IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present
Madam Justice Kashefa Hussain

Civil Revision No. 4148 of 2009

Executive Engineer, Roads and Highway Department, Tangail and others
.....petitioners
-Versus-
Abdul Karim being dead his heirs Md. Atikur Rahman and others
------- Opposite parties.
Mr. Abdul Salam Mondal, D.A.G with
Mrs. Shahida Khatoon, A.A.G
------ For the petitioners
Mr. Probir Neogi, Senior Advocate with Mr. Md. Mozammel Haque Bhuiyan, Advocate with Mr. Sumon Ali, Advocate
.....For the Opposite Parties No. 1-14 and 17-32
Mrs. Sarwat Siraj, Advocate
..... for the Opposite Nos. 15-16.
Heard on: 10.10.2018, 22.10.2018, 23.10.2018, 24.10.2018, 28.10.2018, and Judgment on 05.11.2018.

Upon condoning a delay of 78 days in filing the civil revisional application, Rule was issued in the instant Civil Revisional application calling upon opposite parties No. 1-14 to show cause as to why the judgment and decree complained of in the petition moved in court today should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The opposite parties No. 1-2 predecessor of the opposite party Nos. 3-5, opposite party Nos. 6-14 and one Md. Abdul Bashet as plaintiffs instituted Other Class suit No. 8 of 2003 in the court of learned Senior Assistant Judge, Kalaihati, Tangail impleading the present petitioners and opposite party Nos. 15-16 as defendants praying for declaration of title over the suit land.

The plaintiff's case inter alia is that Jamir Mondol, Emam Shiekh and Amir Ali were the owners of 24 decimals of land under S.A. plot No. 122, khatian No. 14 Mouza-satutia, upazila-Kalihati, District- Tangail and C.S record was prepared in their names. Jamir Mondal while owning and possessing gave the land to his sole daughter Ajiron Nessa and delivered possession thereof. Ajiron Nessa died leaving behind 2 sons namely Bahaj Uddin alias Pakku Mondal and AbdulBased and 2 daughters. Upon an amicable partition 2 sons of Ajiron Nessa got her share. Bahaj uddin died leaving behind 3 sons namely Karim, jabbar and Muhor and 3 daughters but his 3 sons got his shares upon an amicable partition. C.S tenant Emam Sheikh died leaving behind only son Tayez uddin who became owner of his property. After the death of Tayez uddin, Md. Bodor uddin alias Badshah Miah and Shah Alam inherited the property. After death of Bodor Uddin, Shahidul Islam, Julhas uddin and Sheikh Farid got his share. On the death of C.S tenant Amir Sheikh, his 4 sons namely Osman Sarker, Suban Sheikh, Kazimuddin and Siraj

Mondol got his property. On the death of Osman Sarker his 2 sons namely Jasim and Muslem and on the death of Suban Sheikh his 2 sons Mutaleb and Mokbul obtained their share. Government acquired 2 decimals land vide L.A. case No. 1/1942-1943, 8 decimals of land vide L.A. case No. 10/1958-1959 and 6 decimals of land vide L.A case No. 1/1992-1993 out of 24 decimals of land from suit plot No. 122 and the plaintiffs and their predecessors have been holding and possessing the rest 8 decimals land. The plaintiffs constructed buildings, shops over the suit land. The names of some plaintiffs and the names of the predecessor of some plaintiffs have been recorded in S.A khatian. The plaintiffs mutated their names and paid rent and the on going Porcha has been prepared in their names. A Bainama was executed in respect of 8 decimals land vide registered Bainanama No. 4588 dated 29.11.2004. The government notified the previous owner to return back the compensation money agaisnt 10 decimals land which was originally acquired vide L.A case No. 9 of 1972-73 for the purpose of constructing roads but was subsequently released and accordingly the predecessor of the plaintiffs returned back the compensation money vide challan and took back possession of the said land. On 16.10.2002 during operation of joint forces college authority upon threat intimidated the plaintiff by giving the option to the effect that if they execute an affidavit in favour of the college in respect of 8 decimals land then their buildings will not be demolished. The plaintiffs were

compelled to execute an affidavit and applied to the college authority for taking rents of the shop. On 11.01.2003 at 10 a.m. college authority threatened the plaintiffs to dispossess them from the suit land which constrained the plaintiffs to file the instant suit.

