

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

WRIT PETITION NO. 5850 of 2023

IN THE MATTER OF:

An application under Article 102 read with Article 44 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Md. Golam Mohiuddin and others.

..... Petitioners

-versus-

Government of Bangladesh and others

..... Respondents.

And

Mr. Mohammad Hossain with

Mr. Md. Mesbahul Islam Asif, Advocate

..... for the Petitioners.

Mr. Tushar Kanti Roy, D.A.G with

Mr. Md. Salim Azad, A.A.G

..... For the Respondents

Heard on: 28.05.2024 &

Judgment on 06.06.2024.

Present:

Mr. Justice Mustafa Zaman Islam

and

Mr. Justice S.M. Masud Hossain Dolon

S.M. Masud Hossain Dolon, J:

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi has been issued calling upon the respondents to show cause as to why the Notices under section 4(1)

of the স্বাবর সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ bearing জারির

নম্বর: ৯২(১৫) dated 29.12.2022 issued in the name of wrong person by

the respondent No. 5 in L.A. Case No. 02/2022-2023 (Annexure-D & D-1) and Notices under section 4(1) of the স্বাবর সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ bearing জারির নম্বর। 04.01.2023 issued ৯২(১৫) dated by the respondent No. 5 fixing the date of joint inquiry on 02.01.2023 in L.A. Case No. 02/2022-2023 (Annexure- F & F-1) and subsequent report vide স্বারক নং ০৫.৪৩.৭৬০০.০২৯.১৪.০১১.১৯-২৩. ১১৯ (ক) dated 22.03.2023 changing the category of the schedule land (Annexure-H-2) should not be declared to have been issued and done without any lawful authority and are of no legal effect and /or pass such other or further order or orders as to this court may seem fit and proper.

Facts relevant for disposal of the Rule are that the petitioners are co-sharer and owner of the schedule property. The Respondents issued notice to the petitioner under section 4(1) of the L.A. Case No. 02/2022-2023 for acquisition of schedule land. The Ministry of Education vide Memo No. 37.00.0000.070.01.006.2014-199 on 05.06.2017 directed the respondents to conclude the acquisition process of the schedule property by awarding adequate compensation to the petitioners on urgent basis but they did not comply with the directions given by the Ministry of Education. Then petitioners preferred the Writ Petition being No. 15578 of 2017 before this Division and obtained Rule and

after hearing, the Rule was disposed of with some directions. For implementation of judgment and order passed in Writ Petition No. 15578 of 2017 the petitioner were compelled to prefer a Contempt Petition No. 515 of 2019 in which contempt rule and repeated reminders were issued by this Division. Though the schedule land was recorded as Dhani in the R.S. Khatian but last 50 years the schedule land has been developed by filling earth and the category of which has been changed as high land. Therefore the respondents fixed the rent of the schedule land as residential rate and the petitioners have been paying the residential rent in the schedule land. Against the impugned judgment the respondents preferred a Civil Petition for Leave to Appeal No. 2900 of 2019 before the Hon'ble Appellate Division and after hearing the Leave Petition was disposed of. Lastly the respondents initiated L.A Case being No. 02/2022-2023 for acquisition of schedule land and issued notices to the wrong persons under Section 4(1) of the স্বাবর সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ on 29.12.2022 and also filed the category of land as Dhani and accordingly the petitioners prayed for amending the notices. Thereafter another notice for acquisition under section 4(1) of the স্বাবর সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ was issued on 04.01.2023 which was replaced by the same date and memo of earlier notices wherein the date 02.01.2023 was mentioned for joint investigation which is absurd and

practically impossible. During pendency of the Writ Petition, Contempt Petition, Civil Petition for Leave to Appeal respondents willfully violated the Hon'ble Court's order and changed the nature and character of the schedule land by inviting tender for construction work. In this circumstances the petitioners filed an application on 29.05.2022 before the DC, Pabna for conversion of category of the land and accordingly an inquiry was held and report was submitted by the Union Assistant Land Officer, Poura Land Office, Ishwardi on 31.07.2022, but in vain. Then petitioners under such compelling situation preferred Writ Petition No. 2255 of 2023 for a direction to dispose of the application to change the category of land. On 22.02.2023 after hearing, this Division was pleased to direct the respondents to dispose of the said application. Thereafter the DC, Pabna with an ulterior motive without followed due course of law mechanically has changed the category of land, but fact remains the category has not been changed, even the same was not intimated to the petitioners, but he prepared a report and issued a letter on 22.03.2023 and communicated the same on 08.03.2023. The category of land has not been changed in due course of law, rather a mechanical letter was issued to that effect by the DC, Pabna even after so called change of land the DC, Pabna received the rent at the residential rate of the schedule land lastly on 03.04.2023 which loudly reveals the malafide and illegality of the respondents. Thereafter petitioners stating the facts in details filed a complaint before the Divisional

