

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

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 3132 of 2018**

**IN THE MATTER OF :**

An application under section 115(1) of the Code of  
Civil Procedure

-And-

In the Matter of:

Dr. Md. Sajahan (Saju) being dead his legal heirs  
1(a) Mst. Nurjahan and others

... Plaintiff-Petitioners

-Versus-

Government of Bangladesh and another

... Defendant-Opposite Parties

Mr. Md. Khalilur Rahman, Advocate with

Mr. Md. Khalilur Rahaman (Helal), Advocate

... For the petitioners

Mr. Md. Md. Shahiduzzaman, DAG with

Mr. Kazi Mohammad Moniruzzaman Dablu, AAG

Mr. S.M. Ariful Islam, AAG and

Ms. Sumaiya Binta Aziz, AAG

... For the Government-opposite parties

**Judgment on: 10.03.2026**

**Md. Riaz Uddin Khan, J-**

At the instance of the plaintiffs Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 23.05.2018 passed by the Additional District Judge, Sherpur in Other Class Appeal No. 195 of 2011 allowing the appeal and thereby reversing the judgment and decree dated 18.05.2010 passed by the Joint District Judge, 2<sup>nd</sup> Court, Sherpur in Other Class Suit No. 42 of

2007 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule the parties were directed to maintain status-quo in respect of possession and position of the suit land for a period of 06 (six) months initially which was extended time to time.

Succinct facts for disposal of this Rule are that the predecessors of the present petitioners instituted Other Suit No. 42 of 2007 in the Court of Joint District Judge, 2<sup>nd</sup> Court, Sherpur for declaration of title in the suit property. The plaintiffs narrated in the plaint that Nagendra Mondal and other RS recorded owners were in possession of the suit property of 2.10 acres. After death of Nagendra Mondal, his son Jogendra Mondal being owner on 10.01.1957 sold said land to Asgar Ali Mondal by registered deed and accordingly his name was recorded in the SA khatian. Asgar died leaving 2 sons Md. Ibrahim and Md. Akbar Ali and 2 daughters Hazera Begum and Rasheda Begum as his heirs. Aforesaid Md. Ibrahim and Md. Akbar Ali on 11.03.1997 sold disputed 1.65 acre of land to plaintiff No. 1. Then Rasheda Begum on 26.08.1997 sold disputed 23 decimal of land to the plaintiff No.2 and that Hazera on 07.09.1997 sold 23 decimals of land to the plaintiff No.2. In this way the plaintiffs become owners of the suit land by registered kabala deeds. The suit land had been wrongly recorded in BRS khas khatian No.1. The defendants have neither title nor possession in the suit property. On

01.08.2007 the defendants threatened the plaintiffs to dispossess them from the suit property. The plaintiff on 05.08.2007 got definite knowledge of said wrong record of suit lands from Sherpur District record room and hence the suit.

The defendant No.1, government of Bangladesh contested the suit by filing written statement denying the material claims made in the plaint contending *inter alia* that Jogendra Mohan Barman and others were recorded tenants to the suit property of 4.80 acres as highlands. Then after 1965 of Indo Pak War the suit land was acquired through L.A. Case No. 93 of 1965 in the name of Ministry of Relief and Rehabilitation for accommodation of the refugees who had been rehabilitated therein. The suit land has been correctly recorded in BRS khas khatian No. 1 in the name of the Deputy Commissioner, Sherpur. There is no provision to transfer or sale the acquired land. The plaintiffs have neither title nor possession in the suit property which is now managed and controlled by the Government. The plaintiffs have created some forged documents for grabbing the suit property and hence the suit is liable to be dismissed.

The plaintiffs adduced 3 witnesses while the defendant adduced one witness and both parties produced some documents to prove their respective case. The learned Joint District Judge, 2<sup>nd</sup> Court, Sherpur after conclusion of trial by his judgment and decree dated 18.05.2010 decreed the suit.