The defendant No.s 1-2 and defendant Nos. 3-5 contested the suit by filing seperate written statements denying the material allegations contending inter-alia that the suit is not maintainable in its present form and is barred by limitation. Government acquired 6 decimals land vide L.A case No. 1/92-93, 8 decimals of land vide L.A case No. 10/58-59 and 10 decimals of land vide L.A case No. 1/1942-43(1A) and (1)(B) i.e. entire 24 decimals of land under C.S plot No. 122 of Statutia Mouza for development of Kalihati Ratongonj Road and Tangail-Mymensing Road. The plaintiffs have no title and interest over the 8 decimals of land as described in the suit schedule and as shown in the imaginary map. While owning and possessing the same, government leased out 11 decimals of land in favour of Kalihati college for a long period and on 13.01.1981 a registered deed was executed in favour of the said college. Some of the plaintiffs applied to the college authority for getting a quantum of leased property in lieu of Tk. 2005 and upon being refused the plaintiffs applied to get back the said amount on 30.12.1989. The defendants are holding and possessing the 11 decimals of land by construction and

fencing by barbed wire. The defendants did not issue any sort of threat to the plaintiffs. The 8 decimals of suit land is government property and the plaintiff by creating some forged papers and in collusion with some government staffs brought the instant suit and as such defendant prayed for dismissal of the suit.

Pursuant to trial the trial court upon adducing documentary evidences and by way of depositions by both sides heard the suit and decreed the same by its judgment and decree dated 19.07.2006 passed by the learned Assistant Judge, Kalihati, Tangail in Other Class Suit No. 8 of 2003 in favour of the plaintiffs (opposite parties in the revisional application).

Being aggrieved by the judgment and decree dated 19.07.2006 passed by the learned Assistant Judge, Kalihati, Tangail in Other Class Suit No. 8 of 2003 the defendants No. 3-5 government of Bangladesh preferred an appeal being Other Class Appeal No. 163 of 2006 which was heard by the learned Joint District Judge, 1st Court, Tangail who upon hearing the appeal affirmed the judgment of the trial court upon concurrent findings and thereby dismissed the appeal.

Being aggrieved by the judgment and decree dated 16.06.2008 passed by the learned Joint District Judge, 1st Court, Tangail in Other Appeal No. 163 of 2006 dismissing the appeal and thereby affirming the judgment and decree dated 19.07.2006 passed by the learned Assistant Judge, Kalihati, Tangail in Other

Class Suit No. 8 of 2003 the defendant Nos. 3-5 appellant as petitioner preferred the instant Civil Revisional application which is before me for disposal.

The defendants No. 1 and 2 in the suit that is Khalihati college Tangail appears in the revisional application as proforma opposite party Nos. 15 and 16.

Learned Deputy Attorney General Mr. Abdus Salam Mondal along with Mrs. Shahida Khatoon, Assistant Attorney General appeared on behalf of the petitoners while Mr. Probir Neogi, Senior Advocate along with Mr. Md. Mozammel Hoque Bhuiyan, Advocate along with Mr. Sumon Ali, Advocate represented by the opposite party Nos. 2-13 and Mrs. Sarwat Siraj, learned Advocate represented the pro-forma opposite party Nos. 15-16.

Learned D.A.G on behalf of the petitioners commences his submission upon assertion that both courts below upon absolute misreading of evidences and non consideration of facts and non appreciation of the relevant laws came upon erroneous findings occasioning serious miscourage of justice causing severe damage to the interest of the petitioners and therefore the Judgments are not sustainable at all. Learned D.A.G argues that the plaintiffs claim is not bonafide and the suit is not maintainable. He relies upon the records of the case and continues that the plaintiffs originally claimed 0.08 acres of land out of a total of 24 decimals

of land by 3 seperate L.A cases in the year of 1942-43, 1958-59 and in the year 1992-93 respectively. The learned D.A.G contends that however the opposite parties plaintiffs by way of amendment in the plaint subsequently during trial claimed another acquisition of 10 decimals of land by L.A case No. 9 of 1972-73 by the government. In pursuance of these claims of the opposite parties the learned D.A.G for the petitioner draws this court's attention to the records wherefrom he shows that it is the plaintiffs' case as in the plaint that the total amount of land in Dag No. 122, Khatian No. 14 is 24 decimals of land and the plaintiffs claim that out of 24 decimals of land 16 decimals of land in total was acquired by the government by 3 separate cases L.A case No. 1/1942-43, L.A case No. 10/1958-59 and L.A case No. 9/1972-73. The plaintiffs claim .08 acres of land from the 24 decimals of land. He submits that the plaintiffs admittedly do not claim the 16 decimals of land acquired by the government in the LA case. He next submits that however the plaintiffs subsequently amended the plaint by way of amendment. He further asserts that plaintiffs claim that 10 decimals of land was acquired by the government by L.A case No. 9/1972-73 and that the same 10 decimals of land acquired by LA case 9/1972-1973 was released later on by the government in favour of the plaintiffs returning back the compensation releasing the land accordingly are totally untrue not having any factual basis. Learned D.A.G contends that plaintiffs have themselves stated in

