

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

**Writ Petition No. 8131 of 2020**

In the matter of:

An application under article 102(1),(2)(a)(i)(ii) read with article 44 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:

Shahnaj Parvin and others

..... Petitioners.

-Versus-

The Government of Bangladesh, represented by its Secretary, Ministry of Local Government, Rural Development and Cooperatives, Secretariat, Ramna, Dhaka and others,

... Respondents.

Mr. Mohammad Rafiul Islam, Advocate,

...For the Petitioners.

Mr. Bepul Bagmar, D.A.G,

...For the Respondent No.1.

Mr. Mintu Kumar Mondal, Advocate

.....For the respondent No.2.

**Judgment on: 12.05.2024**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**and**

**Mr. Justice K M Zahid Sarwar**

**MD. KHASRUZZAMAN, J.:**

In the application under article 102(1)(2)(a)(i)(ii) read with article 44 of the Constitution, on 07.12.2020 the *Rule Nisi* under adjudication was issued in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why without acquiring the petitioners’ land as*

*described in the schedule of the writ petition the construction of bridge by the respondents should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuance of the *Rule Nisi*, the respondents were restrained by an order of injunction from constructing any work on the petitioners' land described in the schedule of the writ petition. However, the respondents were allowed to proceed with the development works if the land is acquired or khas or government land.

Challenging the said interim order of injunction dated 07.12.2020, the respondent No.5 Executive Engineer, LGED, Manikganj filed Civil Petition for Leave to Appeal No. 2424 of 2020 before the Appellate Division. The Appellate Division vide its order dated 11.01.2021 disposed of the civil petition and stayed the interim order of injunction till disposal of the writ petition by the High Court Division.

Thereafter, the writ petitioners filed an application for issuance of a supplementary *Rule Nisi* stating that since the respondents have already constructed bridge and its approach road upon the lands of the petitioners without paying any compensation, they have filed this application for direction upon the respondents for realization of compensation money. Having considered the submissions and perused the application, this Court by order dated

16.05.2023 issued a supplementary *Rule Nisi* in the following terms:

*“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why they shall not be directed to pay compensation money for the lands of the petitioners as described in the schedule of the writ petition as per the provision of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

Facts necessary for disposal of the *Rule Nisi*, in short, are that petitioner No.1 got 30.00 decimals of land under R.S. Khatian Nos. 198,179, 151 and 163 corresponding to R.S. Plot Nos. 355, 353, 357, 308 and 346 by Deed of Gift No. 6289 dated 13.08.2018. Thereafter, she got 5.50 decimals of land under R.S. Khatian No. 26 corresponding to R.S. Plot No.359 by Deed of Gift No.6458 dated 16.08.2018 and lastly, she got 1.50 decimals of land under R.S. Khatian No. 26 corresponding to R.S. Plot No.359 by Deed of Gift No. 6736 dated 04.09.2018. Accordingly, the petitioner No.1 has become an owner of 37.00 decimals of land on the basis of the above three deeds of gift. Petitioner Nos. 2 to 5 are the owners of 19.71 decimals of land under R.S. Khatian No. 222 corresponding to R.S. Plot No.351 by Deed of Gift No.3223 dated 11.04.2018. Petitioner No.6 and others are the owners of 21.50 decimals of land under R.S. Khatian No.6 corresponding to R.S. Plot No.358 by purchase vide deed dated 12.05.1997. Petitioner Nos. 7 and 8 are

