

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

Writ Petition No. 7218 of 2021

In the matter of:

An application under article 102 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:

Kazi Omar Ali and others

..... Petitioners.

-Versus-

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat, Dhaka and others,

..... Respondents.

Mr. Md.Ekramul Hoque, Advocate,

.....For the petitioners.

Mr. Mohammed Rezaul Hoque, A.A.G

....For the respondent Nos.2-6.

Judgment on: 13.12.2023

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In the application under article 102 of the Constitution, on 06.09.2021 the *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inactions of the respondents in not disbursing the compensation money for acquisition of

the land of the petitioners measuring an area of .2389 acre of Mouza-Joarsahara, Police Station- Cantonment, R.S. Khatian No. 401, R.S. Dag No. 2687(Part) as Viti land for the project namely- Dhaka Elevated Expressway PPP Construction Project should not be declared to have been done without lawful authority and is of no legal effect and as to why they should not be directed to disburse the compensation money for acquisition of the land of the petitioners measuring an area of .2389 acre of Mouza-Joarsahara, Police Station- Cantonment, R.S. Khatian No. 401, R.S. Dag No. 2687(Part) as per award book, which the respondents are bound by law 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 Nisi*, in short, are that land measuring .2389 acre appertaining to R.S. Khatian No. 401, R.S. Plot No. 2687 of Mouza-Joarsahara, Police Station-Cantonment belonged to the predecessors of the petitioners namely- Syed Ali Kazi, Asad Ali Kazi, Ayat Ali Kazi and Zaynab Ali Kazi who purchased the lands along with other lands vide Kabalas dated 16.03.1947, 28.11.1973, 11.08.1992, 05.07.1993 and 11.01.1996. After purchase the lands were recorded in their names in S.A., R.S and City Khatians respectively (Annexures-A, A-1 to A-8). The

Government undertook a project namely, “Dhaka Elevated Expressway Construction Project” and initiated L.A. Case No.15 of 2010-2011 to acquire lands of different persons along with the aforesaid .2389 acre of land of the predecessor of the petitioners. On 09.06.2011 notice under section 3 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 was issued and after observing all formalities as required under sections 4, 5, and 6 of the said Ordinance, 1982, on 17.07.2013 final notice under section 7 of the said Ordinance was issued fixing compensation for such acquired land to TK.3,92,95,800.96 (Taka Three Crore Ninety Two Lac Ninety Five Thousand Eight Hundred and Ninety Six Paisa) treating the acquired land as *Viti land*. Thereafter, on 17.07.2013 the Deputy Commissioner, Dhaka passed an award of TK. TK.3,92,95,800.96 (Taka Three Crore Ninety Two Lac Ninety Five Thousand Eight Hundred and Ninety Six Paisa) in the name of the predecessors of the petitioners treating the land as *Viti land* vide Annexures-B, C and D to the writ petition. Thereafter, possession was taken over by publishing Gazette Notification on 27.08.2015 incorporating the acquired land of L.A. Case No. 15 of 2010-2011 (Annexure-F). In the meantime, on 10.05.2015 the predecessors of the petitioners submitted application for getting compensation money in lieu of their acquired land (Annexure- E). But they were not paid any

compensation money on the plea of pendency of Title Suit No.304 of 2016 filed against the predecessors of the petitioners over the land in question. It is stated that some adjacent land owners whose lands were acquired have already received the compensation money as *Viti land* (Annexure-G).

However, in the meantime the aforesaid Title Suit No. 304 of 2016 has already been dismissed vide judgment and decree dated 25.01.2018 (decree signed on 29.01.2018) (Annexures-H and H-1). Against that judgment and decree, Title Appeal No. 267 of 2018 was filed but that appeal was also dismissed on 27.01.2019 (Annexure-I). Thus there is no bar to pay compensation money to the petitioners.

After disposal of the aforesaid two cases, on 16.02.2020 the petitioners filed three applications for getting compensation of their acquired land as per award. But till date their applications have not been disposed of. Rather on quarry the petitioners came to know that in the meantime a report was prepared on 02.04.2016 by some Surveyors of the office of Deputy Commissioner, Dhaka stating that the petitioners are entitled to get compensation as per the rate fixed for *Boro Land* instead of *Viti land* (Annexures-J, J-1, J-2 and K to the writ petition).

Under such circumstances, the petitioners have challenged the inactions of the respondents in not disbursing the compensation money for acquisition of the land of the petitioners by filing the instant writ petition and obtained the *Rule Nisi* as quoted hereinabove.