the plaint that the total land comprises of 24 decimals of land but yet the plaintiffs opposite parties later claimed by way of amendment of plaint another 10 decimals of land as being acquired by the government by L.A case No. 9 of 1972-73. On this issue the learned D.A.G shows that as a result the total area of land amounts to 26 decimals of land and not 24 decimals of land. He continues that these inconsistent claims alone are adequte proof that the plaintiffs did not come with clean hands. He argues that it is admitted by both sides that the Dag No. 122 comprises of an area of 24 decimals of land. He further argues that under such circumstances the plaintiffs' later claim of another 10 decimals of land making the total land into 26 decimals of land is an absurdity not having any factual basis. Learned D.A.G also draws this court's attention to the records and to exhibits 'ঘ'/Gha wherefrom he points out that some of the plaintiffs in the suit had filed another suit previously 1984-85 regarding the same dag from which they claimed 4 decimals of land. Learned D.A.G asserts that such inconsistency and indiscrepancy in the conduct of the plaintiffs only prove that they do not have any genuine claim to the suit land and as such they filed the suit with malafide intention to usurp the property. Learned D.A.G also submits that the suit is not even maintainable given that against any such order as the impugned order passed by the Deputy Commissioner land or relating to revenue, the plaintiff could have made an application before the

land appeal board if aggrieved by such order. He contends that therefore resorting to the civil court by filing the present suit is not maintainable at all. The learned D.A.G by way of his argument as to non maintainability of the suit draws attention to Section 14(A) of the Emergency Requisition Property Act-1948 and asserts that section 14(A) of the act expressly barred jurisdiction of Civil courts to entertain any such suit or application against any such order passed by the authorities. In the context of the plaintiff-opposite-parties' claim that the plaintiffs claim that the land acquired vide L.A case No. 9 of 1972-73 comprising of 10 decimals of land was subsequently released by the authority upon returning the compensation money which was earlier paid to the plaintiffs upon acquisition, the learned DAG by way of controverting such claim submits that pursuant to any acquisition by any L.A case there is no scope to release the property under the relevant laws, neither under the Emergency Requisition Property Act-1948 nor the later amended Act of 1982. He submits that the plaintiffs themselves stated that the land was acquired by an "L.A" case that is "land acquisition" case. In pursuance he contends that such being the claim of the plaintiffs it was not a case of "requisition" by the plaintiffs own admission and therefore under the relevant laws relating to acquisition and requisition of property there is no scope to release a property which has once been acquired. He next contends that the plaintiffs' claim to the

L.A case No. 9 of 1972-73 is actually baseless having no basis in fact in as much as that the plaintiffs could not produce any documents relating to acquisition of the property by way of any L.A case during 1972-73. He argues that this particular claim of the plaintiffs is only a subsequent claim by way of amendment at a later stage. He continues that the learned courts below yet failed to comprehend that admittedly the total amount in Dag No. 122 comprise of 24 decimals of land but by the subsequent amendment this 24 decimals of land became 26 decimals. He asserts that the courts below failed to apply their judicial mind and failed to question such significant inconsistency in the claims of the plaintiffs. He also takes me to the judgment of the trial court wherefrom he shows that the trial court states: "উপরোক্ত কাজগুলো বাদীপক্ষের অনুকূলে সরকার কর্তৃক ডি-রিকুইজিশন মুলে ১০ শতাংশ জমি ফেরত দৌয়ার ক্ষেত্রে দালিলিক সাক্ষ্য প্রমান করে।" In this context the learned D.A.G submits that however the trial court failed to ascertain or point out of as to which দালিলিক সাক্ষ্য or documentary evidences the plaintiffs relied upon to prove the claim that land was acquired in 1972-73. The learned D.A.G also points out that the trial court in its finding stated that the land was derequisitioned. In pursuance he submits that the trial court upon total misapplication of mind came to a finding of "derequisition" of the suit land itself given that the claim arose out of an "L.A" case that is "land acquisition" case being L.A case no. 9/72-73.He continues that a claim of derequisition under the relevant law is

not sustainable since there is no scope or provision for derequisition in the statute once a land is requisitioned under the law. The learned D.A.G also assails that the original claim of the plaintiffs was for .08 acres of land out of .24 acres of land and continues that therefore their subsequent claim of 10 decimals of land out of total 26 decimals of land only proves the uncertainty of the plaintiffs in their inconsistent claims and is manifest of their malafide and dishonest motive. In support of his submissions that there is no basis of the L.A case No. 9 of 1972-73, the learned D.A.G takes me to the LCR to the deposition of P.W-1's where by P.W-1 deposes "কোন কাগজ পত্র দাখিল করি নাই" . He asserts that the P.W-1's express admission that they could not produce any documents in support of their claim in L.A case No. 9 of 1972-73 is adequate proof that their claim to title is not based on facts. He takes me to the LCR and draws my attention to the exhibit No. 5 the notice which is signed by the হুকুম দখল কর্মকর্তা (Additional Requisition Officer) and exhibits 6 challan which is signed by the treasury officer. In this context he argues that in exhibit 5 significantly the signature and seal of the Deputy Commissinser who is the concerned authority is missing. He argues that the provisions of land acquisition in both the Acts of 1948 and 1982 respectively provide that anything relating to acquisition or requisition of land whatsoever confers the sole authority and power to the Deputy Commissioner to do all acts pertaining to it or arising out of it whatsoever. He asserts that all