Against the said judgment and decree passed by the trial court, the defendant-opposite party preferred

Other Class Appeal No. 195 of 2011 before the court of learned District Judge, Sherpur which was ultimately heard by the learned Additional District Judge, Sherpur who by his impugned judgment and decree dated 23.05.2018 allowed the appeal and dismissed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 23.05.2018 the plaintiffs filed the instant civil revision before this Court and obtained the Rule and interim order as stated at the very outset.

Mr. Md. Khalilur Rahman, the learned advocate appearing for the petitioners submits that the plaintiff-petitioners did not challenge acquisition proceeding or any order of L.A. case as such the suit is not barred under section 14A of The (Emergency) Requisition of Property Act, 1948 as held by the court of appeal below.

The learned advocate then submits that for argument sake if it is held that the L.A. Case No. 93 of 1965 has been challenged in the present suit indirectly, in that case section 14A of the Act will not create any bar of the Jurisdiction of the Civil Court since notices under section 3 and 5 of the said Act has not been served upon the R.O.R. owner that is Ajgor Ali or his heirs and no compensation was paid to him/them which is malice in law. The Government failed to produce any notice under section 3 and 5 of the said Act and also failed to produce any document relating to payment of compensation in favour of R.O.R. tenant Ajgor Ali or his heirs as such the Government's title has not been accrued over the suit land. In support of

his contention the learned advocate cited three decisions reported in 34 DLR (AD) 29, 5 BLD 57 and 45 DLR 727.

The learned advocate next submits that in the Gazette notification dated 18.02.1965 there is no statement that the suit land was acquired for Public purpose, that is, for rehabilitation of Mohajer. According to learned advocate since the acquisition was not for public purpose the acquisition proceeding was initiated on *mala fide* intention. Moreover, the Government failed to prove their title and possession over the suit land since DW-1 stated in his cross examination that “নাঃ জমিতে কোন মোহাজের দখলে আছে তা বলতে পারব না।.....নাঃ জমির প্রকৃতি বা চৌহদ্দী বলতে পারব না।” which suggest that the so-called acquisition has not been acted upon. In support of his contention the learned advocate cited decision of Ali Jan Khan Vs. Bangladesh & others reported in 37 DLR (AD) 161.

Mr. Rahman further submits that the Plaintiffs proved their title and possession over the suit land who have been in possession for more than 68 years since their vendors' predecessor Ajgor Ali. As such even if the suit land was acquired by the Government in that case the Plaintiffs have also acquired title over the suit land by way of adverse possession. The trial court rightly decreed the suit whereas the court of appeal below without following the Order-XLI, Rule-31 of the Court of Civil Procedure passed the impugned judgment and decree without controverting the findings of the trial court. In support of his submission the

learned advocate cited the decision reported in 1995 BLD (AD) 91.

Mr. Rahman finally submits that he has filed an application calling for the record of L.A. Case No. 93 of 1965 though in a belated stage. According to him since the defendant No. 1 failed to prove that the notices of L.A case No. 93 of 1965 were served upon the vendor of the Plaintiffs Ajgor Ali or his heirs and compensation was paid to him or his heirs, the record of L.A. Case No. 93 of 1965 is required to be called for by this Court for complete adjudication of the real controversy of this case.

Per-contra Mr. Md. Shahiduzzaman, the learned Deputy Attorney General (DAG) appearing for the Government-opposite party submits that the trial court has totally failed to understand the position of law settled by series of decisions by the higher court over the period of time and came to a wrong conclusion decreeing the suit. The suit in the present form is not at all maintainable as it is hit by section 14A of the (Emergency) Requisition of Property Act, 1948. The court of appeal below by elaborate discussion of position of law decided that the suit was not maintainable. In support of his contention the learned Deputy Attorney General cited the decision in the case of Nur Muhammad and others Vs. Moulavi Mainuddin Ahmed and others reported in 39 DLR (AD) 1 and the case of Director of Housing and Settlement Vs. Abdul Majid Howlader and others reported in 2004 BLD (AD) 56.