the owners of 63.75 decimals of land under R.S. Khatian No. 26 corresponding to R.S. Plot Nos.359 and 360 by purchase vide sale deed No. 91 dated 06.01.2008. Petitioner Nos. 9 to 11 are the owners of 4.20 decimals of land under R.S. Plot Nos. 424 and 425 by purchase. One Mohabbat Ali was the recorded owner of the land under R.S. Khatian Nos. 360, 163, 179 and 208 corresponding to R.S. Plot Nos. 344, 345, 346, 354 and 357. Said Mohabbat Ali died leaving behind Alauddin, Khokon Miah, Rabeya, Rahela and Ambia including petitioner No.12. Petitioner No.12 is the owner of more or less 17.00 decimals of land in the above khatian and plots. Petitioner No. 13 is the owner of 15.00 decimals of land under R.S. Plot No.222 corresponding to R.S. Plot No.351 by deed of Heba Bil Awaz No.4582 dated 03.06.2018. Petitioner No.14 got 2.00 decimals of land under R.S. Khatian No.178 corresponding to R.S. Plot No.424 by deed of sale dated 16.08.2018. Thereafter, she got 2.00 decimals of land under R.S. Khatian No. 127 corresponding to R.S. Plot No. 340 vide deed of purchase No.6735 dated 04.09.2018. Lastly, she got 1.50 decimals of land under R.S. Khatian No.178 corresponding to R.S. Plot No.424 by purchase deed No. 7715 dated 02.10.2018. So, the petitioner No.14 is the owner by purchase of total 5.50 decimals of land on the basis of the above three deeds of purchase. Petitioner No.15 got 2.75 decimals of land under R.S. Khatian No. 178 corresponding to R.S. Plot No. 424 by deed of sale No.6123 dated 07.08.2018. She thereafter got 17.39 decimals of land under R.S. Khatian No.26 corresponding to R.S.

Plot No.359 by deed of gift No.6120 dated 07.08.2018. Afterwards, she got 26.50 decimals of land under R.S. Khatian Nos. 198, 179, 151 and 208 corresponding to R.S. Plot Nos. 308, 344, 353, 355 and 357 by deed of gift No.6290 dated 13.08.2018. Lastly, she got 20.40 decimals of land under R.S. Khatian Nos. 198, 160 and 179 corresponding to R.S. Plot Nos. 344, 345, 353, 354, 355 and 357 by deed of gift No.8056 dated 11.10.2018. So, on the basis of the above four deeds of gift the petitioner No.15 is the owner of total 67.04 decimals of land. Petitioner No.16 got 9.00 decimals of land under R.S. Khatian No. 6 corresponding to R.S. Plot No. 358 by deed of gift No.6121 dated 07.08.2018. She thereafter got 25.85 decimals of land under R.S. Khatian Nos. 160, 208, 163 and 178 corresponding to R.S. Plot Nos. 244, 345, 353, 354, 355 and 357 by deed of gift No.8055 dated 11.10.2018. In view of the above two deeds of gift, petitioner No.16 has become the owner of 34.85 decimals of land in the khatians and plots mentioned above.

It is stated that on 23.04.2018 respondent No.2, Chief Engineer, Local Government Department (LGED), LGED Bhaban, Sher-E-Bangla Nagar, Agargaon, Dhaka issued a letter to the respondent No.1 (Senior Secretary, Ministry of Local Government, Rural Development and Co-operatives, Local Government Division) seeking approval to acquire 2.2779 acres of land for construction of the approach road for 360 meter in length PC Guarder Bridge over the Kaligonga river in Nawabgonj-Paragram UZR Sholla UP Maniknagar JC Road under the project of 'Construction of Large