the provisions in the section relating to acquisition expressly provide that the concerned Deputy Commissioner shall be the sole authority to undertake necessary measures and do the acts relating to any acquisition. He now takes to me exhibit 7 which is another notice wherefrom he shows that in the said 'notice' the initial only appears which the plaintiffs claim to be the Deputy Commissioner's but simultaneously he also points out that there is no officials seal to indicate that the notice has been issued from the D.C's office neither is there anything else to indicate that any other concerned officer has been authorized to issue such notice. He next takes me to exhibit 7(Ka)-7(ga) which seems to be a notice of delivery of possession issued to the plaintiffs and which bears seal of the hukum dakol kormokorta (হুকুম দখল কর্মকর্তা) and not the D.C's. He points out that only a signature claimed to be the D.C's in the absence of official seal is not sustainable. He submits that the courts below completely over looked such significant inconsistencies in these exhibits in as much as that the plaintiffs in the suit being opposite parties in the instant civil Revision failed to prove the authenticity of the documents produced in respect of the said L.A cae No. 9 of 1972-73 from which their claim to "derequisition" of 10 decimals of land arise. He asserts that the petitioner government has no record of the L.A case No. 9 of 1972-73 and the learned D.A.G denied existence of any L.A case such having been filed relating to the "so called" 10 decimals of land in L.A case No. 9

of 1972-73. He asserts that these concocted and created papers by way of exhibits 5, 7, 7(ka)-7(ga) are only proof that no L.A case of 9 of 1972-73 comprising of 10 decimals of land was ever filed and it is only the plaintiffs' opposite parties' creation upon collusion by way of fraud upon creating some false papers to usurp title in the suit land. The learned D.A.G on behalf of the petitioner in support of his contentions cites a few decisions of this court and our Apex court interalia in the cases of Golam Moula Vs. Gourpada Das reported in 50 DLR(AD)(1998), in the case of Shahabuddin Bhuiyan Vs. Madar Mia and others reported in 5 MLR(AD)2000 page 256, in the case of Abani Mohan Saha Vs. Assistant Custodian reported in 39DLR(AD)(1987) 223, and in the case Abul Basher Vs. Bangladesh reported in 50 DLR(AD)(1998)11. He concludes his submissions upon assertion that the concurrent findings of the courts below upon stark misreading and non reading of evidences and upon non-comprehension of the relevant laws relating to acquisition and requisition and the suit being filed in the wrong forum and not being maintainable, therefore those judgments and decree of the courts below ought to be set aside and the Rule bears merit and be made absolute for ends of justice.

On the other hand learned Senior Advocate Mr. Probir Neogi appearing for the opposite parties opens his submission upon assertion that the courts below upon correct appraisal of

evidences and taking into consideration the relevant laws relating to acquisition and requisition came upon their concurrent findings which are correctly given and do not call for interference by this court sitting in revision. At the onset he commences upon contending that the proforma respondent Kalihati college are not proper parties in the civil revision at all. In pursuance of his assertion he continues that Kalihati college the proforma respondent here, even through were defendants No. 1 and 2 in the original suit and suit was dismissed but yet they did not make themselves party to the appeal in Other Appeal No. 163 of 2006. He argues that since they were not parties to the appeal it is to be understood that they have acquiesced with the judgment of the trial court and therefore they have waived their right to oppose at this stage being barred by the doctrine of estoppel. He continues that not being a party to the appeal amounts to conceding with the judgment of the trial court. By way of attempting to ascertain the proper meaning of "Appeal" he further contends that there is no definition of Appeal in Section 96 of the Code of Civil Procedure and takes me to the chapter and submits that "appeal" has not been defined in the code. By way of supporting his contention he cites a decision of the Privy Council 1932 in the case of Nagendra Nath Vs. Suresh whereby the takes me to the part he is relying upon which reads thus:

"Appeal" is any application by party to appellate court to set aside or revise decision of subordinate Court"

In pursuance of his reliance on this decision he submits that the college is barred under the law being estopped by their conduct in being a party at the revisional stage as proforma opposite parties. He next draws my attention to the scope of this court sitting in revision. He contends that this court sitting in revision must confine itself within the scope of revision and argues that this court under section 115(1) it can only interfere with the order of the courts below or any other order in case of ***"any error of law resulting in an error in such decree or order occasioning failure of justice."*** He pursuades that therefore this court is purely a court of law and can not assess the evidence on record unless there is misreading or non consideration of evidences by the courts below on the face of the record. He continues that in the instant case the courts below committed no error of law and came to their findings upon correct appraisal of the evidences and therefore those need not be interfered with sitting in revision. He next travels toward his contention that in the plaintiffs' case regarding the suit land in question it is a matter of "requisition" and not "acquisition". He persuades that the land "requisioned" in L.A case No. 9 of 1972-73 comprising of 10 decimals of land subsequently upon repayment of the compensation money was released and given back to the

