

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

Writ Petition No. 11947 of 2021

with

Writ Petition No. 11455 of 2021

IN THE MATTER OF:

An application under Article 102(2) of the  
Constitution of the People's Republic of  
Bangladesh.

AND

IN THE MATTER OF:

Md. Salim Khan, Chairman, 10 No. Lakhipur  
Union Parishad, Chandpur Sadar Upozilla,  
Chandpur, son of late Abdul Hye Khan of  
Ramdashdi Road, Puran Bazar, Police Station  
District-Chandpur and another

...Petitioners (W.P No. 11947 of 2021)

Jwel, son of Nurul Islam and Tafurinessa of  
Montaj Gazi Bari, Village-Lakhipur, Post  
Office-Bohoria, Police Station-Chandpur  
Sadar, District-Chandpur

....Petitioner (W.P No. 11455 of 2021)

Versus

Government of Bangladesh, represented by  
the Secretary, Ministry of Land, Bangladesh  
Secretariat Building, Police Station-Shahabag,  
Dhaka, and others

Mr. Shafique Ahmed, Sr. Advocate with  
Mr. Ajmalul Hossain QC, Senior Advocate,  
Mr. Muhammad Yusuf Hussain Humayun, Sr.  
Advocate,

Mr. Mahbub Shafique, Advocate and  
Mr. M. Moniruzzaman Asad, Advocate

....For the Petitioners

Mr. A.M. Amin Uddin, Attorney General with  
Mr. Kazi Mynul Hassan, DAG,  
Mr. Md. Nasim Islam, AAG,  
Mr. Md. Nazrul Islam Khandaker, AAG and  
Mr. Md. Faruk Hossain, AAG

....For the Respondents

Present:  
Mr. Justice Md. Ashfaul Islam  
And  
Mr. Justice Md. Iqbal Kabir

Judgment on 09.06.2022.

Md. Iqbal Kabir, J:

The question of law and facts involved in the aforesaid two writ petitions are identical and the Rule Nisi has been issued in similar terms, so those two writ petitions are taken together for hearing and disposed of by a single judgment.

In the writ petition No.11947 of 2021, at the instance of the petitioners this Court issued the Rule Nisi in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why (i) the letter being Memo No. 05. 42. 1300. 016. 14. 022. 21-217 dated 14.10.2021 issued by the Deputy Commissioner, Chandpur (respondent No. 3) directing to collect the price from 18.05.2020 to 17.05.2021, 18.05.2019 to 17.05.2020 and 18.05.2018 to 17.05.2019 for preparing the estimated value of the land under L.A. Case No. 12/2020-2021 (Annexure-'G') and (ii) the letter being Memo No. 05. 42. 1300. 016. 14. 022. 21-231 dated 04.11.2021 issued by the Deputy Commissioner, Chandpur (respondent No. 3) asking the Vice-Chancellor, Chandpur Science and Technology University to deposit Tk. 193,90,65,507.17 (Annexure-'J') should not be declared to have been issued without lawful authority and is of no legal effect and further as to why the respondents should not be directed to prepare the valuation of the said land in question as per section 9(1)(ka) of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ and/or such order or further order or orders passed as to this Court may seem fit and proper."

Short facts, relevant for disposal of the Rules, are that the petitioners in the writ petition Nos. 11947 of 2021 and 11455 of 2021 are

the owner of the land. The case of the petitioners, as set out in writ petition No. 11947 of 2021, in short, is as follows:

Petitioner No.1 is an elected Chairman of 10 No. Lakkhipur Union Parishad, Chandpur Sadar Upazilla, Chandpur, and also the owner of a vast area of land situated under 115 No. Lakkhipur Mouza. Being the Chairman, he always wants to see the well-being of the people including students of his Union Parishad. Petitioner No. 2 is a local resident and owner of a vast area of land in the same Mouza. The Government decided to establish a Public University under the name and style Chandpur Science and Technology University (in short University) and the place has been selected within Lakkhipur Mouza, Chandpur. Ministry of Education by a letter dated 06.04.2021, given its administrative approval; thereby under the L.A. Case No.12/2020-21 acquisition process has been started. Notice under section 4 of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ (in short the Act-2017) has been served upon the owners of lands informing the desire of the government to acquire their lands. On 19.07.2021, the Ministry of Land approved 62.5490 acres of land under the L.A. Case for setting up the University; for compensation, land acquisition officer vides its letter dated 01.09.2021 directed Sub-Registrar, Chandpur to provide the land price of the executed Deeds for the period 18.05.2020 to 17.05.2021. In response, Sub-Registrar, Chandpur vide its letter dated 26.09.2021, forwarded all Saf-Kabala Deeds executed in the alleged period to the Deputy Commissioner, respondent No. 3 to estimate compensation which stood at Taka. 529,25,95,483.19/-. However, respondent No. 3 by the memo dated 14.10.2021 formed a committee for collecting price of the land in question upon examining Saf-Kabolla Deeds executed between 18.05.2020 to 17.05.2021, 18.05.2019 to 17.05.2020 and 18.05.2018 to 17.05.2019. The alleged committee beyond the scope of law illegally and arbitrarily by adopting pick and choose policy

determined the average market price of the land in question on the basis of only 43 (forty-three) Saf Kabala Deeds out of 182 deeds executed in previous 12 (twelve) months, i.e., from 18.05.2020 to 17.05.2021 (as evident from the report submitted by the said Committee Annexure-"H-1"). Though, on 27.10.2021, the owner of the land made an application to the Secretary, Ministry of Land seeking direction to estimate value considering preceding of one year's average value. Therefore, respondent No. 3 was directed by respondent No. 1 Secretary, Ministry of Land to take steps in respect of estimation of price as per Section 9(1) (Ka) of the Act, 2017 (Annexures-I and I-1). Respondent No. 3 despite having the said letter dated 27.10.2021 (Annexure-I-1) without evaluating the price from 18.05.2020 to 17.05.2021 as per Section 9(1) (Ka) of the Act-2017, vide a letter bearing Memo No. 05. 42. 1300. 016. 14. 022. 21-231 dated 04.11.2021 requested the Vice-Chancellor of the University to deposit an amount of Tk.193,90,65,507.17/- (Taka one hundred ninety-three crore ninety lac sixty-five thousand five hundred seven and paisa seventeen) only under the L. A. Case No.12/2020-21 for the acquisition of 62.5490 acres of land for setting up the University (Annexure-J).