Respondent Nos. 2 to 6 filed *affidavit-in-opposition* denying the material averments made in the writ petition and contending *inter-alia* that actually the acquired land is not the *Viti land* rather it was recorded in R.S. and City Survey as *Nal/Boro land* in nature. After submission of the application for award of compensation, concerned Surveyors and Kanungo made physical inspection and found the nature of the land as *Nal/Boro* and there was water with hyacinth. It is stated that at the initial stage of acquisition local people along with concerned land owners made barriers against such acquisition and even they assaulted some government officials engaged in such acquisition process and as such, the process was done in a hasten manner and consequently, in the joint survey made at the time of acquisition, the land was written as *Viti land*. Since the Deputy Commissioner can make lawful correction in the award book, the compensation should be assessed at the rate fixed for *Nal/Boro land* instead of *Viti land* as per recommendation given in the report dated 02.04.2016 vide Annexure-K to the writ petition. In stating the above facts, the

respondent Nos. 2 to 6 have prayed for discharging the *Rule Nisi*.

Mr. Md. Ekramul Hoque, the learned Advocate appearing on behalf of the petitioners submits that admittedly the petitioners are the owners of the land which was acquired by the Government vide L.A. Case No. 15 of 2010-2011. After exhausting all the formalities required under sections 4, 5, and 6 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 the respondent No. 2 issued final notice under section 7 of the Ordinance, 1982 treating the land as *Viti land* and award of compensation of TK. 3,92,95,800.96 (Taka Three Crore Ninety Two Lac Ninety Five Thousand Eight Hundred and Ninety Six Paisa) has been fixed to be paid to the petitioners and finally Gazette Notification was published on 27.08.2015 showing the acquired land including the petitioners' land and the respondents have no scope but to pay the petitioners as per the award of compensation which has already been passed by the respondent No.2.

Referring to Annexure-K to the writ petition, Mr. Md. Ekramul Hoque, the learned Advocate further submits that it is a report dated 02.04.2016 made by some surveyors of the Office of Deputy Commissioner, Dhaka; and after completing

all procedures of law and also after passing the final award of compensation and before payment of the same to the petitioners, the said so called report has been made. In the report, they changed the nature/class of the acquired land and thereby stated that the compensation may be given treating the land as *Nal/Boro Land* instead of *Viti land* which is illegal and without jurisdiction. Referring to Annexure-G to the writ petition, he also submits that adjacent lands of the petitioners were acquired and the owners of adjacent lands were paid compensation treating the same as *Viti land* and as such, they are entitled to get compensation as was fixed in the award of compensation dated 16.07.2013 treating the land as *Viti Land*. In placing the above submissions, the learned Advocate prays for making the *Rule Nisi* absolute.

Mr. Bepul Bagmar, the learned Deputy Attorney General appearing on behalf of the respondent Nos. 2 to 6 submits that actually the land was recorded as *Nal/Boro* in R.S and City Survey Khatians and as such, the Surveyors and Kanungo were directed to make physical enquiry of the land who by physical enquiry found the land as *Nal/Boro Land* and submitted report vide Annexure-K to the writ petition recommending to pay the compensation treating the acquired land as *Nal/Boro Land* in place of *Viti land* and as such, there is no illegality on the part of the respondents in causing delay

of paying compensation to the petitioners. With regard to the assessment of the land made earlier, the learned Deputy Attorney General further submits that at the initial stage of acquisition of the lands, some owners and local people made protest against such acquisition and even some government officials were also assaulted and as such, the process of acquisition was completed in a hasten manner and consequently, the nature of the land of that plot was written as *Viti land* which has been reflected in the report of the Surveyor and therefore, the compensation should be made as per the rate fixed for *Nal/Boro Land* instead of *Viti land*. The learned Deputy Attorney General also submits that due to pendency of suit at that relevant time, the payment of award of compensation money was kept stayed. Accordingly, he submits that the *Rule Nisi* is liable to be discharged.

We have considered the submissions of the learned Advocate for the petitioners and the learned Deputy Attorney General and perused the writ petition and other papers annexed thereto and the relevant provisions of law.

Admittedly, the land of the petitioners was acquired by the Government through the Deputy Commissioner, Dhaka vide L.A. Case No. 15 of 2010-2011 and in the process of acquisition, notice under section 3 of the Acquisition and

Requisition of Immovable Property Ordinance, 1982 was issued upon the predecessors of the petitioners on 09.06.2011 vide Annexure-B to the writ petition. Thereafter, joint survey was done and report was prepared showing the acquired land to be *Viti land*, and after exhausting all formalities required under sections 4, 5 and 6, final notice under section 7 of the Ordinance, 1982 was served on 27.02.2012.