plaintiffs. He persuades that it was a case of prior "requisition" and not acquisition. By way of supporting his contention he submits that the translation of the word acquisition in Bangla is "অধিগ্রহন" while requisition in bangla translation is হুকুম দখল. He submits that in this case the land was "requisitioned" and not "acquired" and therefore pursuant to the requisition the plaintiffs were given compensation but that at one stage the authority decided to give back the suit land upon repayment of the compensation and the requisitioned property was subsequently released in favour of the plaintiffs in accordance with law. He submits that the evidences of the release documents are produced as exhibits 5, 6, 7, 7(ka), 7(kha) and 7(ga). He takes me to the trial court's finding wherein the Trial Court in its judgment at one place stated: *"নালিশী ১২২ নং দাগের মোট ভুমির পরিমান .২৪ শতাংশ. উক্ত ১২২ দাগে .২৪ শতাংশ ভুমি মধ্যে কালিহাতি-রতনগঞ্জ, এবং টাঙ্গাইল-ময়মনসিংহ মহাসড়ক উন্নয়ন প্রকল্পে উক্ত সাতুটিয়া মৌজার সি,এস ১৪ নং খতিয়ানের অন্তর্গত ১২২ দাগের .০২ শতাংশ ভুমি বিগত ইং ১৯৪২-৪৩ সনের ১ নং এল, এস কেস মূলে একোয়ার করা হয়।"* In pursuance he submits that plaintiffs do not claim the .16 acres of land and that the plaintiffs' claim is confined to only 8 decimals of land and the 16 decimals of land acquired by the government petitioner is not claimed by the plaintiffs out of 24 decimals of land. He also submits that the plaintiffs do not claim the 11 decimals of land that have been leased out by the government to the defendant No. 3-5 in the suit. He persists that such being the situation, there is no inconsistency in the claim of

the plaintiff-respondent-opposite parties here. He also submits that the government could not show that Section 5(7) of the Act of 1948 provides that gazette notification must be issued pursuant to acquisition but in this case there is no such gazette notification and submits that it is a process that must be exhausted by stages. Upon a query from the bench regarding the petitioners' claim that the opposite parties are their tenants and that the opposite parties could not directly deny this during trial the learned Senior Advocate Mr. Probir Neogi replied that compensation is also sometimes given in requisition in the form of rents. He takes me to section 7(f) of the Emergency Requisition Act 1948 which section provides the payment of compensation to the heirs of the deceased owner. He takes me to Section 8 of the Emergency Requisition Act 1948 which provides for the procedure for release from requisition. He submits that in this case the requisition was "wrongly" called অধিগ্রহন (acquisition) whereas it should actually be "হুকুম দখল" (requisition). He takes me to the exhibits -7 series wherefrom he shows that the signature of the D.C who is the authorized person to deal with matters related to acquisition and requisition that features in the exhibits. In pursuance he submits that the signature of the proper authority being manifest from those exhibits, therefore the procedure from release from requisition was done in a valid manner. He persuades that the courts below correctly came to their finding regarding the exhibits. He draws

attention to Section 114 of the Evidence Act 1872 and submits that exhibits are not private documents and Section 114(e) of the Evidence Act provides for presumption of regularity in official acts and that the court may presume regularity in judicial and official acts in absence of proof to the contrary. He now takes me to the L.C.R and submits that plaintiffs' claim for 8 decimals of land and not 16 decimals of land which was acquired by the petitioner government. He takes me to the deposition of D.W-1 that is Vice Principal, Kalihati college wherefrom the deposition of DW-1, he points that to the D.W-1's admission that the disputed 8 decimals land is on the west side of the land owned by the college. He also draws attention to the deposition of D.W-1's deposition that he has no knowledge of the derequisition. He then takes me to the trial court's finding that the defendants did not prove that the exhibits are false. In support of his submissions he cites a few decision of this court and the appellate division in the cases of Nagendra Nath Vs. Suresh in Privy Council 1932 page 165, in the case of Abdul Mannan Vs. Jobeda Khatun reported in 44DLR(AD)37, in the case of Joynal Abedin Vs. Mafizur Rahman reported in 44DLR(Ad) 1992 page-163, in the case of A.R Niazi Vs. Pakistant reported in 20DLR(SC)(1968)205. He concludes his submissions upon assertion inter alia that the trial court arrived upon their findings upon proper appraisal of the laws and upon correct reading of the evidences and that the suit here actually arises out of a case of

requisition and not acquisition therefore the instant revisional application bears no merit and ought to be discharged for ends of justice.