It is noted that based on the same fact and document writ petition No. 11455 of 2021 has also been filed at the instance of one Mr. Jewel as petitioner, and in similar terms, the Rule Nisi has been issued therefore, it does not require repetition.

Against this backdrop, challenging the legality and propriety of the impugned memos, the petitioners have brought this case under judicial review.

Mr. Ajmalul Hossain QC, the learned Senior Advocate appearing on behalf of the petitioners in all these writ petitions upon taking us through the impugned decision and annexed documents/papers available on record submitted that section 9(1) of the Act-2017 categorically states

that the market value of the land to be acquired at the time of publication of notice under section 4 shall be considered for determining the compensation and as per section 9(1)(Ka) and in determining such market value the respondent No. 3 shall take into account the average value of the properties of similar description and with similar advantages in the vicinity during the 12 (twelve) months preceding the date of publication of notice under section 4, but in the instant case respondent No. 3 most illegally and arbitrarily directed the Committee formed for collecting the price: rate of the land in question to collect the price of previous 3 (three) years, i.e., from 18.05.2020 to 17.05.2021, 18.05.2019 to 17.05.2020 and 18.05.2018 to 17.05.2019 and as such the impugned letter dated 14.10.2021 (Annexure-G) is liable to be declared to have been issued without lawful authority and is of no legal effect.

He next submits that the Committee formed by respondent No. 3 most illegally and arbitrarily determined the average market price of the land in question violating the provisions of law as stipulated in section 9(1) (Ka) of the Act, 2017 by taking into account only 43 (forty-three) Saf Kabala Deeds out of total 182 deeds executed in the period from 18.05.2020 to 17.05.2021, as such the compensation fixed by the respondent No. 3 on the basis of the average market price of the land in question as determined by the said committee which is evident from the impugned letter dated 04.11.2021 (Annexure-H) is liable to be declared to have been determined without lawful authority and is of no legal effect since there is no scope to apply pick and choose policy in considering the Saf Kabala Deeds of the land in question of the said 12 (twelve) months for determining the average market price.

He submits that respondents have a legal obligation to calculate the average value of 12 (twelve) months before the issuance of the notice under section 4 of the vicinity of the immovable property and the

equivalent immovable property, the respondents ought to have collect all Saf Kabala Deeds between 18.05.2020 to 17.05.2021 and also to estimate price based on all Saf Kabala Deeds as per section 9(1)(Ka) of the Act-2017 for the acquisition of 62.5490 acres of land.

He submitted that respondent No. 2, Secretary, Ministry of Land vide letters dated 27.10.2021 and 10.11.2021 directed respondent No. 3 to take steps in respect of estimation of price based on saf- kabala deed i.e. from 18.05.2020 to 17.05.2021 executed last twelve months as per Section 9(1) (Ka) of the Act-2017; despite the said direction the respondent No. 3 most arbitrarily and illegally estimated the price as such impugned letters (Annexures-G and J) should be declared illegal.

He lastly submitted that petitioners are losing their homestead due to arbitrary action of respondent No. 3 as he did not act fairly and reasonably in the acquisition of petitioners property; that the petitioners are not receiving their proper price as such impugned letters (Annexures-G and J) should be declared illegal.

Mr. A.M. Amin Uddin, the learned Attorney General along with Mr. Kazi Mynul Hassan, the learned DAG contested the Rule by filing an affidavit-in-opposition.

Respondent No. 3 categorically denied the allegations and irregularities so far as it relates to the estimation of the price of land measuring 62.5490 acres for setting up the University as it was claimed by the petitioners is that the estimation of the land has been made on the basis of an average price based on three years of saf kabala deeds. In response to the effect, respondents claim that following due process based on the period 18.05.2020 to 17.05.2021 authority estimated the price of land. According to him, compensation has been calculated in terms of section 9(1)(Ka) of the Act-2017 wherein in determining such market value, the authority has taken into account the average value of

the properties of similar description and with similar advantage in the vicinity during the last twelve months preceding the date of publication of the notice under section 4 of the Act-2017.

Mr. Amin Uddin submits that the impugned memo is internal communication; it has been made because of section 41 of the Act-2017 which has already been acted upon as such petitioners don't have the locus standi to challenge the same. According to Mr. Amin respondent is permitted by law to assess "market value" for the land in question, he cannot consider the deeds executed with malafide motive showing an exorbitant price. Therefore, no wrong was done by respondent No. 3 requiring the same to be declared unlawful.

He submits that statute envisages to the effect that only land of the vicinity will be taken under consideration for acquisition with equal class and equivalent facilities ought to be considered, nothing more and nothing less, therefore, under section 9(1) (Ka) of the Act-2017 exclusion of 139 deeds over the proposed university area in question is absolutely within the mandate of law. It has been claimed by the respondent that the petitioners purposely executed 139 deeds within a short period at an exorbitant price of the land. Substituting his submissions, he took us to the documents annexed in this petition as of Annexure-T to the supplementary affidavit of the petitioners and Annexures-VII, VIII, X, and XVII of the affidavit-in-opposition thereto.