Commissioner, Rajshahi on 30.03.2023 and accordingly the L.A. Case was returned without any approval to the DC, Pabna for holding further inquiry of the land in question. That pursuant an inquiry was held on 24.04.2023 and 27.04.2023, but the said land was not demarcated properly, more so the infrastructures and trees were not counted and included in the investigation and accordingly the petitioners filed an application on 30.04.2023 before the DC, Pabna with a request to supply the copy of the joint investigation list, but in vain. It is pertinent here to mention that the category of land has developed and changed much earlier from Dhani (ধানী) to residential (আবাসিক) and accordingly the rent of the land has been determined as residential rate. The petitioners have been paying the rent for the land at the residential rate. The petitioners also prayed for approval of construction of building thereon before the Ishwardi Poursava, Pabna by deposited requisite fees on 12.01.2002. The Ishwardi Government College, Pabna earlier filed Other Class Suit No. 31 of 2017 before the Joint District Judge, 2nd Court, Pabna against the handing over the possession of the suit land pursuant to an order of the Contempt Petition No. 277 of 2015 against the Government and petitioners, where in the Ishwardi Government College, Pabna categorically mentioned the infrastructures and trees which are situated over the schedule land of the petitioners under acquisition. It appears from the Mouza Rate 2023-2024 of the Mosuria Para Mouza, Ishwardi, Pabna it reveals that there are extreme

differences between the rate of Dhani, Residential and Potit category land whereas the DC, Pabna is treating the high category land as low category to deprive the petitioners from their legal entitlement.

Thereafter, having found no other equally efficacious remedy the petitioners filed the instant writ petition and obtained the Rule.

Mr. Md. Mesbahul Islam Asif, the learned Advocate for the petitioners submits that after preparation of the impugned report dated 22.03.2023 as to the category of land the DC, Pabna has been accepting the rent as residential rate of the schedule land which reveals that the land has changed as residential category but he submitted vexatious report to the apex court of the country and hence judicial intervention is immense urgent. He further submits that two residential building are situated in the eastern part of the schedule property which is admittedly a residential area and accordingly the rent of which has been fixed as residential rate and the petitioners have been paying rent at residential rate from long since and they are entitled to get compensation of the schedule land at the residential rate fixed for the year 2023-2024 otherwise they will be highly prejudiced. He further submits that the requiring body itself claimed the structure are situated over the schedule land in the plaint of the Other Class Suit No. 31 of 2017 whereas the respondents excluded the same without demarcation of the schedule property for which the petitioners have been suffering irreparable loss and injury. The report dated 29.09.1999 submitted by

the Upazilla Nirbahi Officer that the land is situated within Ishwardi College compound and the petitioners also prayed for approval of construction from authority concerned which in no manner can be treated as low category land other than residential category. Learned Advocate further submits that due process of law is to be followed for changing the category of land, but the Deputy Commissioner, Pabna without following the due process most illegally changed the category of land and mechanically issued a letter on 22.03.2023 and communicated the same on 08.03.2023 which is palpably illegal and is liable to be declared without any lawful authority and is of no legal effect. Learned Advocate lastly submits that the malafide and illegality of the respondents have not been infringed the right to property of the petitioners as guaranteed under Article 31 and 42 the Constitution of the Peoples Republic of Bangladesh and hence judicial intervenes is immense urgent.

Mr. Tushar Kanti Roy, the learned Deputy Attorney General on behalf of the respondent submits that the land has been acquired by the Government being RS Khatian No. 88 and Dag No. 279 and 299 as per Exhibit-D and D1, Class of land is Dhani (ধানি) therefore, the registered owner of the land will get compensation as per স্বাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭. After acquisition, Government is always ready to grant compensation as per law, if the owner of the land

reclassifies the land for the purpose of making illegal profit, the Government will not bear the responsibility or compensation for the same.

We have perused the writ petition and all other relevant papers submitted by the parties in connection with the contents of this writ petition along with supplementary affidavit, affidavit in opposition appended thereto. It appears that this is a case of land acquisition admittedly, Government has duly acquired the land for Ishwardi Government College. The dispute relates classification of acquisition of land. The landowner as petitioners claim that they have been paying their land rent as a residential for a long time that is why the land is a non agriculture land but DC, Pabna claims that the land is agricultural land as per S.A. record. In the writ Jurisdiction we can only consider admitted facts. In this circumstances we have perused record that Principal of Ishwardi Government College was filed a suit bearing No. 31/17 and admitted that they have been used this land for their various activities for about 54 years in column two of the petition of this suit which run as follow:-

“নাঃ জমির মধ্যে ঈশ্বরদী সরকারী কলেজের মেইন গেট, সাইন বোর্ড, বিল,এন,সি,সি অফিস, সুইপার ঘর, শহিদ মিনার, জাতীয় পতাকা উত্তোলন মঞ্চ, কলেজে প্রবেশের পাকা রাস্তা প্রশাসনিক ভবনের লাগা কলা ভবনের

কিয়াদাংশ, ল্যাট্রিন, বাথরুম, যাতায়াতের
 রাস্তা কলেজের পক্ষ হইতে লাগানো বিভিন্ন
 ধরনের ফলজ ও বনজ গাছ পালা সহ বিভিন্ন
 ধরনের জিনিষ পত্র রহিয়াছে। নাঃ (ক)
 তপশীল সম্পত্তিতে ঈশ্বরদী কলেজ প্রতিষ্ঠা
 কাল হইতেই অদ্যাবধি ৫৪ বৎসর পর্যন্ত
 ঈশ্বরদী কলেজ শান্তি পূর্ণ ভাবে ভোগ দখল
 করিতেছে।”

In this situation it is admitted by the requiring party of the
 schedule land, the Ishwardi Government College, Pabna that the
 infrastructures and various activities are situated over the schedule
 land of the petitioners.

