

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Hasan Foez Siddique**  
**Chief Justice**

**Mr. Justice Obaidul Hassan**

**Mr. Justice M. Enayetur Rahim**

**CIVIL APPEAL NO.289 OF 2015.**

(From the judgment and order dated 17.08.2011 passed by the High Court Division in Writ Petition No.6643 of 2006.)

Abdul Halim Gaznabi and Appellants.  
others.

**=Versus=**

M.M. Badsha Shirazi and Respondents.  
others.

For the Appellants : Mr. Qumrul Haque Siddique,  
Advocate, instructed by Ms.  
Madhumaloti Chowdhury Barua,  
Advocate-on-Record.

For the Respondent : Mr. Probir Neogi, Senior  
Nos.1. Advocate, instructed by Mr.  
Syed Mahbubar Rahman,  
Advocate-on-Record.

For the Respondent : Ms. Nahid Sultana,  
No.6 Advocate-on-Record.

Respondent : Nos.2- Not represented  
5, 7-17.

***Date of hearing* : 22.06.2022 & 27.07.2022.**

***Date of judgment* : 03.08.2022**

**JUDGMENT**

**Hasan Foez Siddique, C.J:** This Civil Appeal is directed against the judgment and order dated 17.08.2011 passed by the High Court Division in Writ Petition No. 6643 of 2006 making the Rule absolute.

The respondent No.1 herein, Superintendent of Hossaini Dalan Waqf Estate, Dhaka filed the above mentioned writ petition challenging the order No.150 dated 05.02.2006 passed by the Artha Rin Adalat No.3, Dhaka in Miscellaneous Case No.7 of 1996 arising out of Title Execution Case No.151 of 1991 rejecting the application under order 21 rule 58 of the Code of Civil Procedure.

The facts necessary for disposal of this appeal, in short, are that the present appellants took loan from the respondent No.3 bank by mortgaging the property, in question. The borrowers defaulted in repayment of the said loan, consequently, the bank instituted Title Suit No.244 of 1979 against the borrowers for recovery of outstanding loan and the said suit was decreed on compromise on 23.09.1984. Since the defendant-judgment debtors could not pay the decretal amount, the decree-holder bank put the decree in execution by filing the Title Execution Case No.151 of 1991. In that title execution case a tender notice was published in a daily newspaper for holding auction of the mortgaged property of the judgment-debtors. The present respondent,

Superintendent of Hossaini Dalan Waqf Estate then filed an application under Order XXI Rule 58 of the Code of Civil Procedure in that execution case stating, inter alia, that the property in question was waqf property which was leased out to one Pearoo Miah Sarder by a registered lease deed dated 21.12.1956 for 50 years at a yearly rental of tk.250/. It was stipulated in the said lease deed that the lessee would surrender possession of that property to the lessor on expiry of the lease period. The bank filed the mortgage suit without impleading the Administrator of Waqf or the respondent No.1 as a defendant in that suit. The defendant- judgment debtors had no authority to mortgage the property, in question to the plaintiff bank to secure the loan availed by them. The disputed property was liable to be excluded from the execution proceeding.

The said application under order 21 Rule 58 of the Code of Civil Procedure filed by the respondent No.1 was registered as Miscellaneous Case No.7 of 1996.

The decree-holder bank and the judgment-debtors proforma opposite party Nos.3 to 8

contested the said miscellaneous case by filing two separate written objections. Their case, in short, was that the mortgagors became owners of the property in question under the Government after wholesale acquisition of rent receiving interest, the respondent No.1 had no right, title and interest in that land and as such the miscellaneous case was liable to be rejected.

The Artha Rin Adalat, on consideration of the evidence adduced by both the parties and the facts and circumstances, dismissed the said miscellaneous case by the order No.150 dated 05.02.2006.

Being aggrieved by this order dated 05.02.2006, the Superintendent of Hossaini Dalan Waqf Estate filed Writ Petition No.6643 of 2006 in the High Court Division and obtained rule. The present appellants contested the rule by filing affidavit-in-opposition.

A Division Bench of the High Court Division, after hearing both the sides, made that rule absolute observing that on the expiry of the lease tenure in the year of 2007, the property, in question, would be returned to the lessor as per terms and conditions embodied in the lease deed. The High Court Division set aside the

order dated 05.02.2006 passed by the Artha Rin Adalat No.3, Dhaka and allowed the Miscellaneous Case No.07 of 1996 under order 21 Rule 58 of the Code of Civil Procedure by the impugned judgment and order.