Respondent brought to the notice of this Court that petitioner Mr. Salim Khan made an application against respondent No. 3 to the Ministry of Land wherein by taking into account only 43 (forty-three) deeds out of 182 deeds estimation has been prepared and he requested therein to consider all the deeds and it was claimed only thereafter, authority can estimate the cost. In response to that Ministry of Land issued a letter

dated 10.11.2021 with a further direction. By the letter respondent No. 3 was directed to produce a report in the following manner:

"আবেদনপত্র ও অন্যান্য কাগজাদি এতদসঙ্গে প্রেরণক্রমে আবেদনে বর্ণিত বিষয়ে স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ এর ৯(১)(ক) ধারা ও বিদ্যমান বিধি-বিধান অনুযায়ী বর্ণিত অধিগ্রহণ কেসের সামগ্রিক বিষয় পর্যালোচনাপূর্বক একটি প্রতিবেদন প্রেরণ করার জন্য নির্দেশক্রমে অনুরোধ করা হলো।"

Respondent No. 3 sent a report along with other relevant documents to the authority concerned, the relevant part of the report is reproduced herein below:

"৪। সংগৃহীত মূল্যহার চরম অস্বাভাবিক প্রতীয়মান হওয়ায় অধিকতর যাচাই বাচাইয়ের জন্য ১৪/১০/২০২১খ্রি. তারিখের ২১৭ নং স্মারকে অত্র জেলাধীন কানুনগো ও সার্ভেয়ারগণের সমন্বয়ে ১৩ (তের) সদস্য বিশিষ্ট একটি কমিটি গঠন করা হয়। ভূমি অধিগ্রহণ কর্মকর্তাকে উক্ত কাজের সমন্বয় সাধন ও মূল্যহার পরীক্ষাকরণ এবং জেলা রেজিস্ট্রার, চাঁদপুরকে মূল্যহার পরীক্ষা করে মতামত প্রদানের অনুরোধ করা হয় (সংযুক্তি পৃষ্ঠা নং-৩০-৩১)।

উল্লিখিত কমিটি কার্যপরিধি মোতাবেক যে প্রতিবেদন প্রস্তুত করেন তা জেলা রেজিস্ট্রার পরীক্ষা করে প্রত্যয়ন প্রদানপূর্বক ০১/১১/২০২১ খ্রি. তারিখের ৪৮১ নং স্মারকে দাখিল করেন (সংযুক্তি পৃষ্ঠা নং-৩২-৪৮)। কমিটি কর্তৃক দাখিলকৃত প্রতিবেদন পর্যালোচনায় প্রাপ্ত তথ্যাদি এবং পূর্বের সংগৃহীত মূল্যহারের তথ্যাদি নিম্নরূপঃ

ক্রমিক নং	বিবেচ্য সময়	ভূমির মূল্য (আনুমানিক ২% সহ)	মন্তব্য
০১	১৮/০৫/২০২০ হতে ১৭/০৫/২০২১ পর্যন্ত	৫২৯,২৫,৯৫,৪৮৩.১৯/- (পাঁচশত উনত্রিশ কোটি পঁচিশ লক্ষ পঁচানব্বই হাজার চারশত তিরিশি টাকা উনিশ পঁয়সা)	১। অধিগ্রহণ প্রস্তাবাধীন দাগসূচির অন্তর্ভুক্ত দাগসহ সকল দাগ বিবেচনায় নিয়ে স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন ২০১৭ এর ৯(ক) ধারামতে ৪ ধারার নোটিশ জারীর পূর্বের ১২ মাসের গড়মূল্য।
০২	১৮/০৫/২০২০ হতে ১৭/০৫/২০২১ পর্যন্ত (একই মৌজায় অধিগ্রহণ প্রস্তাবিত ও পূর্বের অধিগ্রহণকৃত দাগ ব্যতীত)	১৭০,০৯,৫৩,৭০০.২১/- (একশত সত্তর কোটি নয় লক্ষ তিপান্ন হাজার সাতশত টাকা একশ পঁয়সা)	১। স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন ২০১৭ এর ৯(ক) ধারামতে ৪ ধারার নোটিশ জারীর পূর্বের ১২ মাসের গড়মূল্য। ২। চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয়ের বিল পাশের



			বছর। (সংযুক্তি পৃষ্ঠা নং ৫১-৫৩)
০৩।	১৮/০৫/২০১৯ হতে ১৭/০৫/২০২০ পর্যন্ত	১৫১,৫৩,৯৪,৩৮৩/- (একশত একাত্তর কোটি তিপান্ন লক্ষ চুরানব্বই হাজার তিনশত তিরিশি টাকা)	চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয়ের খসড়া আইন পাশের বছর। (সংযুক্তি পৃষ্ঠা নং ৪৯-৫০)
০৪	১৮/০৫/২০১৮ হতে ১৭/০৫/২০১৯ পর্যন্ত	৩৯,২৮,০৭,৭৮৪.৮০/- (উনচল্লিশ কোটি আটশ লক্ষ সাত হাজার সাতশত চুরাশি টাকা আশি পয়সা)	চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় স্থাপন সংক্রান্ত কার্যক্রম শুরু হওয়ার পূর্বে।