Learned Advocate Mrs. Sarwat Siraj appearing for the proforma opposite parties college submits that the plaintiff opposite parties produced forged documents in the L.A case No. 9 of 1972-73 to prove their case. By way of her arguments, she contends at the very outset, the defendant-petitioners challenged the veracity of the exhibits in the L.A case No. 9/1972-73. She continues that Section the Evidence Act was invoked and suggestions were put forward to the plaintiff-opposite party witnesses during cross examination. She also submits that the plaintiff-opposite parties exhibited the certified copy of the L.A case No. 1 of 1942-43(exhibit 4), but failed to exhibit the certified copy of the more recent L.A case No. 9 of 1972-73, although their case was solely reliant on the L.A case No. 9 of 1972-73. She submits that even if for sake of argument it is conceded that the suit land was “requisitioned” and not “acquisitioned” under L.A case No. 9 of 1972-73 the plaintiff opposite parties failed to produce the necessary documents to prove their case. The plaintiffs-opposite parties could not produce any papers as exhibits pertaining to L.A case No. 9 of 1972-73, by way of certified copy of the L.A case or the Notice of the so called “requisition”. It is also asserted that requisition of

land is a temporary measure under the Emergency Requisition of Property Act, 1948 and in this context she submits that requisition can only be done for a short period of time but yet the plaintiff claims to have received the notice of return of their land, 7 years after the “so-called” requisition. She continues that some evidences of the plaintiffs being tenants of the college have been produced as exhibit ‘ga’ in the suit in the courts below and are evidences of the tenant and landlord relationship between the college and the plaintiffs. Countering the submissions of learned Senior Advocate Mr. Probir Neogi submits that college cannot be made a party in the revisional stage, Mrs. Sarwat Siraj submits that counters that if they are not a party to the appeal yet since the college is a lessee from the government and there exists a lessor and lessee relationship between the government and the college therefore the interests of the government and the interest of the college is similar therefore the colleges not making themselves party at the appellate stage will not affect the outcome of the case. She argues that since the interest of the government and the college being same non appearance at the Appellate stage does not create any legal bar for them and the college is quite competent to appear as proforma respondents in the instant Civil Revision.

On the issue of maintainability Ms Sarwat Siraj in support of her argument that the suit is not maintainable in its present

form in the absence of evidence of exclusive possession and that the plaintiffs are barred from filing a suit for declaration of Title, cites a decision of our Apex Court in the case of Tayeb Ali Versus Abdul Khaleque reported in 43 DLR (AD)1991 page 87 where the relevant portion cited reads thus:

Maintainability of suit – The suit being one for declaration of title to an unspecified share of an undivided pot of land on the basis of gift and there being no evidence that the donor thereof was in exclusive possession at any time, is not maintainable without a prayer for partition.

I have heard the learned Advocates for both sides, perused all materials on record including the judgments of the courts below, perused the L.C.R and decisions cited. The first issue I am inclined to address is the issue to whether the suit property is at all an acquired property or a property under requisition. I have gone through the documents on record. Regarding the L.A case No. 9 of 1972-73 comprising of 10 decimals of land which the plaintiff claims was “requisitioned” but “released” subsequently to requisition by the government. I have gone through the records of the case and the relevant exhibits. Apparently I find that the plaintiffs could not show any documents of 1972-73 which may prove that 10 decimals of land from dag No. 122 was actually acquired by L.A case No. 9 of 1972-73. The plaintiffs however produced some documents as exhibits before the courts

below by way of exhibits 5, 6, 7, 7(ka), 7(kha) and 7(ga) to prove that the property which the plaintiffs claim were acquired in 1972-73 by an LA case being LA case no 9 of 1972-73. I have carefully examined those exhibits. Exhibit 5 appears to be the original copy of the notices dated 19.11.1979 for return of compensation of money. Upon scrutiny, it is revealed that only the initials of the Deputy Commissioner seems to appear there. Exhibit-5 is the initial notice of release apparently signed by the Hukum Dokhol Kormokorta and not the Deputy Commissioner. Next I go to exhibit 7 wherein an initial supposed to be the DC's appears, but strangely enough there is no official seal from the D.C's office rather the seal that appears is that of the Hukum Dakol Kormokorta হুকুম দখল কর্মকর্তা. In consonance with Exhibit 7, 7(ka), 7(kha) and 7(ga) also similarly appears to have a signature of the D.C but the official seal is that of the Hukum Dakol Kormokorta.

Now let me examine the relevant provisions of law relating to the case, being the provisions under The (Emergency) Requisition Property Act 1948 which is applicable to the suit land claimed to have been acquired in 1972-73 and supposedly released in 1979, therefore the Act of 1948 and not the latter amendment Act of 1982 or ordinance will be applicable in the instant case .

I have gone through the relevant provisions of the Act of 1948 specially Sections 3, 4, 5, 5(A)(B)(C), 7, and Section 8 of the Act. From perusal of these sections it appears to me that in a case of acquisition(অধিগ্রহন) once property upon which compensation paid is acquired there is no scope to release such property any more under the provisions of the Act. Scope of releasing the property however in case of requisition has been provided in the Act. In a case of requisition provisions for subsequent scope of release is provided by the law even if compensation has been paid but there is no scope of release in case of acquisition(ভূমি দখল) any where in the act.