Bridges on Upazila and Union' (Annexure-A). Out of the proposed 2.2779 acres of land, 2.0319 acres is for the approach road within Sholla mouza, Singair of Manikganj District and 0.246 acre is for Nawabganj-khatia of Dhaka District. After taking approval from the Ministry, the requiring body i.e. respondent No.5, Executive Engineer, LGED, Manikganj vide his Memo No. এল জি ই ডি / নিঃ প্রঃ / মানিকগঞ্জ / ২০১৮ / ২১৫৭ dated 03.09.2018 requested the acquiring body i.e. respondent No.6, Deputy Commissioner, Manikganj to acquire 2.0319 acres of land situated in the part of Manikganj for construction of 360 meter in length PC Girder RCC Bridge over the river Kaligonga (Annexure-B). Thereafter, Land Acquisition Officer, Manikganj vide his Memo No.05.30.5600.303.02.014.18-177(4) dated 08.11.2018 requested the Additional Deputy Commissioner (Revenue), Upazila Nirbahi Officer, Singair and Assistant Commissioner (Land), Singair to give opinion with a report regarding feasibility of the acquisition of the land for construction of approach road and bridge (Annexure-C). After completion of the said feasibility study, respondent No.6 being the acquiring body initiated L.A. Case No.03/2018-2019 and issued notices under section 4(1) of the Acquisition and Requisition of Immovable Property Act, 2017 upon the petitioners to acquire their lands (Annexure-D). After taking final decision of the acquisition under section 6 of the Act, on 31.03.2019 the respondent No.6, the Deputy Commissioner, Manikganj issued notices under section 7(1) of the said Act to appear before him along with all necessary

documents on the date and at the time as fixed therein to explain their title and interest in the lands proposed to be acquired (Annexure-E). But without completing the process of acquisition and without paying any compensation, the requiring body i.e. the respondent No.5 started constructing the bridge and the approach road on the lands of the petitioners (Annexure-F) (Photographs of the constructed bridge). In such circumstances, on 03.06.2019 the petitioners made representation to the requiring body i.e. respondent No.6 asking their compensation (Annexure-G).

It is stated that on 25.07.2019 the acquiring body i.e. the respondent No.6 vide letter dated 25.07.2019 requested the requiring body i.e. respondent No.5 to deposit TK.13,99,54,460 (Thirteen Crore Ninety Nine Lac Fifty Four Thousand Four Hundred and Sixty) within 120 days as compensation money against the aforesaid acquisition of the lands (Annexure-H). The requiring body i.e. the respondent No.5, without depositing the compensation money in favour of the respondent No.6 and without paying any heed to the representation of the petitioners dated 03.06.2019, issued letter to respondent No.9 (DIRD Engineering Limited) granting work order of construction of Reinforced Earth (EC) Wall of 360 meter in length PC Girder RCC Bridge (Annexure-I). Under such circumstances, the petitioners filed Writ Petition No.10691 of 2019 and obtained *Rule Nisi* and a direction to dispose of their representation dated 03.06.2019 vide order dated 03.11.2019 (Annexure-J). After the *Rule Nisi* was issued in that writ petition,

respondent No.4, Executive Engineer, Agargaon, Dhaka Zone by his letter dated 13.11.2019 informed the respondent No.3, the Project Director, stating that since the fund is insufficient, the construction work of approach road will be completed on the existing road and no land is required for acquisition. The respondent No.5 also by his letter dated 19.11.2019 requested the respondent No.6, the Deputy Commissioner, to cancel the acquisition process (Annexure-K). After the acquisition process was cancelled, the cause of action for filing above Writ Petition No.10691 of 2019 has lost its force and as such, the petitioners got the *Rule Nisi* discharged for non prosecution on 15.10.2020 (Annexure-L).

Thereafter, on 27.02.2020 one Md. Sakhawat Hossain and the writ petitioners jointly made representation to the acquiring body i.e. the respondent No.6 seeking remedy in accordance with law. On the basis of the representation, an enquiry committee consisting of (1) Executive Engineer, Manikganj LGED, (2) Upazila Nirbahi Officer, Singair, Manikganj, and (3) Assistant Commissioner (Land), Singair was constituted to enquire into the matter. After holding physical enquiry the enquiry committee submitted report dated 20.06.2020 stating that though the process of acquisition was cancelled by LGED, they have already constructed the bridge and approach road over the land of the private parties not the existing road (Annexures- M and M-1).



Under such circumstances, the petitioners filed the instant writ petition and obtained the *Rule Nisi* and an order of injunction in the manner as stated hereinabove on 07.12.2020.