উপর্যুক্ত তথ্যাদি থেকে প্রতীয়মান হয় যে, মৌজা মূল্যের থেকে নাল শ্রেণির ভূমির হস্তান্তর এর গড়মূল্য ২৮/০৫/২০২০ খ্রি. তারিখ হতে ১৭/০৫/২০২১ খ্রি. তারিখ পর্যন্ত অর্থাৎ ৪ ধারার নোটিশ জারীর পূর্বের ১২ মাসে ২০.৪ গুণ বৃদ্ধি পেয়েছে। একইভাবে অন্যান্য শ্রেণির ভূমি যথাঃ ডোবা, বাগান, ভিটি ও বাড়ি শ্রেণির ভূমির মূল্য চরম অস্বাভাবিকভাবে কয়েকগুণ বৃদ্ধি পেয়েছে। চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় স্থাপনের নিমিত্ত ২৩/১২/২০১৯খ্রি. তারিখে খসড়া আইন পাশ হয় এবং ০৯/০৯/২০২০ খ্রি. তারিখে সংসদে বিল পাশ হয়। তৎপ্রেক্ষিতে ১৫/০৯/২০২০খ্রি. তারিখে চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় আইন-২০২০ (২০২০ সালের ১৬ নং আইন) এর গেজেট প্রকাশিত হয়। কমিটি কর্তৃক দাখিলকৃত মূল্যহার এবং দলিলের হস্তান্তর মূল্য পর্যালোচনায় দেখা যায়, বিশ্ববিদ্যালয় সংক্রান্ত কার্যক্রম শুরু হওয়ার পর থেকেই ১১৫ নং লক্ষ্মীপুর মৌজার ভূমির হস্তান্তর মূল্য চরম অস্বাভাবিকভাবে বাড়ানো হয়, যা উদ্দেশ্য প্রণোদিত মর্মে প্রতীয়মান হয়।

৫। স্থাবর সম্পত্তি অধিগ্রহণ ও লুকুমদখল আইন ২০১৭ এর ০৪ ধারার নোটিশ জারীর পূর্বের ১২ মাসের সকল দলিল বিবেচনায় নিয়ে মোট প্রাক্কলণ দাঁড়ায় প্রায় ৫৫৩,০৭,০৭,২৯০.১৫/- (পাঁচশত তিপান্ন কোটি সাত লক্ষ সাত হাজার দুইতশ নব্বই টাকা পনের পঁয়সা মাত্র), পক্ষান্তরে একই সময়ের অধিগ্রহণ ও পূর্বে অধিগ্রহণকৃত দাগ ব্যতীত দলিল বিবেচনায় নিয়ে মোট প্রাক্কলণ দাঁড়ায় ১৯৩,৯০,৬৫,৫০৭.১৭/- (একশত নিরানব্বই কোটি নব্বই লক্ষ পঁয়ষট্টি হাজার পাঁচশত সাত টাকা সতের পঁয়সা মাত্র) (সংযুক্তি পৃষ্ঠা নং-৫৪-৫৫)। এ থেকে প্রতীয়মান হয় যে, অধিগ্রহণ প্রস্তাবিত দাগসূচির ভূমির হস্তান্তর ছিল উদ্দেশ্য প্রণোদিত ও এর মাধ্যমে ভূমির মূল্যহার চরম অস্বাভাবিকভাবে বৃদ্ধি করা হয়েছে; এবং এতে সরকারের আর্থিক ক্ষতির পরিমাণ দাঁড়ায় ৫৫৩,০৭,০৭,২৯০.১৫- ১৯৩,৯০,৬৫,৫০৭.১৭)=৩৫৯,১৬,৪১,৭৮২.৯৮/- (তিনশত উনষাট কোটি ষোল লক্ষ একচল্লিশ হাজার সাতশত বিরিশি টাকা আটানব্বই পঁয়সা) টাকা। চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় আইন সংক্রান্ত কার্যক্রমের পূর্বের ভূমির হস্তান্তর মূল্য মৌজা মূল্যের সাথে সামঞ্জস্যপূর্ণ ছিলো মর্মে দেহা যায় (৪ নং অনুচ্ছেদের ০৪ নং ক্রমিক সদয় দ্রষ্টব্য)।

৬। বিশ্ববিদ্যালয়ের প্রস্তাবিত দাগসূচি এবং পূর্বে অধিগ্রহণকৃত দাগের অর্থাৎ চরম অস্বাভাবিক (প্রায় ২০ গুণ বেশি) দলিলসমূহ বিবেচনায় নিয়ে প্রাক্কলণ তৈরি করলে সরকারের ৩৫৯,১৬,৪১,৭৮২.৯৮/- (তিনশত উনষাট কোটি ষোল লক্ষ একচল্লিশ হাজার সাতশত বিরিশি টাকা আটানব্বই পঁয়সা) টাকা

ক্ষতি হতো এবং মৌজা মূল্য অস্বাভাবিক বৃদ্ধিতে সাধারণ জনগণ ভূমি হস্তান্তরসহ ভূমি সংক্রান্ত বিষয়ে নানাবিধ অসুবিধার সম্মুখীন হতো।

এমতাবস্থায়, অধিগ্রহণ প্রস্তাবিত ও পূর্বে অধিগ্রহণকৃত দাগসমূহের ভূমির হস্তান্তর মূল্যের চরম অস্বাভাবিক বৃদ্ধি এবং ইহা উদ্দেশ্য প্রণোদিত প্রতীয়মান হওয়ায় জনস্বার্থে ও সরকারি অর্থ সাশ্রয়ে অস্বাভাবিক উচ্চ মূল্যে সম্পাদিত দলিল ব্যতীত ১১৫ নং দক্ষিণপুর মৌজার অন্যান্য সাফ কবলা দলিল বিবেচনায় নিয়ে অবকাঠামো, গাছপালা, ভূমির মূল্য এবং আনুষঙ্গিক ২% সহ সর্বমোট ১৯৩,৯০,৬৫,৫০৭.১৭/- (একশত তিরানব্বই কোটি নব্বই লক্ষ পঁয়ষট্টি হাজার পাঁচশত সাত টাকা সতের পঁয়সা মাত্র) টাকার প্রাক্কলন প্রস্তুত পূর্বক ০৪/১১/২০২১ খ্রি. তারিখের ২৩১ নং স্মারকমূলে উপাচার্য, চাঁদপুর বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয়, চাঁদপুর বরাবরে প্রেরণ করা হয়েছে।”