I have heard the arguments advanced at the bar, perused the revisional application along with other

applications. I have perused the Lower Court Records including the plaint, written statement, depositions and exhibited documents of both the parties. I have also carefully examined the judgment passed by the courts below.

It seems from the judgment passed by the trial court that it framed five issues namely: whether the suit is maintainable in its present form; whether the suit is barred by limitation; whether the suit is barred for defect of parties; whether the plaintiffs have title, interest and possession over the suit land and whether the plaintiffs are entitled to get any relief. It further appears from the judgment of the trial court that it took the issue Nos.1-3 at a time and in a single line without discussing anything held the issue No.1 positively while issue Nos.2-3 in the negative in favour of the plaintiffs. On the other hand it appears from the judgment of the court of appeal below regarding the first issue of maintainability of the suit the learned judge found that the Government has exhibited the Gazette notification dated 18.02.1965 regarding the requisition case No. 93 of 1965 as exhibit-Kha and the court of appeal below found that in that Gazette notification the property sought by the plaintiffs has been at first requisitioned and finally acquired by the Government. In such circumstances the learned judge of the court of appeal below refereeing series of decisions of this Court finally came to the conclusion that the suit was hit by section 14A of the (Emergency) Requisition of Property Act, 1948 and the suit was not maintainable in its present form. The court of appeal below since found that the suit is not

maintainable he did not discuss the other evidence regarding the possession of the suit property.

In examining the plaint it appears that the plaintiffs claimed that the suit property measuring 2.10 acre of land was recorded in the RS Khatian No.74, RS plot No. 150/464, ROR Khatian No.80, ROR Plot No. 150/464, and BRS Khatian No. 1, BRS Plot No. 359/360 under Mouja Protapnagor, Upazila-Jhenaigati, Sherpur. The simple case of the plaintiffs as claimed in the plaint that the RS record was published in the name of Nagendra Mondal and after his death it was devolved to his son Jogendra Mondal. One Asgar Ali Mondal through a registered deed of kabla dated 16.01.1957 purchased the land and thereafter the plaintiff Nos. 1 and 2 purchased the land from the heirs of said Asgar Ali Mondal namely Md. Ibrahim, Md. Akbor Ali, Most. Hazera Begum and Most. Rashada Begum in the year of 1997 by three deed of Kobla dated 11.03.1997, 26.08.1997 and 07.09.1997 measuring total 2.10 acres of land. The plaintiffs did not claim that they have paid any rent to the government since 1956 or after publication of ROR or SA record. The plaintiffs alleged to have purchased the land in the year 1997 but even did not bother to pay rent to the government. Long after 10 years of their alleged purchase in the year 2007 they went to the office of the government for paying rent and came to know about the latest record of right, that is, BRS record and claimed title over the suit land. The defendant-government by filing written statement specifically stated that the suit property was acquired by the government by producing the Gazette notification though an attested photocopy before the trial court. In



minutely examining the plaint I do not find in the four corner of the plaint that the plaintiffs anywhere challenged the acquisition/requisition proceeding initiated by the government not to speak of any allegation of non service of notice or nonpayment of compensation or *mala fide* or *malice* in law.

It appears from the Gazette notification published in the Dhaka Gazette on 18.02.1965 that the suit property situated under the Police Station-Nolitabari, District-Mymenshingh (subsequently District-Jamalpur and at present District-Sherpur) Revisional Survey (RS) plot no. 150/464 was fully acquired by No.93-Reqn dated 11<sup>th</sup> February 1965 by the government along with other properties measuring more or less 68.66 acres of Protapnagar mauza. It has been stated in the Gazette:

“whereas by order, dated 11<sup>th</sup> February 1955, 23<sup>rd</sup> October 1958 and 26<sup>th</sup> December 1958 the properties described in the schedule below were requisitioned under section 3 of the East Bengal (Emergency) Requisition and Property Act, 1948 (East Bengal Act No. XIII of 1948);

And whereas after the said properties continue to be subject to requisition;

And whereas after considering the report made under sub-section (5) of section 5 of the said Act, Government have decided to acquire the said properties;

Now, therefore, in exercise of the power conferred by sub-section (7) of section 5 of the said Act, it is hereby notified that the said requisitioned properties as described in the schedule hereunder are acquired by the government.”