It appears from the final notice of compensation of the land dated 17.07.2013 (Annexure-C) that the compensation was assessed showing the land as *Viti land* for an amount of TK.3,92,95,800.96 by the Deputy Commissioner, Dhaka. It further appears from Annexure-F to the writ petition that the land of the petitioners was published in the Bangladesh Gazette on 27.08.2015 as acquired land under section 11(2) of the Ordinance, 1982 vide L.A. Case No. 15 of 2010-2011.

But it is admitted that the petitioners were not paid compensation money for their acquired land. In this respect, the respondents took two pleas for not paying the compensation money. One is, title suit regarding title over the acquired land was pending at the relevant point of time and another is, the acquired land is not *Viti land* rather, the same is *Nal/Boro Land* as recommended vide report dated 02.04.2016 (Annexure-K).

On perusal of the record, it appears that Title Suit No.304 of 2016 was filed by Abdul Jalil Kazi against the predecessors of the petitioners for declaration of title over the acquired land. Ultimately, the learned Senior Assistant Judge, 2nd Court, Dhaka vide his judgment and decree dated 25.01.2018 (decree signed on 29.01.2018) dismissed the suit (Annexure-H and H-1). Against the judgment and decree of dismissal of the suit, Title Appeal No.267 of 2018 was preferred before the learned District Judge, Dhaka, and the learned District Judge, Dhaka after hearing the appellant and on perusal of the record dismissed the appeal on 27.01.2019 (Annexure-I). Thereafter, the judgment and decree in appeal has not been challenged before the higher Court. So, the plea of pendency of suit over the acquired land is no more subsisting.

The respondents took another plea that the nature/class of the acquired land was/is *Nal/Boro Land* instead *Viti land* and as such, the petitioners are entitled to get compensation money treating the land as *Nal/Boro Land* instead of *Viti land*. In this respect, the respondents based on a report dated 02.04.2016 (Annexure-K), which is long after the final award of compensation was made on 17.07.2013 (Annexure-C), has stopped the payment of compensation of award money.

Now, let us come to another point as to whether there was any scope to raise question over the assessment and award of compensation already made earlier under section 7 of the Ordinance, 1982.

It would be beneficial to answer the point if we go through the provision of section 7(2) to 7(4) of the Acquisition and Requisition of Immovable Property Ordinance, 1982 which reads as follows:

“7. Award of compensation by Deputy Commissioner-

(1)

(2) The award made by the Deputy Commissioner shall, except as hereinafter provided, be final.

(3) The Deputy Commissioner shall, within seven days from the date of making award of compensation,-

(a) give notice of his award to the person interested;

(b) send the estimate of the award of compensation to the requiring person.

(4) The requiring person shall deposit the estimated amount of the award of compensation with the Deputy Commissioner in the prescribed manner within sixty days from the date of receipt of the estimate.”

So, as per sub-section (2) of section 7 of the Ordinance, the award made by the Deputy Commissioner shall be final.

As per sub-section (3) the Deputy Commissioner shall give notice of his award to the person interested. In the instant case, notice under sub-section (3)(a) of section 7 was signed by the Deputy Commissioner, Dhaka on 17.07.2013 and issued and served upon the predecessors of the petitioners under process No. 145 dated 18.07.2013 (Annexure-C). As per subsection (3)(b) of section 7 the Deputy Commissioner shall send estimate of award to the requiring person who shall thereafter deposit the estimated amount of award with the Deputy Commissioner within sixty days from the date of receipt of the estimate. So, it appears that the award of compensation with regard to the petitioners acquired land was made final on 17.07.2013 under section 7(2) of the Ordinance.

Let us try to appreciate under what circumstances payment of compensation can be withheld. Relevant provision have been described in section 10 of the Ordinance, 1982.

In the instant case, the land of the petitioners was declared as the acquired property of the Government by publishing Gazette Notification under section 11(2) of the Ordinance, 1982 on 27.08.2015 vide Annexure-F to the writ petition. As per section 11(2) of the Acquisition and Requisition of Immovable Property Ordinance, 1982 it is provided that immediately after the acquisition of the property

under sub-section(1), a declaration by the Deputy Commissioner in the prescribed form to that effect shall be published in the Official Gazette and it has been done in the present case. As per sub-section(1) of section 11, it appears that “when the compensation mentioned in the award has been paid or is deemed to have been paid in pursuance of section 10, the property shall stand acquired and vest absolutely in the Government free from all encumbrances.”