Respondent No. 1, issuing another letter bearing Memo No. 185 dated 29.11.2021 (Annexure-VI) informed its position to the petitioner Mr. Md. Salim Khan that lawfully there is no scope to rectify the estimation made in L.A. Case No. 12/2020-2021 on the basis of an application made by the owner of the land.

Mr. Kazi Mynul Hassan, the learned D.A.G has brought to the notice of this Court that a document which reveals that land transfer rates in the proposed plots are highly abnormal (excessively high) in comparison with Mouza rates. In such a situation respondent No. 3 formed a committee for assessment of land prices separately for the period of i) 18.05.2020 to 17.05.2021 ii) 18.05.2019 to 17.05.2020 and 18.05.2018 to 17.05.2019 in view of Section 41 of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ and reasons for the unusual and exorbitant price of the land in question sought vide Memo No. 05. 42.1300. 016. 14. 022. 21-217 dated 14.10.2021 (Annexure-G). The committee submitted a report with the certification of the District Registrar, Chandpur on 01.11.2021, bearing Memo No. 481. The report shows that 182 Saf Kabala deeds were registered between 18.05.2020 to 17.05.2021 in the 115 No. Lakshnipur Mouza. Among all these deeds, 139 were in the proposed land in acquisition and only 43 were in other parts of whole areas of the Mouza.

The number of deeds in the proposed land is abnormal in comparison with the number of deeds in the whole Mouza.

In this case, taking into consideration all these counts a claim has been made on the basis of a huge number of motivated deeds for the area in question those were executed in the preceding last twelve months of Notice under section 4 of the Act-2017. It appears that total estimated costs stand at Tk.553,07,07,290.15/- (five hundred fifty-three core seven lac seven thousand two hundred ninety points fifteen paisa) which is more than 20(twenty) times higher price than normal price and considering normally executed Deeds, the total estimated price was claimed for Tk.193,90,65,507.17/- (one hundred ninety-three crore ninety lac sixty-five thousand five hundred seven-point seventeen only). The average land transfer rate in the 115 No. Lakshmipur Mouza from 18.05.2020 to 17.05.2021 before issuing a letter under section 4 of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ has been increased 20.4 times in Nal class of land. Land transfer rates in other classes of land also shown to have been increased highly which is very unusual.

We have considered the submissions made by the contending parties, perused the petition, affidavit-in-opposition, and other materials on record brought before this Court, and considered the facts and circumstances of the case.

It is to be noted that under the law authority is duty-bound to follow the provisions of law as stipulated in the Act-2017. However, it was contended by the petitioners that the conduct of the respondent in the present case demonstrates that they failed to observe law and rules and thereby did not discharge their duties and responsibilities diligently under the law.

Mr. Kazi Mynul Hassan, the learned DAG pointed out that the average land transfer rate before issuing the letter under section 4 of Act,

2017 has been increased 20 times which is very unusual. He submits that petitioner No. 1 along with others has a plan to grab public money. Section 4 of the Act-2017 has empowered the authority and categorized the process and procedure to be followed in bringing an action in respect of any public interest. According to Mr. Mynul for proper consideration, assessment and estimation of land section 9 (1)(Ka) of the Act-2017 ought to be considered and should be read along with sub section (5), (7) and explanation of the section 4 and information procured under section 41 of the Act-2017. He claims under the above provisions of law respondent is entitled to exclude any sort of malafide transaction/s, etc which are against the spirit of the Act-2017 as aforesaid. For the proper adjudication, the relevant portion of section 9 (1)(Ka), sub section (5), (7) of section 4 and explanation of “জনস্বার্থ বিরোধী উদ্দেশ্য” made in the said section and section 41 of the Act-2017 is herein reproduced below:

#### Section -9 of the Act-2017

‘৯। ক্ষতিপূরণ নির্ধারণের ক্ষেত্রে বিবেচ্য বিষয়াবলি।-(১) এই আইনের অধীনে অধিগ্রহণযোগ্য কোনো স্থাবর সম্পত্তির ক্ষতিপূরণের পরিমাণ নির্ধারণ করিবার সময় জেলা প্রশাসক নিম্নবর্ণিত বিষয়সমূহ বিবেচনা করিবেন, যথাঃ-

(ক) ধারা ৪ এর অধীন নোটিশ জারির সময় সংশ্লিষ্ট স্থাবর সম্পত্তির বাজার মূল্যঃ তবে শর্ত থাকে যে, বাজার মূল্য নির্ধারণের সময় উক্ত স্থাবর সম্পত্তির পারিপার্শ্বিক এলাকার (vacinit) সমশ্রেণির এবং সমান সুবিধায়ুক্ত স্থাবর সম্পত্তির ধারা ৪ এর অধীন নোটিশ জারির পূর্বের ১২ (বার) মাসের গড় মূল্য নির্ধারিত নিয়মে হিসাব করিতে হইবে;

#### Sub section (5), (7) and explanation of “জনস্বার্থ বিরোধী উদ্দেশ্য” made in the section 4 of the Act-2017

৪(৫)। অবৈধভাবে লাভবান হইবার নিমিত্ত অধিগ্রহণাধীন বা অধিগ্রহণ হইতে পারে এমন ভূমির উপর জনস্বার্থ বিরোধী উদ্দেশ্যে কোনো ঘরবাড়ি বা অবকাঠামো নির্মাণ করা হইয়াছে কিনা বা নির্মাণাধীন কিনা তাহা, জেলা প্রশাসক, নির্ধারিত পদ্ধতিতে, যৌথ তালিকায় উল্লেখ করিবেন।

...