Being aggrieved, the judgment-debtors have preferred this appeal upon getting leave.

Mr. Qumrul Haque Siddique, learned Counsel appearing for the appellants, submits that the admitted position is that late Khawja Habibullah Bahadur leased out the suit properties to Pearoo Miah Sardar by a registered yearly lease deed dated 21.12.1956 and in the lease deed it was clearly stipulated that the lease shall endure and subsist for a period of 50 years from the 1<sup>st</sup> day of January, 1957 to 21<sup>st</sup> day of December, 2007 and that the lease hold interest thus created should be heritable by the heirs of the lessee and should also be transferrable in any manner whatsoever, the High Court Division erred in law in making the rule absolute. He further submits that after acquisition of rent receiving interests late Pearoo Miah Sardar became tenant under the Government, thereby, he acquired valid title of the property in question, the High

Court Division erred in law in making the Rule absolute. He lastly submits that instant writ petition was not at all maintainable.

Mr. Probir Neogi, learned Senior Counsel appearing for the respondent No.1, submits that regard having been had to the provisions of section 85(1) (e) of the Non Agricultural Tenancy Act, the land, in question, being a land under a public waqf nothing in this act shall apply to the instant case. He further submits that when the indenture of the lease clearly provides that the lease is for specified period, the said lease is not lease in perpetuity but is one for specified period. He further submits that section 26A of the Non Agricultural Tenancy Act and section 81A of the State Acquisition and Tenancy Act, have no manner of application in the instant case since lease in question started on 21.12.1956.

It appears from the materials on record that Uttara Bank Limited, instituting Title Suit No. 244 of 1979 for recovery of outstanding loan against the appellants, got compromise decree on 23.09.1984 but the judgment debtors failed to pay the said decreetal dues. Thus, the Bank filed Title Execution Case No.151 of 1991 and in

the said execution proceeding the case land was attached and in order to sell the said land in auction an auction notice was published in "The Daily Inquilab". The writ petitioner respondent No.1, thereafter, filed an application under order 21 Rule 58 of the Code of Civil Procedure, stating that the property described in the schedule No.1 to the application for execution is Waqf property which was leased out to one Pearoo Miah Sardar by registered lease deed on 21.12.1956 for a period of 50 years at a yearly rent of taka 250/- only. In clause "G" of the said lease deed it was specifically stipulated that after expiry of the period of lease, the lessee would surrender the possession of the lease property. The judgment-debtors have had no right to mortgage the property to the plaintiff Bank. It was the contention of the learned Advocate of the appellants that after enforcement of the State Acquisition and Tenancy Act, the lessee became the permanent lessee under the Government and that the respondent No.1 had no rent receiving interest in the case property. The rent receiving interest of all the rent receivers were acquired with effect from 14.04.1956 under section 3 of the State

Acquisition and Tenancy Act, as amended by East Bengal Ordinance No. III of 1956 in the District of Dhaka vide notification Nos.4826 LR to 4836-LR respectively, dated 2<sup>nd</sup> April, 1956, published in Dhaka Gazette extra-ordinary dated 2<sup>nd</sup> April, 1956 (part one). The instant lease deed was executed and registered on 21.12.1956, that is, after enforcement of State Acquisition and Tenancy Act. In such view of the matter, the submission made by Mr. Siddique that after enforcement of the State Acquisition and Tenancy Act, lessee Pearoo Miah Sardar became tenant under the Government has no leg to stand.

Moreso, it appears from the lease deed that there was clear stipulation that the lessor agreed with the lessee that lease shall endure and subsist for a period of 50 years, from the 1<sup>st</sup> day of January, 1957 to 21<sup>st</sup> day of December, 2007. From that aforesaid condition of the lease and pursuant to the provision of section 108(B) of the Transfer of the Property Act, it is apparent that the lessor was entitled to get back the property after expiry of 50 years. After expiry of that 50 years tenure, the lease hold rights of the appellants have been extinguished.



Considering the aforesaid facts and circumstances of the case, we are of the view that the High Court Division has not committed any error of law in making the Rule absolute releasing the property of the writ petitioner respondent No.1 from the attachment.

Accordingly, we do not find any substance in the appeal.

Thus, the appeal is dismissed.

**C.J.**

**J.**

**J.**

The 3<sup>rd</sup> August, 2022.  
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