On reading of section 11 of the Ordinance, 1982 it appears that before publishing Gazette Notification, the Deputy Commissioner is required to pay the compensation money as made under section 7 to the person entitled according to the award as evident from section 10 of the Ordinance. In sub-section (2) of section 10, it is provided that “if the persons entitled to compensation do not consent to receive it, or if there be no person competent to receive the compensation, or if there be any dispute as to title to receive the compensation, or as to the apportionment of it, the Deputy Commissioner shall keep the amount of compensation in a deposit account in the Public Account of the Republic which shall be deemed payment for the purpose of taking over possession of the property without any prejudice to the claim of the parties to be determined by the Arbitrator.” So, it is clear that for the contingencies as mentioned in sub-section

(2) of section 10, the Deputy Commissioner is authorized to keep the amount of compensation in a deposit account of the Public Account of the Republic.

The criteria as mentioned in sub-section (2) of section 10 is absent in the present case. We have already found that final award was made under section 7 of the Ordinance on 17.07.2013 (Annexure-C). Before making such final award on 17.07.2013, the steps required under sections 4 to 6, 8 and 9 were exhausted including joint survey for preparing physical inventory of the acquired land. The respondents admitted that at the time joint inspection the land was noted as *Viti land*. Only ground the respondents has taken that because of urgent/hastened manner in the process of acquisition, the land was noted as *Viti land*. This excuse/plea is being taken by the respondents after more than three to four years and more particularly more than three years after the final award book has been prepared by the Deputy Commissioner. This is nothing but harassing the petitioners. We have also noticed that adjacent land owners were paid compensation money treating the land as *Viti land*. So, the respondents under no circumstances can treat the petitioners differently than those of adjacent land owners.

In view of the provisions as above, the inaction of the respondents in not paying the amount of compensation as per the award dated 17.07.2013 is nothing but without any lawful authority. After serving notice under section 7, there is no scope for the respondents to raise a question over the assessment of compensation. In determining compensation, sections 8 and 9 are very relevant in this respect. In section 9 of the Ordinance, it has been provided that matter not to be considered in determining the compensation. One of the matters is stated in section 9(a) that the degree of urgency which has led to the acquisition. In the report dated 02.04.2016 vide Annexure-K to the writ petition, the Surveyors stated that because of urgency in the process of acquisition, initially the joint survey team has wrongly noted the nature of the acquired land as *Viti land*. This excuse is nothing but a lame excuse having no authority of law.

Be that as it may, the petitioners asserted in the writ petition that some owners of their adjacent land were paid compensation treating their land as *Viti land*. In support of their statement, the petitioners annexed document vide Annexure-G to the writ petition. As such, they are entitled to be treated equally in getting the amount of compensation treating their land as *Viti land*. On perusal of Annexure-G, we find substance in the same. Article 27 of the Constitution

provides that all citizens are equal before law and are entitled to equal protection of law. In article 31 of the Constitution it has been provided that right to protection of law has been guaranteed under article 31 of the Constitution. So, the petitioners cannot be subjected to any discrimination. As we have already found that the adjacent land owners were paid compensation treating their land as *Viti land* and as such, the petitioners are also entitled to get the amount of compensation as per award made under section 7 of the Ordinance vide award dated 17.07.2013. Right to compensation of acquired land is a fundamental right as enshrined in article 42 of the Constitution. Because of the acquisition vide L.A. Case No. 15 of 2010-2011, the petitioners lost their property forever. Every process as required under law has been exhausted and final award has been passed under section 7 and finally gazette notification has been published on 27.08.2015 declaring the land as acquired land of the Government. Now, the respondents cannot reopen and reassess the compensation already made upon following due process of law. Only ground the Surveyors stated in the report dated 02.04.2016 is that because of urgency in the initial stage of the process of acquisition, the joint survey team wrongly noted the nature/class of the land as *Viti land* is not sustainable in the eye of law.

For the discussions and reasonings as stated above, we find substance in the submissions of the learned Advocate for the writ petitioners as well as merit in the *Rule Nisi*.

In the result, the *Rule Nisi* is made absolute.

Hence, the inactions of the respondents in not disbursing the compensation money for acquisition of the land of the petitioners measuring an area of .2389 acre of Mouza-Joarsahara, Police Station- Cantonment, R.S. Khatian No. 401, R.S. Dag No. 2687(Part) as *Viti land* for the project namely- *Dhaka Elevated Expressway PPP Construction Project* is hereby declared without lawful authority and is of no legal effect.

The respondents are directed to disburse the compensation money for acquisition of the land of the petitioners measuring an area of .2389 acre of Mouza-Joarsahara, Police Station- Cantonment, R.S. Khatian No. 401, R.S. Dag No. 2687(Part) as per award book within 60 (sixty) days from the date of receipt of this judgment.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.