(৭)। অধিগ্রহণাধীন বা অধিগ্রহণ হইতে পারে এমন ভূমির উপর, উপ-ধারা (৩) এর দফা (ক) এর অধীন কার্যক্রম গ্রহণের পর, অসদুদ্দেশ্যে নির্মিত বা নির্মাণাধীন ঘরবাড়ি বা

অবকাঠামোর দ্বারা সংশ্লিষ্ট ভূমির শ্রেণি পরিবর্তন করা হইলে, উক্তরূপ পরিবর্তন জেলা প্রশাসক যৌথ তালিকায় অন্তর্ভুক্ত করিবেন না।

...

ব্যাখ্যা।-এই ধারায় ‘জনস্বার্থ বিরোধী উদ্দেশ্য’ বলিতে প্রকল্প বাস্তবায়নে বাধা প্রদান, বিঘ্ন সৃষ্টি বা বিলম্বিত করিবার লক্ষ্যে কোনো কাজ বা ব্যবস্থা গ্রহণক্রমে ক্ষতিপূরণ হিসাবে বা অন্য কোনোভাবে আর্থিক সুবিধা লাভের উদ্দেশ্যকে বুছাইবে।"

#### Section 41 of the Act, 2017

"তথ্য সংগ্রহের ক্ষমতা। জেলা প্রশাসক, কোন স্থাবর সম্পত্তি অধিগ্রহণ বা হুকুমদখল করিবার উদ্দেশ্যে অথবা অধিগ্রহণকৃত স্থাবর সম্পত্তির ক্ষতিপূরণ নির্ধারণ করিবার উদ্দেশ্যে, এই আইনের অধীন অধিগ্রহণকৃত বা হুকুমদখলকৃত অথবা অধিগ্রহণের বা হুকুমদখলের উদ্দেশ্যে কোনো স্থাবর সম্পত্তি সংক্রান্ত বিষয়ে সুস্পষ্ট তথ্য নির্দিষ্ট কোনো কর্মচারী বা কর্তৃপক্ষকে প্রদান করিবার জন্য যে কোনো ব্যক্তিকে লিখিতভাবে নির্দেশ প্রদান করিতে পারিবেন।"

Respondent No. 3 being informed about the unusual and exorbitant price which has increased after the declaration of the establishment of the University, formed a committee to assess the rate/price for certain periods separately for the land in question and asked for a report as to the reason for such unusual abrupt exorbitant price increase in view of Section 41 of the Act-2017 (impugned Annexure-G), which already acted upon (as reflected from the Annexure-G-1 of the writ petition) and as such nothing wrong has been done by the respondent No. 3 which is liable it to be declared as unlawful and without lawful authority. Further, it appears that in the determining period 182 deeds have been executed relates to the land of alleged proposed Mouza. Out of those deeds 43 (forty-three) deeds were took place excluding proposed land for acquisition, in seated of that 139 deeds were executed against the land which has been proposed for acquisition. All the 139 deeds have been executed by the petitioners and their vested quarters (Annexure-VII) and the land of those deeds fall under acquisition process which clearly show with an ulterior motive on the part of the petitioners, it has executed. If the same is considered along with other information/documents referred

above, rates of the proposed land for acquisition to establish a University are highly unusual, so the estimation was made following section No. 9(1) (Ka) of the Act-2017 by excluding only highly abnormal deeds. Only the deeds made on the plots of proposed land for acquisition are excluded as these plots are transferred at highly unusual rates. From the combined reading of those sections it transpired the law indeed empowered respondent No. 3 to exclude any sale deeds executed with a bad motive like any other acts/transactions etc. for the purpose to assess the market value of the land in question for acquisition.

It is noted that under the law respondent has the authority to collect other documents to determine and or calculate the estimated price of the lands. The record shows in this case, the respondent did not consider three years period to determine the estimated price of the lands rather it was considered to find whether any unscrupulous person executed any deeds with the exorbitant price during the period between 18.05.2020 to 17.05.2021 in comparison with just immediate preceding two years among other facts including considering all the deeds separately during the period between 18.05.2020 to 17.05.2021. It is at this juncture that this Court has taken into consideration Mr. Hassan's submission that the respondent has authority to collect other documents and exclude such sale deeds which have been executed with a bad motive like any other acts/transactions etc for the purpose to assess the market value of the land for acquisition.

It is also noted that the alleged 139 deeds have been executed by the petitioner and his family member and the land relates to the above deeds is the subject matter of the land under L/A case. Those deeds or the value of alleged land cannot be considered as surrounding or vicinity land at the time of calculation of the compensation. Law does not empower the Authority to include the land which is the subject matter of

L/A case. To determine the value of the land under L/A case law allowed and the authority has empowered only to consider the average value of the properties of similar description and with similar advantage in the vicinity during the last twelve months preceding the date of publication of the notice. Thus, the land related to the alleged deeds cannot be considered.