Respondent No.2, Chief Engineer, Local Government Engineering Department (LGED) filed an *affidavit-in-opposition* denying the material allegations made in the writ petition and contending *inter-alia* that due to shortage of fund, the design of the approach road was changed proposing to construct the approach road on the existing road by making Reinforced Earth Wall (EC) and there was no necessity of acquiring any land. This proposal was sent to the Project Director on 18.02.2019 and 13.11.2019. Thereafter, on 02.01.2020 the administrative approval for acquiring the land was cancelled. The claim of the petitioners is totally unspecific, vague and upon such claim the writ petition cannot be maintained since the claim is not admitted by the respondents. As such, it is stated that the *Rule Nisi* is liable to discharged.

Mr. Mohammad Rafiul Islam, the learned Advocate appearing for the petitioners submits that the respondent No.6 being the acquiring body initiated L.A. Case No. 03/2018-2019 for acquisition of the lands of the petitioners and issued notices under section 4(1) of the Acquisition and Requisition of Immovable Property Act, 2017 and thereafter, upon taking final decision in favour of such acquisition, the respondent No.6 with a view to take possession issued notices under section 7(1) of the said Act, 2017 requesting the petitioners to appear and explain about their title

over the lands. Thereafter, the requiring body i.e. the respondent No.5 has been asked by the acquiring body to deposit the compensation money within 120 days, the requiring body all of a sudden issued letter to the acquiring body i.e. the Deputy Commissioner, Manikganj requesting him to cancel the process of acquisition. He further submits that there is no bar in law to cancel the process of acquisition. But in one hand they cancelled the process of acquisition and in other hand, they have completed the development work of constructing approach road and the bridge over the Kaligonga river on the petitioners' lands. Without paying any compensation the respondents under no circumstances can construct the approach road and the bridge in question. Right to get compensation in lieu of their lands is a fundamental right under article 42 of the Constitution and this right of getting compensation is protected under article 31 of the Constitution and as such, the petitioners are entitled to get compensation for their lands. Accordingly, he prays that the *Rule Nisi* is liable to be made absolute.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing for the respondent No. 1 submits that since the process of acquisition has been cancelled by the respondents, and after revising the design of the approach road, the construction of such approach road on the existing road has already been completed as per order dated 11.01.2021 passed by the Appellate Division in Civil Petition No. 2424 of 2020. Thus the question of payment of

compensation does not arise at all. In such circumstances, the claim of the writ petitioners becomes a disputed question of fact which is not amenable under the writ jurisdiction. As such, the *Rule Nisi* is liable to be discharged.

Mr. Mintu Kumar Mondal, the learned Advocate appearing for the respondent No.2 has adopted the submissions so made by the learned Deputy Attorney General for the respondent No.1 and prayed for discharging the *Rule Nisi*. The petitioners if so advised may seek remedy before the competent civil Court not before this writ jurisdiction since the claim of the petitioners is required to be substantiated by taking evidence which cannot be done in the writ petition.

In reply to the submissions of the learned Advocates for the respondents, Mr. Mohammad Rafiul Islam, the learned Advocate for the petitioners submits that right to property is a fundamental right and for the enforcement of such right the affected person can come directly before the High Court Division under the writ jurisdiction. Referring to the case of **Government of Bangladesh, represented by the Ministry of Works and another Vs. Syed Chand Sultana and others, 18 BLD (AD) 274**, he submits that the writ petitioners need not have invoked the jurisdiction of the civil Court because the very non payment of the compensation money of the land used for construction of the approach road is violative of article 42 of the Constitution and as such, they have come directly to the High Court Division for protection of their fundamental right. Accordingly, he submits that the writ petition is maintainable under article 102 of the Constitution for protection of their

fundamental right and hence the main *Rule Nisi* as well as the supplementary *Rule Nisi* is liable to be made absolute.

We have considered the submissions of the learned Advocates of both the parties and perused the writ petition along with all papers annexed thereto as well as the relevant law and decisions as referred to above.