Such being the provisions of the law it becomes imperative to examine whether the suit land from which the plaintiffs' case arises from was at all ever acquired or whether it was requisitioned or rather whether the plaintiffs' claim amounts to requisition or acquisition. Learned Senior Advocate Mr. Probir Neogi for the opposite parties submitted that the plaintiffs' case was one of requisition and not acquisition. The Courts below appear to be quite uncertain and inconsistent in their findings. The trial court at one place referred to the case as one of "requisition". But however the Trial Court does not mention the source of its observation that is the property is a case of "requisition". From my examination of the records and exhibits it is clear that the plaintiffs admittedly based their claim arising out

of an L.A case being L.A case No. 9 of 1972-73. The alphabets L.A stands as an abbreviation for “land acquisition” and the plaintiffs as it evident have been consistently asserting that the case arose out of an “L.A” case. Exhibits 5, 6, 7, 7(ka), 7(kha) and 7(ga) pertaining to “release” of the land including concerning delivery of possession to the plaintiffs. The exhibits relied upon by the plaintiffs all relate to L.A case of 9/72-73 and in my considered view it is evident that the plaintiffs are claiming out of an “L.A” or “Land Acquisition” case. Hence there is no scope to change their stance at this stage and they are now estopped from shifting from their earlier position. They cannot now claim that the suit land was a requisitioned land and not an acquisitioned or acquired land.

The learned Advocate for the proforma respondent opposite party Nos. 15-16 continues that all through the trial in the appellate court the plaintiffs did not claim earlier that the land was not an acquired property but that it was requisitioned. Such being the circumstances as is apparent from the records my considered view is that the submission of the learned Senior Advocate Mr. Probir Neogi that the land was requisitioned and not acquired does not carry much force in this case.

Learned D.A.G counters the submissions of the learned Advocate for the opposite parties wherein Mr. Probir Nieogi submitted that this court sitting in revision cannot interfere

except in case of non consideration and misreading of evidences or misinterpretation of law. In this context the learned D.A.G submits that this court may very well interfere with the findings of courts below in such a situation in case of non-consideration and misreading of evidence. He assails that a careful scrutiny and examination of exhibits 5, 6, 7, 7(ka), 7(kha) and 7(ga) themselves manifest the fact that these documents are not genuine documents but created as a result of fraud and collusion. Upon scrutiny into the provisions of the Act of 1948, I have also noticed that the authorized person to deal with anything relating to acquisition is the D.C(Deputy Commissioner) himself and no other person. A perusal of the provisions of the relevant sections express that once a property is acquired upon the statutory procedure being exhausted, pursuant to acquisition the person or persons whose property has been acquired shall receive compensation subject to any objection or discussion as to the amount of compensation which shall also be settled in accordance with the relevant provisions of the act. But once compensation has been given and accepted, the acquisition is final. The spirit of the law is that payment and receiving of compensation expresses the finality in the whole process of acquisition of a property which vested with the government and can not he subsequently released in favour of the original owner.

Learned D.A.G drew the court's attention to Section 2(i) of the Act of 1948 and Section 2(B) of the Act of 1982 and agitated that those sections specify the authorized persons who may exercise power in place of the D.C. In the exhibits however I do not find any seal of any such authorized person.The express provisions of section 2(i) of Act of 1948 reads thus:

2. Definitions- In this Act, unless there is anything repugnant in the subject or context-

(i) "Deputy Commissioner" includes an Additional Deputy commissioner and a Joint Deputy Commissioner and also an Assistant Commissioner or [Deputy Magistrate and Deputy Collector] authorised by the Deputy Commissioner to exercise any power conferred, or perform any duty imposed, on the Deputy Commissioner by or under this Act."

While Section 2(b) of the act of 1982 reads thus:

2. Definitions- In this Ordinance, unless there is anything repugnant in the subject or context-

(b) ["Deputy Commissioner" includes an Additional Deputy Commissioner and any other officer authorised by the Deputy

commissioner to exercise any power conferred, or perform any duty imposed, on the Deputy Commissioner by or under this Ordinance"]

Apparently plaintiffs also claimed that they have no claim over the 16 decimals of land acquired by the government nor do they have any claim over the 11 decimals of land leased out by the college.

I am not inclined to mull over this issue because in my opionion the pivotal issue before me is whether the 10 decimals of land in L.A case No. 9 of 1972-73 was at all acquired and if acquired can it be released under the eye of law. It is revealed from the records that the plaintiffs could not produce any document to the effect that the land was actually acquired vide L.A case No. 9 of 1972-73.

The non production and absence of any document pertaining to the so called land acquisition in the so called L.A Case 9/72-73 is only indicative of the subsequent creation of some manufactured papers created upon collusion which were produced as exhibits in the courts below being exhibits 5, 7, 7(Ka), 7(Kha) and 7(Ga).