Mr. Hassan also brought to our notice that the petitioners by producing some documents as of Annexures-U, Z-21, Z-22, and Z-25 tried to impress upon this Court. As regard the alleged document Annexure-U, respondent No. 3 claims in addition two signatures except petitioner No.1 were there. The date of signature was on 16.02.2018, and it has approved on 22.02.2018, but from the plan, it appears the land based on which it has approved been purchased after approval of the plan i.e., referred to sale deed No. 2829 dated 15.05.2019; 3172 dated 19.06.2019; 3205 dated 19.06.2019 and some other deeds. Further, the resolution of the Union Parishad meeting (Annexure-Z-22) dated 17.02.2020, stated that an application for approval of "Cinebaz Film City cum Residential Building" dated 17.02.2020 has been submitted along with a plan of the building before the Chairman of the Union and the same was placed in the meeting and approved on that date. Respondent claims it is fabricated because Annexure-Z-25 reflects the signature of the town planner put on 20.02.2020 and the Chairman put his signature on 22.02.2020, thus same could not be placed in the Union Parishad meeting dated 17.02.2020. Further, it was claimed that the provisions of sections 43, 44, and schedule 2 under section 47 in respect of holding meeting and approval procedure of the plan of Local Government (Union Parishad) Act, 2009 was not followed and it was not on agenda. Respondent claims that the government constituted a committee for approval of a plan vide an order dated 10.07.2017 with the Upazilla

Parishad Chairman as Chairman of the Committee and Upazilla Assistant Engineer as member Secretary and others referred therein including Union Parishad Chairman as a member. In the instant case, no plan was submitted before the committee as aforesaid. Besides that petitioner No. 1 as the applicant for the plan as well as chairman of the same union is disqualified to be part of the plan approved as per the terms and reference of the committee and as per cardinal rules of natural justice based on Latin doctrine "Nemo iudex in causa sua i.e., "no one should act as a judge in his own cause."

It is evident from Annexure-T that petitioner No. 1 did not own much land till 2013. Besides, nothing transpires that his family members purchased any land till mid-September, 2019. Therefore, the claim as to purchase since 2013 is untrue and fabricated. It appears that he purchased in multiple numbers only after the declaration of the establishment of the University which has become part of the acquisition and has been made by the petitioner (Annexure-VII). The record shows that petitioner No. 1 started purchasing alleged land showing more rate than what he obtained earlier i.e., in mid-2019. Therefore, the construction and establishment of Cinebaz Film City Cum Resorts in the alleged Mouza in question long before the commencement of activities concerning the University is not true as Cinebaz Limited is incorporated with RJSC on 10.03.2021 (Annexure-K-6).

It is noted in this case that petitioner No. 1 did not make any reasonable reply when it was claimed by the respondent that enclosing manufactured documents the petitioners tried to impress upon us to get the benefit. It is evident from the record as well as the law of the land that the meeting of Union Parishad was not done following the provisions of Law, and Union Parishad had no authority to approve the plan, a committee was there to do such act, and it was not placed before such



committee. All alleged conducts of an elected public representative falls under misconduct and corruption as he fraudulently did such activities using public office.

It is noted that the proposed land has been selected by the requiring body, before the proposal was made by the requiring body, no place or land was selected by the district land allocation committee. In this context, in reply to the query made by respondent No. 1 dated 10.11.2021, a reply has been given by respondent No. 3 as of Annexure-M where from it appears that:

"উল্লেখ্য, উক্ত মৌজায় অধিগ্রহণের জন্য প্রস্তাবিত ভূমি প্রত্যাশী সংস্থা কর্তৃক নির্বাচন করা হয়েছে। প্রত্যাশী সংস্থা থেকে আনুষ্ঠানিক প্রস্তাব পাওয়ার পূর্বে জেলা ভূমি বরাদ্দ কমিটি কর্তৃক কোনো স্থান নির্বাচন করা হয়নি।"

From Annexure-M to the petition, it appears that the alleged proposed land has been selected by the requiring body. The record reveals that behind the back petitioner No. 1 is the mastermind who took initiative to select the alleged land for University. The document shows Authority selected two pieces of land, one for the University and another one for the Hostel measuring a total of 62.54 acres of land. In this respect, the respondent brought notice to this Court that the petitioner made a representation dated 11.11.2020 to the Education Ministry of requiring body (As of Annexure-XVII) by which the petitioner insist or requested to take 46.6200 acres of land for setting up a University. For the convenience of our understanding the alleged representation read as hereunder:

"এমতাবস্থায়, চাঁদপুর সদর উপজেলায় ১১৫ নং লক্ষীপুর মৌজায় ৪৬.৬২০০ একর ভূমিতে প্রস্তাবিত বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় স্থাপনের লক্ষ্যে অধিকতর উপযুক্ত বিবেচনায় ডিপিপিতে অন্তর্ভুক্তক্রমে ভূমি অধিগ্রহণের নিমিত্ত প্রশাসনিক অনুমোদনের সদয় প্রয়োজনীয় ব্যবস্থা গ্রহণ এবং জেলা প্রশাসক, চাঁদপুরকে ভূমি অধিগ্রহণের নির্দেশনা প্রদানের জন্য জনস্বার্থে বিনীত অনুরোধ করছি।"

Further, it appears that by a letter dated 17.01.2021 (Annexure-VIII) petitioner made a specific proposal to select the land for setup Hostel of the University and sought administrative approval. For our better understanding relevant part of the letter read as follows:

"এমতাবস্থায়, চাঁদপুর সদর উপজেলায় ১১৫ নং লক্ষীপুর মৌজায় ৪৬.৬২০০ একর ভূমিতে প্রস্তাবিত বিজ্ঞান ও প্রযুক্তি বিশ্ববিদ্যালয় স্থাপন ও ১৩,৮৩০০ একর ভূমিতে ছাত্রাবাস স্থাপনের লক্ষ্যে অধিকতর উপযুক্ত বিবেচনায় ডিপিপিতে অন্তর্ভুক্তক্রমে ভূমি অধিগ্রহণের নিমিত্ত প্রশাসনিক অনুমোদনের সদয় প্রয়োজনীয় ব্যবস্থা গ্রহণ এবং জেলা প্রশাসক, চাঁদপুরকে ভূমি অধিগ্রহণের নির্দেশনা প্রদানের জন্য জনস্বার্থে বিনীত অনুরোধ করছি।"

In the alleged letter Education Ministry of the requiring Body had given a direction on it, and put a note on the body of the letter. For our convenience of understanding the same read as hereunder.