Now the question raised by the learned advocate for the petitioners for the first time before this revisional Court that the requisition and acquisition proceeding was not proceeded with in accordance with law and or proceeded in a *mala fide* intention as there was no notice served upon the ROR tenant or his heirs. It is noteworthy that though the defendants in their pleadings (written statement) specifically asserted that the suit property claimed by the plaintiffs have been acquired by the government and produced the Gazette notification before the trial court but the plaintiffs did not bother to amend the plaint before the trial court or before the appellate court or even before this Court though adjournment was sought for the purpose before this Court for several times.

Let us now examine the relevant provisions of law as specified in the (Emergency) Requisition of Property Act, 1948 (East Bengal Act No. XIII of 1948). Section-3 of the Act deals with the procedure of requisition of property. It states as follows:

When any property is required for a public purpose or in public interest, the Deputy Commissioner may requisition it by an order in writing:

Provided the projects covering more than one district or the projects of which the requiring body is the Dacca Improvement Trust, the Chittagong Development Authority or the Khulna Development Authority, the proposal shall require the approval of the Government before proceedings under the Act are started:

Provided further that no property used by the public for the purpose of religious worship graveyard and cremation ground shall be requisitioned:

Provided further that when a property is required permanently for a public purpose or in public interest, the Deputy Commissioner may also requisition it with a view to its permanent acquisition for such public purpose or in such public interest.

Section-4 deals with the service of order of requisition which states as follows:

(1) When an order of requisition has been made under section 3, it shall be served on the owner of the property personally by delivering or tendering it to him, or, where the owner cannot be found, it shall be served by leaving an authentic copy thereof with some adult male member of the family of such owner, or, if no such adult male member of the family can be found, it may be served by affixing an authentic copy thereof to some conspicuous part of the premises in which he is known to have last resided or

carried on business or personally worked for gain and also by affixing another such copy to some conspicuous part of the requisition property. An authentic copy of such order shall also be affixed on the notice-board of the local Union Council and the local Tahsil office and the order shall also be proclaimed by beat of drum in the locality in which the property is situate.

(2) Where the order of the requisition has been served under sub-section (1) in respect of a property, the Deputy Commissioner may take possession of the property forthwith and may use or deal with the property in such manner as may appear to him to be expedient.

Section-4A deals with appeal and revision which runs as follows:

(1) An appeal against an order made under section 3 shall, if presented within 30 days from the date of service of the order, lie to the Commissioner.

(2) The Government may, at any time, either on its own motion or on application by an aggrieved party, revise any order passed by the Deputy Commissioner under section 3, where no appeal has been filed under sub-section (1), and, also any order passed by the Commissioner on appeal under sub-section (1).

Section-5 deals with acquisition of property which reads as under:

(1) The Government may, if it thinks fit, acquire any requisitioned property on the proposal of the Deputy Commissioner in the manner hereinafter provided in this section.

(1a) The Deputy Commissioner shall, if he considers that the acquisition of any requisitioned property is expedient for a public purpose or in public interest, cause a public notice to be given at convenient places on or near the requisitioned property stating that the property is proposed to be acquired.

(2) Such notice shall state particulars of the property to be acquired, and shall require all persons interested in the property to appear personally or by agent before the Deputy Commissioner at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the property, their objections (if any) to the acquisition of the property and particulars of their claims to compensation for their respective interests.

(3) Notice shall also be served to the above effect on the owner of such property and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested as reside or have agents authorised to receive service on

their behalf within the revenue district in which the property is situated.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by registered post in a letter addressed to him at his last known residence, address or place of business.

(4a) Every person required to make or deliver a statement under sub-sections (2), (3) and (4) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code [XLV of 1860].