On perusal of the materials on record, it appears that after obtaining administrative approval from the Ministry, the Executive Engineer, LGED, Manikganj being the requiring body requested the acquiring body i.e. Deputy Commissioner, Manikganj for acquisition of 2.0319 acres of land for construction of the approach road vide Memo dated 03.09.2018 (Annexure-B). The Office of the Deputy Commissioner in compliance of such request vide letter dated 08.11.2018 under the signature of Land Acquisition Officer, requested the Additional Deputy Commissioner (Revenue), Upazila Nirbahi Officer and Assistant Commissioner (Land), Singair, Manikganj to make feasibility study of the acquisition of the land for construction of the approach road. Thereafter, the Deputy Commissioner, Manikganj issued notices under section 4(1) of the Acquisition and Requisition of Immovable Property Act, 2017. Afterwards, notices under section 7(1) of the said Act were issued upon the petitioners. On perusal of the notices under section 7(1) of the Act, it appears that the government has taken final decision to acquire the lands of the petitioners as required under section 6 of the Act. On 25.07.2019 the acquiring body i.e. the Deputy Commissioner, Manikganj (respondent No.6) sent the award of compensation to the requiring body (respondent No.5) requesting them to deposit the said amount in favour of the respondent No.6 for payment of the same to the petitioners being

the affected persons as required under section 8 of the said Act (Annexure-H).

It appears that without depositing the award of compensation money, the requiring body i.e. the Executive Engineer, LGED, Manikganj vide his letter dated 19.11.2019 informed the Deputy Commissioner, Manikganj stating that there is no necessity of acquisition of the land and steps were taken to inform the Ministry for cancellation of the administrative approval for acquisition of the land.

Of course, the acquiring body has ample power to cancel or withdraw the process of acquisition. In sub-section (1) of section 14 of the Acquisition and Requisition of Immovable Property Act, 2017, it has been provided that if the requiring body does not deposit the estimated amount of compensation money within 120 days as per sub section (4) of section 8, the process of acquisition shall be cancelled and in that respect a declaration shall be published in the government gazette notification by the Deputy Commissioner. In sub-section (2) of section 14, it has also been provided that before making payment of the compensation, the Deputy Commissioner with prior approval of the government can cancel entire process of acquisition through gazette notification. In sub-section (3) of section 14, it has further been provided that if the process of acquisition is cancelled or withdrawn, the Deputy Commissioner will take necessary steps to give payable compensation money arising out from such process of the acquisition to the affected owners of the land. In the present case, we do not find any such gazette notification has been published by the Deputy Commissioner, Manikganj with regard to the cancellation of the process of acquisition.

However, from the statements made in the writ petition and the affidavit-in-opposition filed by the respondent No.2, it appears that the requiring body has already completed the construction of the approach road and the bridge over the river Kaligonga. It appears that the petitioners jointly made application to the Deputy Commissioner for getting compensation money on 03.06.2019. But the said application has not been responded to by the respondents. It further appears that on 27.02.2020 one Md. Sakhawat Hossain and the writ petitioners jointly made an application seeking remedy to the respondent No.6 i.e. the Deputy Commissioner, Manikganj alleging that the respondents are taking away their lands to construct the aforesaid bridge and approach road without completing the acquisition process and without paying any compensation money. In view of the said application, the Deputy Commissioner, Manikganj being the acquiring body constituted an enquiry committee consisting of (1) Upazila Engineer, LGED, Singair Manikganj, (2) Upazila Nirbahi Officer, Singair and (3) Assistant Commissioner (Land), Singair asking them to enquire into the matter physically and give report to resolve the allegations made in the application dated 27.02.2020. After physical inspection in presence of the applicants and the people of the construction firm, a joint enquiry report was submitted on 20.06.2020 (Annexures-M and M-1). In the report it has been mentioned that the approach road is being constructed over the land of R.S. Plot Nos. 351, 353, 354, 355, 357, 358 and 359 of Sholla Mouza under Singair Upazila, Manikganj. During enquiry the enquiry committee also found that as per previous alignment the lands which are being used are private lands meaning that the construction of approach road was not made on the existing road.