But we find that according to RS record, the schedule land is
 classified as agriculture. It appears that the section 4 of the স্বাবর
 সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ provides that land
 development tax on nonagricultural land. (1) Land development of non
 agricultural land all of the country according to the land value and use
 for determining the tax rate land can be classified into several
 classes.(2) The Government may, by notification in the Official Gazette,
 from time to time, subsection (1) may fix or refix the rate of land
 development tax for any area classified under (3) The Government
 shall, by notification in the Government Gazette, fix and refix the rate of

land development tax on nonagricultural land by dividing the nonagricultural land into commercial, industrial and residential and other categories based on use explanation 'Residential and other categories' means nonagricultural land not used for commercial or industrial purposes, such as residential and office buildings, roads, fields, courtyards, structures etc. owned by public-private organizations or individuals.

On scrutiny of investigation report dated 31.07.22 submitted by Union Land Assistant Officer, Poura Land officer, Ishwardi, Pabna, it appears R.S. Dag No. 297 of 0.4211 of land is classified as Dhani but presently used as play ground and Eidga as fillup the land. R.S. Dag No. 299 of 0.53435 of land is classified as "Dhani" but presently remain "Patit" fallen because it is uncultivated. But both the R.S. Dag Nos. 297 and 299 are fixed by Tax as Residential rate.

We meticulously scrutinized the Joint survey report dated 17.05.2023 and the said Joint investigation was done by Additional Deputy Commissioner (Revenue), Assistant Commissioner (land) of Ishwardi, Land Acquisition Officer, in presence of representative of Requiring Body (RD) and the writ petitioners and Joint investigation was done on 24.04.2023. The Joint investigation report was submitted before us by Md. Salim Azad, Assistant Attorney General by affidavit as Annexure-10. It appears that Joint investigation found though the R.S. Dag No. 279 of 0.47 acre land was classified as "Dhani" land but the

same land is equal high of the Ishwardi Government College and nearest Government Road as such Joint investigation Report classified the land as "Vita". In R.S. Dag No. 299 of 0.80 acres of land was classified as "Dhani" but the Joint investigation committee by their investigation practically found a home is situated on 0.1825 acres of land and also a road is acres on land of 0.0300 acres further 0.5875 of land is remain "Patit" and the Joint investigation committee is opined to treat the sand 0.5865 of land is "Dhani".

Now the Moot question remains whether 0.5865 of "Patit" land can be treated as agricultural land due to the joint investigation committee proposed of 0.5865 acres of land may be treated as "Dhani". On scrutiny of Government policy on Land Development Tax on Non-Agricultural Land and Land Development Tax on Agricultural Land in Urban Areas by memo No. ১৭(৬৪)-পিসি/স্ট্যাট-১/৮৪ dated 19.05.1984 issued and signed by Deputy Secretary of Land Administration and Land Reform Ministry, Annexure-4, provided that-

“শহর বা পৌর এলাকায় কোন জমি যদি অকৃষি জমি হিসাবে ব্যবহারের উদ্দেশ্যে পতিত রাখা হয় তবে উহাও অকৃষি জমি হিসাবে বিবেচিত হইবে এবং তদানুযায়ী উহাদের ভূমি উন্নয়ন কর নির্ধারিত হইবে। ”

On the other hand the Memo No. ১৭(৬৪)-পিসি/স্ট্যাট-১/৮৪ dated 19.05.1984 issued and signed by Deputy Secretary of Land Administration and Land Reform Ministry, Annexure Q of the writ

petition issued determination and collection of the land development tax on land used for agricultural purpose within the municipal area provided “ ভূমিটি উচু (ভিটি) জমি হইলেও যদি উহা কৃষি কাজে ব্যবহৃত হইয়া থাকে তাহা হইলে কৃষি জমির জন্য নির্ধারিত হার অনুসারেই ইহার ভূমি উন্নয়ন কর আদায় করিতে হইবে।

From above discussion it appears that the schedule land is not used for agricultural purpose and the Joint investigation committee only recommend 0.5865 of land may be treated as “Dhani” but said land of 0.5865 is remain “Patit” as non agricultural land moreover land tax is collecting at the rate of residential tax. So the owner of the land is entitled to get the compensation of this land as residential as per law.

In view of the discussion made above we find substances submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

In the result, the Rule is made absolute without any order as to cost. The respondents are directed to issue fresh notices under section 4(1) of the স্বাবর সম্পত্তি অধিগ্রহন ও হুকুম দখল আইন, ২০১৭ mentioned the current date and category of land as per rent receipt upon the petitioners of the schedule property within 60(sixty) days from the date of the receipt of this judgment.

Communicate the order at once.

Mustafa Zaman Islam, J:

I agree

Asad/B.O