(5) The Deputy Commissioner shall, after hearing all objections and after making such further enquiry, if any, as he thinks necessary, submit the case for the decision of the Government together with the record of the proceedings held by him and a report containing his recommendations on the objections.

(6) The Government, after considering the report made under sub-section (5), shall make a decision about the acquisition of the requisitioned property and such decision of the Government shall be final.

(7) The Government shall then publish in the Official Gazette a notice to the effect that the Government has decided to acquire the requisitioned property. On and from the beginning of the day on which the notice is so published the requisitioned property

shall vest absolutely in the Government free from all encumbrances and the period of such requisition of such property shall end.

Section-5A, 5B, 5C and section-6 deals with procedure of payment of compensation of movable property while Section-7 deals with the procedure of payment of compensation of immovable property. Section 7A deals with dispute, award and civil suit which runs as under:

**7A. Dispute, award and civil suit-** (1) Where there is any dispute as to the apportionment of compensation or any part thereof or as to the person to whom the same or any part thereof is payable the Deputy Commissioner after hearing the claimants or giving them an opportunity to be heard shall decide the dispute and make an award and shall give immediate notice of the award to the person or persons interested.

(2) Any person interested who has not accepted the award made under sub-section (1) may bring a suit in a Civil Court of competent jurisdiction for the determination of the dispute:

Provided that no such suit shall be entertained unless it is instituted -

(a) if the person instituting it was present or represented before the Deputy Commissioner at the time when he made his award, within six weeks from the date of Deputy Commissioner's award;

(b) in other cases, within six weeks of the service of notice by the Deputy Commissioner under sub-section (1) or within three months from the Deputy Commissioner's award, whichever period shall latter expire.

(3) Any person who has instituted a suit in the Civil Court under sub-section (2) shall produce evidence before the Deputy Commissioner that he has instituted such a suit in the Civil Court within two weeks from the date of expiry of the period referred to in the proviso to sub-section (2), failing which the Deputy Commissioner shall disburse the compensation according to the award made by him under sub-section (1).

Section-14A imposed a bar upon proceeding of Civil Suit which reads as follows:

**14A. Bar to jurisdiction of Civil Court-**  
Except as expressly provided in this Act, no Civil Court shall entertain any suit or application against any order passed or any action taken under this Act and all suits and appeals pending in any such Court against any order passed or any action taken under this Act shall abate with effect from the date of coming into force of the (Emergency) Requisition of Property (Amendment) Ordinance, 1963.

It appears from the exhibit-kha, the Gazette notification, that the government initiated the requisition proceeding by order dated 11.02.1955 then



23.10.1956 and 16.12.1958 and after requisitioned, the government took decision for acquiring the suit property along with other properties and initiated notice under section 5 of the Act and thereafter exercising power conferred under Sections 5 of the Act the government finally acquired the suit property and published it in the Gazette notification of Dhaka Gazette dated 18.02.1965.

It is true that the plaintiffs nowhere in their plaint challenged the proceeding of the LA case No. 93-Reqn of 1965 but the fact remains that the suit property has been acquired by the government. Now the question is whether section 14A of the Act is a bar to the present suit, since the plaintiff did not challenge any order or decision of the L.A proceedings. It is well settled by a number of decisions starting from the Judicial Committee of the Privy Council to this Court up till now that the Civil Court has jurisdiction to try all sorts of suit of civil nature except expressly or impliedly barred by law. It is also settled that even if there is express bar the complete ouster of the jurisdiction of Civil Court cannot be readily inferred rather the Civil Court can examine whether the procedure in that law which purported to oust jurisdiction of the Court is followed or not. In the case of Secretary of State Vs. Mask, AIR 1940 PC 105 this principle has been stated in the following term: *"It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded,*