By filing an affidavit-in-opposition, the respondent No.2 i.e. the Chief Engineer, LGED has stated in paragraph No.11 that no private land has been used for construction of the bridge. Mere making of any such statement is not sustainable when the Upazila Engineer, LGED, Singair by a physical inspection along with the acquiring body found that the lands which are being used for construction of the approach road are private lands. It is very important to note that the enquiry committee in their joint report stated that they found that পূর্বের এলাইনমেন্ট অনুযায়ী এপ্রোচ রোডের জমি ব্যবহৃত হচ্ছে যা ব্যক্তি মালিকানাধীন ভূমি। As such, it can very well be presumed that the approach road has been constructed on the basis of the earlier design not changed design using the lands of the petitioners which were proposed to be acquired under cancelled L.A. case. This joint report was made by the acquiring and requiring body. It also appears that the said joint report was sent to the respondent No.5 i.e. the Executive Engineer, LGED, Manikganj (requiring body) for taking necessary actions vide Memo dated 06.07.2020 (Annexure-M). Against that joint enquiry report, the requiring body did not raise any kind of objection to the acquiring body. So, there is a clear case that the lands which were used for construction of the approach road of the bridge are the lands of the petitioners.

Under such circumstances, the point for determination is that whether the petitioners are entitled to get compensation money for the lands already used for construction of the approach road of the bridge over Kaligonga river. Article 42(1) of the Constitution provides that subject to any restriction imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property. It further provides that no property shall be compulsorily acquired, nationalized or

requisitioned save by the authority of law. (emphasis is given). The second part of the article 42(1) provides for extinction of the right to property only by way of compulsory acquisition or nationalization under the authority of law. On the other hand, this right to property and get compensation money being fundamental right, the petitioners are entitled to get compensation in accordance with law. This right to having compensation is protected under article 31 of the Constitution. As such, article 42(1) of the Constitution cannot be interpreted in a way which will render the protection of article 31 nugatory.

So, it is clear that the right to property and compensation money for the land acquired/used for construction of the approach road is a fundamental right of every citizen including the petitioners. Enforcement of fundamental right upon invoking article 102(1) of the Constitution before this Division is also guaranteed under article 44 of the Constitution.

In the case of **Syeda Chand Guttara and others Vs. Bangladesh, 48 DLR 547**, it has been held that:

*“The very fact that the inclusion of the disputed property in the ‘kha list’ have been found by us to be ex-facie void for want of jurisdiction and in violation of article 42 of the Constitution, it is our view that the petitioners can come directly to this Court for protection of their fundamental rights even through an alternative remedy is available.”*

Again in the case of **Government of Bangladesh represented by Ministry of Works and another Vs. Syed Chand Sultana and others, 18 BLD (AD) 274**, held that:



*“The writ petitioners need not have invoked the jurisdiction of the Court of Settlement because the very inclusion of the property in question in the ‘Kha’ list is ex facie void for want of jurisdiction and is violative of article 42 of the Constitution. The writ petitioners can come directly to the High Court Division for protection of their fundamental right even though an alternative remedy is available.”*

For the reasons and discussions made hereinabove, we find that the *Rule Nisi* as well as the supplementary *Rule Nisi* has merit and the same is therefore liable to be made absolute.

Accordingly, both the *Rules Nisi* are made absolute.

Hence, it is declared that without acquiring the petitioners’ lands as described in the schedule of the writ petition, the construction of the bridge and its approach road by the respondents is without lawful authority and is of no legal effect.

The respondents are directed to pay compensation money for the lands of the petitioners as described in the schedule of the writ petition as per the provision of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ in accordance with law.

There will be no order as to costs.

Communicate the order.

**K M Zahid Sarwer, J.**

I agree.