 4 purchased the said land of the petitioner by auction as the highest bidder through the court on payment of taka 16,50,000/-. He further submits that after the death of the loanee, heirs of the loanee including the petitioner were supposed to pay the loan money and that after the sale in auction, date was fixed on 21.09.2011 for filing Boinanama. He submits that petitioner filed Claim Case No. 8 of 2011 arising out of Artha Rin Execution Case No. 165 of 1993 before the learned Artha Rin Adalat which was rejected on 29.01.2012. Thereafter petitioner filed Miscellaneous Case No. 22 of 2012 before the District Judge, Bogra against the order dated 29.01.2012 passed in Claim Case No. 8 of 2011 and the writ petitioner also filed Partition Suit No. 11 of 2011 in respect of the suit land before the Joint District Judge, Court No.2, Bogra which was pending before the court below and he submits that under such

circumstances the writ petition is not maintainable in the eye of law and the rule is liable to be discharged..

Heard the learned Advocates. Perused the writ petition, supplementary affidavit filed by the writ petitioner, affidavit in opposition filed by the Respondent No. 2 bank and the auction purchaser added as Respondent No. 4 and perused all the connected materials before us.

Learned Advocate for the bank submits that the very property of the petitioner which was not kept under mortgage to the bank has been sold through court as per provision of section 8(7) of the Artha Rin Adalat Ain, 2003. The aforesaid provision of law runs as follows:

“৮(৭): বাদী কোন মামলায় বিবাদীর সম্পত্তির কোন তফসিল প্রদান করিতে অসমর্থ হইলে, বাদীর আবেদনক্রমে আদালত বিবাদীকে লিখিত হলফনামা সহকারে তাহার অস্থাবর ও স্থাবর সম্পত্তির হিসাব দাখিল করিতে নির্দেশ প্রদান করিবে এবং এই রূপ নির্দেশ প্রাপ্ত হইলে বিবাদী তদনুসারে তাহা অস্থাবর ও স্থাবর সম্পত্তির, যদি থাকে, তালিকা লিখিত হলফনামা সহকারে আদালতে পেশ করিবে।”

This provision of law is applicable for the exclusive property of the borrower. Admittedly, the lands which are the self acquired property of the petitioner were not mortgaged to the bank for recovery of the loan amount of the borrower and the petitioner is neither loanee nor mortgagor or guarantor for the loan of her husband and admittedly she has not inherited any property from her

husband, the borrower. So the provision of section 8(7) of the Artha Rin Adalat Ain has got no manner of application for recovery of the loan of the borrower Amjad Hossain now dead by selling out the self-acquired property of the petitioner. Furthermore, it appears from the order No. 83 dated 09.08.2003, it is found that the Artha Rin Execution Case No. 250 of 1992 was disposed of with the full satisfaction without any objection of the decree holder bank.

We find that the very attachment of the petitioner's self acquired property has been attached and sold without any lawful authority and therefore the sale of the said property of the petitioner to the added Respondent No. 4 is illegal and without any sanction of law. As such the very sale of the petitioner's property is illegal and without any lawful authority and is of no legal effect. We can hold that the petitioner has sustained substantial injury by the reason of such attachment of her self-acquired attached property and subsequently by selling out the same to the Respondent No. 4 which was never mortgaged to the bank for recovery of the loan of the borrower Md. Amjad Hossain. More so, that the petitioner has not inherited any property from the borrower Md. Amjad Hossain.

Under the circumstances, we find that the very attachment of the self- acquired property of the petitioner and the very sale of the said property to the added Respondent No. 4 is illegal, without any

lawful authority and is of no legal effect and we find substance in the Rule.

In the result, the Rule is made absolute without any order as to costs. The proceedings of the Execution Case No. 165 of 1993 filed by the respondent No.2 in the Court of Artha Rin Adalat, Bogra is hereby declared to have been made without any lawful authority and is of no legal effect.

The Respondent No. 2 Sonali Bank is directed to refund the sale amount of taka 16,05,000/- to the auction purchaser, added Respondent No. 4 with interest at the rate of 10% within 1(one) month from the date of receipt of this order.

Syed Muhammad Dastagir Husain, J:

I agree.