*the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”* In the case of Abdul Rauf and others Vs. Abdul Hamid Khan and others reported in 17 DLR (SC) 515 Pakistan Supreme Court approving a decision of the High Court explained the conditions in which an ouster clause as to the jurisdiction of Civil Court is attracted, it observed: *“The decision of the question whether the Civil Court had jurisdiction in the present case would depend on whether the impugned orders and proceedings were without jurisdiction. There is in this case attack on the proceeding on the ground of mala fide too. A mala fide act is by its nature an act without jurisdiction. No legislature when it grants power to take action or pass an order contemplates a mala fide exercise of power. A mala fide order is a fraud on the statute. It may be explained that a mala fide order means one which is passed not for the purpose contemplated by the enactment granting the power to pass the order, but for some other collateral or ulterior purpose.”* In the case reported in 39 DLR (AD) 1 (supra) in the majority decision by 3/2 our Appellate Division applying the “hands-off doctrine” dismissed the appeal holding that otherwise chaos and anarchy would prevail leading to all sorts of complexities and confusion and the provisions relating to the bar of suits would be rendered, nugatory and finally affirmed the judgment of the High Court Division which rejected the plaint holding the suit was barred under section 14A of the Act as quoted above.

The majority further viewed that whatever the Legislature says, unless it is contrary to the Constitution, its mandate, either express or implied, has been obeyed by the Court. In the case reported in 37 DLR (AD) 161 (supra) the Appellate Division decided that though there is express provision regarding the bar even then the civil court can examine whether there is any *mala fide* and their lordships after examining finally decided that the suit was barred.

In the case of Alfu Miah and others Vs. Government of Bangladesh and others reported in 1 BLT (AD) 25 plaintiffs got *ex parte* decree against government who filed written statement contending that the suit was barred under section 14A of the Act, 1948 as the suit property was acquired long before. The High Court Division set aside the *ex parte* decree on the finding that the government has acquired the land long before and due notification was made in the Gazette. On appeal the Appellate Division refused to interfere, though there was worse laches on the part of the government, on the finding that when the High Court Division decided to set aside the *ex-parte* decree after finding the land in dispute had been acquired long ago and due notification was made in the Gazette, and that the defendant had an arguable plea of bar of suit under section 14A of the (Emergency) Requisition of Property Act, 1948. In the case of Bangladesh and others Vs. Shamirunnessa Bibi and others reported in 10 BLC (AD) 123 the plaintiff Shamirunnessa brought Title Suit No.208 of 1984 against the Government for declaration of title without challenging the acquisition proceeding and obtained an *ex parte* decree which was set aside by

the court of appeal below against which the plaintiff filed civil revision before this Court and this Court by making the Rule absolute restored the *ex parte* decree. On appeal the Appellate Division without going through the merit of the suit observed that *it can be safely said that when it is the admitted case of the plaintiff that 30 decimals of land out of 2.30 acres of land of suit plot No.533 is within the acquired land of the Government as per gazette notification dated 20.02.1950, the plaintiff's suit for entire 2.30 acres of plot No.533 on the face of it was not maintainable.* The Appellate Division finally held that *since there are some patent incongruities in the plaint of Title Suit No.208 of 1994 (sic) brought by the plaintiff Shamirunnessa Bibi as noticed earlier the ex parte decree dated 12.12.1984 ex facie is not sustainable and allowed the appeal.*

In the present case the plaintiffs did not alleged any *mala fide* in the plaint but urged for the first time by the learned advocate for the plaintiff-petitioners during argument before this Court. *Mala fide* as alleged is a question of fact which has, therefore, to be established, on proof. Ordinarily, the Court decides upon it after taking evidence and hearing the parties. The plaintiff-petitioners neither alleged in the plaint nor adduced any evidence to that effect and as such the submission of the learned advocate has no legs to stand.

In the present case referring the deposition of the DW-1 it is submitted by the petitioners that there is no Mohajer at present in the suit property hence it is not used for the purpose of requisition and

acquisition as such the government cannot retain the property as the plaintiffs are in possession. There is no substance in this contention because if an order of requisition or acquisition in respect of a property is initially for valid purpose, its subsequent user for a purpose other than its expressed purpose would not vitiate the requisition and/or acquisition itself even if the plaintiffs or any other person may be in possession. Law is settled on this point by a catena of decisions including the case reported in 2004 BLD (AD) 56.