সচিব মহোদয়,

দুই খন্ড জমি খুবই কাছাকাছি অবস্থিত। বিশ্ববিদ্যালয়ের জন্য এ জমিটুকুও পাওয়া গেলে ভালো হতে পারে। ব্যবস্থা নিন।

দীপুমনি।

In the above two letters, the petitioner requested to select the land which he mentioned in his letter to set up the University and Hostel. The letter dated 11.11.20 and 17.01.2021 has been made by petitioner No. 1 for the inclusion of land measuring 46.6200 and 13.8300 acres respectively. However, the authority selected those lands and proposed a measure totaling 62.54 acres of land. Though, the petitioner claims that no land was selected and or included in the DPP to acquire based on the letter dated 17.01.2021. The petitioner produced 3 letters dated 10.03.2021 as of Annexures-Z-12, Z-13 and Z-14 and based on the aforesaid letters authority prepared the project and proposed land was selected, records show authority selected those land for University, Hostel and residential house of Vice-Chancellor. Altogether the quantum of land for the above purpose is a little bit bigger than the land proposed land by the petitioner as Chairman. However, it appears all land including dag

which has been mentioned in those two letters made by the petitioner as Chairman has been selected and included by the authority, and it has been mentioned in the project proposal. It needs to be clear that the requiring body in its letters (Annexure-Z-12, 13, and 14) mentions the same land and dag which had been mentioned by the petitioner as Chairman in his letter. But it appears that the quantum of land is a little bit bigger than the lands proposed by the Chairman in his letters. However, L.A case has been started to acquire the same.

It appears petitioners have taken initiative to select the land in question under the L.A Case. They made proposal to acquire the same, therefore, they cannot claim they are loosing their homesteads without receiving the proper price for their land due to the arbitrary action of respondent No. 3. Following provisions of law Authority taken initiative to fix the value of the land. The initiative of the respondent cannot said to be arbitrary as it appears petitioners did some immoral activities and took initiative relating to the transfer of land, executed deeds with high value and illegally influenced acquisition process manipulating spurious documents. Such activities of the petitioners have been brought to light by the Respondent to protect and uphold the public interest. All the misdeeds may go against petitioners and no one is happy with it.

In this case, the authority is duty bound to give proper compensation, Authority estimates the value of the alleged land as under the law, land of the vicinity has to be taken into consideration for acquisition with equal class and equivalent facilities ought to be considered and nothing more and nothing less. The land relates to 139 deeds is the subject matter of the land under L/A case, law does not allow the authority to include such land at the time of estimation or fixing the value of such land which is a subject matter land under L/A case. Therefore, under section 9(1) (Ka) of the Act-2017 exclusion of 139 deeds

over the proposed university area in question is absolutely within the mandate of law. Further, the deeds which have been purposely executed within a short period showing the exorbitant price of the land have been rightly excluded at the time of estimating the price of land as authority empowered under law. Inclusion of deeds as it was claimed by the petitioner is not permitted under law. Authority is duty bound, petitioners will get adequate compensation under the law, and there is no scope to deprive the owner of the land.

It appears that petitioner No. 1 along with some other influential people brought nearly 62.54 acres of land chosen for the proposed University and most of the deeds have been executed soon after the declaration of the establishment of the University (Annexure-VII). The petitioners were involved in the land acquisition process and aware of the fact raised by respondent No. 3. The record shows that petitioner No. 1 in collusion with other petitioners suppressing the material facts, by practicing fraud with an ulterior motive has filed this writ petition. They are associates with each other. All of them had similar object and intention. By the activities as stated above and intention of the petitioners harassing, dragging the Government machinery and thereby wasting valuable public time are highly detestable. Before establishing and blowing the University, all activities of the University have been stopped at the behest of the petitioners and those cannot be restore. Being elected representative, petitioner No. 1 was trusted and it was expected that he would act for the best interest of the people as well as the locality, instead of that he himself using public office acted against the public interest. Such conduct of the petitioners especially by the elected Chairman of the locality is most unbecoming, highly deprecated. It causes serious damage and flouted equality clause and other human rights. It is a fit case to

impose an exemplary cost upon the petitioners and it has to be imposed to stop such frivolous litigation in the future.

For the reason discussed herein above, we are of the view that there are no merits in these Rules.

Accordingly, the Rule Nisi issued in the above two writ petitions is discharged with costs.

Considering the importance and involvement, petitioner No. 1 of the writ petitioner is directed to pay Tk. 50 (fifty) lacs, petitioner No. 2 of writ petition No. 11947 of 2021 and petitioner of writ petition No. 11455 of 2021 are directed to pay Tk. 25 (twenty-five) lacs each, to the Government exchequer within 2(two) months from receiving the copy of the judgment, failing which the amount shall be realized through the process of the Court, and respondent No. 3 is directed to realize the same.

At the time of issuing Rule Nisi this Court directed to maintain the status-quo. However, the interim order passed by this Court was stayed by our Apex Court, thus it is not required to recall and vacate the same.

Communicate the Order.

Md. Ashfaquul Islam, J:

I agree.