There are no supporting evidences on record relating to claim of the plaintiffs pertaining to the act of the 'acquisition' in

the so called L.A case 9/1972-73. It is regrettable that the courts below completed overlooked the fact that these exhibits are created and manufactured papers only. The courts below failed to comprehend the law related to acquisition and requisition given that inspite of the D.C being the competent authority, nevertheless his official seal does not appear in the exhibits which are supposed to be documents to prove subsequent "release" of the property**.** Moreover for the sake of discussion, given that the land of 10 decimals of land vide L.A case No. 9 of 1972-73 was at all acquired, nevertheless under the Act of 1948 and also under the subsequently amended in 1982, such land once acquired cannot be released subsequent to acquisition since the provisions of the relevant law does not allow the scope of release subsequent to acquisition.

Learned Senior counsel Mr. Probir Neogi submits that the college not being a party to the Appeal is barred by the doctrine of estoppel and is therefore estopped from being a party to the Civil Revision Application presently before this court. He asserted that it is a principle of law that when a court's Judgment goes against a party and he does prefer an appeal against it, it amounts to conceding with that Judgment. It was also asserted that the term "Appeal" has not been defined anywhere in the Judgment. In support of his assertions he cited a decision of the

privy council in the case of Nagendra Nath Vs Suresh in privy council 1932 page 165 wherein the Privy Council held:

> *(a) Words and Phrases- "Appeal" is any application by party to appellate court to set aside or revise of subordinate court.*

By way of continuation of this particular argument , he cited a decision of the Supreme Court in the case of Abdul Mannan Vs Jobeda Khatun reported in 44 DLR page 36. In this decision also the meaning of "Appeal" has been discussed in similar strain as the Privy Council case. However, I am of the view that analysis of the term 'Appeal' or attempting to do so is a misplaced endeavour in this case and does not bear much applicability.

In addressing opposition parties' Senior Counsel Mr Probir Neogi contention that the proforma respondent college are barred from a making themselves a party in this revisional application, I find force the argument of the counsel for the proforma respondent and her argument is correct to the effect that the government and college are in a lessor and lessee relationship regarding the suit land and having similar interests those interests merge together and hence not being a party to the appeal does not create any embargo on their being a party in this Civil Revision.

In course of hearing, Learned Counsels from both sides cited decisions of this Court and our Apex Court in support of their respective contentions, I have perused those, a few of which needs this Court's attention to arrive at a proper finding. In support of his submissions that property once acquired cannot be subsequently released, Learned DAG for the petitioner cited a decision of our Apex Court in the case of Abul Basher Vs Bangladesh reported in 50 DLR(AD)1998 page11 which is reproduced hereunder:

Mere non use of the acquired land for the purpose for which it was acquired will not give any right to get return of the same. Once a property is validly acquired after meeting the legal formalities it vests in the Government and it previous owner does not have any right to ask, return of the same for its non – utilization for the specific purpose for which it was acquired.

However my considered opinion regarding this issue is that it bears applicability in the instant case in so far as the principle of this Judgment being in consonance and echoing the laws related to "acquisition" that property once validly acquired can not be released later under any circumstances. By way of his countering the claims of the plaintiffs' (respondents-opposite-parties) failure to prove veracity of the incident of acquisition of the suit land and subsequent release and claim to Title to these suit lands and other claims including the claim that the proforma

Respondents intimidated the plaintiffs upon of operation of "যৌথ বাহিনী"(Joint forces) to evict the plaintiffs, the learned DAG submits that the opposite parties failed to prove any of these claims by adequate evidence and which ought to have been proved by the plaintiffs.

The learned DAG asserted that it ought to be noted that in this case the plaintiffs claimed title to the suit land and that it goes without saying that the onus of proving Title lies on the plaintiffs. He draws support on his assertion from a principle expounded by our Apex Court in the case of Abani Mohan Saha Vs Assistant Custodian reported in 39 DLR(AD) 1987 page 225 as reproduced below:

The initial onus lies on the plaintiff to prove his title.

It was asserted by the opposite parties that pursuant to acquisition the petitioner Government could not show any evidence of acquisition upon publishing such acquisition by issuing gazette notification in accordance with section 5(7) of the Act of 1948.

My considered view is that in this case since the so called acquisition of the 10 decimals of land vide L.A Case "9/72-73" did not take place at all, therefore question of publishing the acquisition by gazette notification does not arise and is therefore a non-issue in this case.

Under the foregoing facts and circumstances and in the light of the submissions made by the learned Advocates for both parties the discussions made above and relying upon the decisions cited by the learned Advocate from both sides. I find merit in this Rule.

In the result, the Rule is absolute and the judgment and decree dated 16.06.2008 passed by the learned Joint District Judge, 1st Court, Tangail Other appeal No. 163 of 2006 dismissing the appeal by affirming the judgment and decree dated 19.07.2006 passed by the learned Assistant Judge, kalihati Tangail in Other Class Suit No. 8 of 2003 dated 19.07.2006 is hereby set aside.

Send down the lower courts records at once.

Communicate the judgment at once.

Arif(B.O)