Regarding the maintainability of the instant suit in its present form, the well settled principle in this behalf is that when the law provides a special forum for adjudicating disputes with regard to any matter under the said law, and if it is the intention of the Legislature that no other forum shall entertain any such dispute, the forum provide by law, and no other forum, can have jurisdiction over the dispute. Therefore, a suit would only lie in this behalf, if the order of requisition/acquisition is wholly outside the purview of the (Emergency) Requisition of Property Act, 1948, otherwise the validity of any act done under the said Act cannot be challenged in a civil suit or in any other manner except as allowed under section 4A and/or 7A as quoted above. That is to say, in order to prosecute an independent suit, it must be shown that the impugned order/action cannot be passed/taken or it does not amount to an order/action under the Act, this means, the order/action itself is incompetent. In the language of SM Murshed, CJ-*There is, however, a vital distinction between an order which cannot be made or*

*which cannot be described as an order made under the Act and an order made by a competent authority for a valid purpose (when the purpose of the order is an essential element of its validity), but tainted with some irregularity or illegality for non observance of some provisions of the Act. In the former case a suit will lie, but in the latter eventuality the grievance can only be agitated under section 4A. It may be mentioned here that the grievance can also be agitated under section 7A of the Act as quoted above.*

In the present case it is noticed that the plaintiffs sought for declaration of title of 2.10 acres of land of RS plot No.150/464. The government contested the suit by filing written statement asserting that the entire RS plot No.150/464 along with other properties was acquired through LA Case No.93-Reqn of 1965 and produced the same before the trial court which was marked as exhibit-Kha. The trial court decreed the suit while the court of appeal below set aside the same on the ground that the suit is not maintainable as it is barred by section 14A of the (Emergency) Requisition of Property Act, 1948. It has already been noticed that the plaintiffs did not challenge the acquisition proceeding or the gazette notification (exhibit-Kha) by which the entire land of the RS plot No.150/464 was acquired by the government. Since in the present case the plaintiff did not challenge the proceeding of the LA case No. 93-Reqn of 1965 by which the suit property was acquired by the government and the government as defendant asserted it in the written statement and produced the Gazette notification before the court and marked as Exhibit-Kha

and that has not been challenged by the plaintiffs as such the suit in the present form is not at all maintainable. Moreover, wherein the Gazette notification it has been stated that the procedure of section 3 and 5 of the Act, 1948 has been followed the onus or the burden of proof was upon the plaintiffs to prove that the claim of the government was not correct. In the present suit the plaintiffs miserably failed to do so. In this regard the trial court totally failed to understand the legal position that when government claimed that the suit property was acquired and produced the gazette notification the presumption is that the procedure was followed in accordance with law and if anyone claims otherwise he has to prove it. In the present case it cannot be ruled out that to avoid the embargo of section 14A of the (Emergency) Requisition of Property Act, 1948, the plaintiffs brought the suit for declaration of title of 2.10 acres of land of RS plot No.150/464 but the entire said RS plot was acquired and in such view it will not bring the suit out of the mischief of section 14A of the Act. Because, *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*, when something is prohibited directly, it is also prohibited indirectly. In other words, what cannot be done directly cannot be done indirectly. Nothing can be achieved by disguised means.

At the fag-end of the hearing the plaintiff-petitioners filed an application for calling for record of the said LA case No. 93 of 1965 but I do not find any reason to call for the record at this belated stage

as the procedure of that requisition/acquisition case or LA case was not at all challenged in the suit.

In the facts and circumstances of the case and the position of law as discussed above I am of the firm view that the suit itself is not maintainable in its present form and for this reason, I am constrained to discharge the Rule as it lacks merit and is destined to fail.

In the result the Rule is **discharged**, however without any order as to cost.

The interim order passed by this Court earlier stands vacated.

Sent down the lower court records along with a copy of this judgment at once.