

IN THE SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION
 (CIVIL REVISIONAL JURISDICTION)
CIVIL REVISION NO. 5453 of 2023.

The Chairman, Rajdhani UnnayanKartipakkha
 (RAJUK)

...Petitioner.

-Versus-

Haji Md. Abu Syeed and another

....Opposite Parties.

Mr. Md. Imam Hasan, Senior Advocate

... For the petitioner.

Mr. Jakir Hossain, learned Senior Advocate with

Ms. Shamsad Rahman, Advocate

...For opposite party No. 1.

Heard and Judgment on: 21.01.2026.

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon the opposite party to show cause as to why judgment and order dated 27.11.2022 passed by learned Senior District Judge, Dhaka in Arbitration Appeal No. 3 of 2021 dismissing the appeal and upholding judgment and order dated 29.06.2021 passed by the learned Joint District Judge and Arbitration Court, Dhaka in Arbitration Revision No. 74 of 2011 allowing the revisionin-part should not be set-aside.

At the time of issuance of Rule, the operation of the impugned judgment and order was stayed for a period of 03 (three) months which was, subsequently, extended till disposal of the Rule.

Facts, relevant for the purpose of disposal of this Rule, are that the Deputy Commissioner, Dhaka acquired 0.8241 acre land of opposite party No.1 including other land under L.A. Case No. 13/2010-2011 of Mouza Bhatara, District Dhaka of various R.S Plots

and made an award of Taka 6,61,25,951.70(Six crore sixty-one lakh twenty-five thousand nine hundred fifty-one Taka and seventy paisa only) as compensation of the acquired land to be paid to the opposite party following which a Notice was served upon the opposite party under section 7(3) of the Acquisition and Requisition of Immovable Property Ordinance, 1982. Upon receipt of the compensation money the opposite party filed an application under section 28 of the Ordinance being Arbitration Revision Case No. 74 of 2011 before the Arbitrator claiming Tk. 20,60,25,000/- (Twenty Crore Sixty Lakh Twenty Five Thousand Taka Only) as enhanced compensation. The petitioner, RAJUK who was the requiring Body, contested the case by filing written objection contending that the compensation award was determined as per provision of law and the opposite party received the compensation determined by the Deputy Commissioner without any protest and as such, the application filed under section 28 of the Ordinance was not maintainable.

During trial, the parties adduced one witness each to prove their respective case. The Arbitrator (learned Joint District Judge and Arbitration Court, Dhaka), upon considering evidence and materials on record, allowed the revision in-part vide judgment dated 29.06.2021 by enhancing 10% of the award money. Being aggrieved by said judgment the petitioner preferred Arbitration Appeal No. 3 of 2021 before the learned District Judge, Dhaka who, upon hearing the parties, vide judgment dated 27.11.2022 dismissed the revision and affirmed the judgment and order of the Arbitrator. Being aggrieved by said judgment and order the petitioner (RAJUK) has preferred this

civil revisional application under section 115(1) of the Code of Civil Procedure and obtained the instant Rule and order of stay.

Mr. Md. Imam Hasan, learned Senior Advocate by taking me to sections 8, 10 and 28 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 submits that the Deputy Commissioner in exercising jurisdiction under section 8 of the Ordinance rightly determined the compensation against the acquired land of the opposite party and in view of the provision under section 10 of the Ordinance the Deputy Commissioner served notice under section 7 of the Ordinance to the opposite party and the opposite party upon receiving the award money without any protest filed the Arbitration Revision and as such, in view of the first proviso to section 10 read with section 28 of the Ordinance the arbitration revision was not maintainable. Learned Advocate further submits though the opposite party challenged the determination of award made by the Deputy Commissioner and filed four deeds for determination of the compensation award for the acquired land but those deeds were not sufficient to enhance the compensation money because of the fact that as per section 8 of the Ordinance, in determining the market value Deputy Commissioner took into account of the average value of the properties of similar description and with similar advantages in the vicinity during the 12 months preceding the date of the publication of the notice under section 3 of the Ordinance. Learned Advocate further submits that though the opposite party failed to show that he received the money of the award under protest but the Arbitration Court shifted the burden of proof to the petitioner and wrongly came to the finding that the opposite party received the compensation award under protest. Learned Advocate further

submits that the Arbitrator byignoring the provisions under section 8 of the Ordinance took into consideration of four deeds submitted by the opposite party in determining the compensation award and illegally enhanced the compensation award. Learned Advocate further submits that the Court of appeal upon mis-reading non-consideration of the material evidence and misconception of law erroneously affirmed the findings and decision of the Arbitrator and thus committed an error of law resulting in an error in the decision occasioning failure of justice.In support of his contention the learned Advocatehas referred to the case of *Thomarshu @ Majhi vs. Bangladesh 52 DLR 516.*

Mr. Jakir Hossain, learned Senior Advocate appearing with Ms. Shamsad Rahman,learned Advocatefor the opposite party (affected party) submits that he received the compensation award under protest as found by the Arbitrator and the petitioner failed to submit any document to show that the opposite party received the compensation money without protest.Learned Advocate further submits that considering the sale deeds in respect of the relevant period the Arbitrator rightly came to the conclusion that the compensation which was determinedwas not the real market value of the acquired land and accordingly, the Arbitrator rightly revised the award and enhanced 10% of the compensation money. Learned Advocate finally submits that the Court of appeal as the last Court of facts, upon proper evaluation of the evidence and materials on record, rightly passed the impugned judgment and accordingly, committed no error of law resulting in an error in the decision occasioning failure of justice.

I have heard the learned Advocates, perused the revisional application, the judgments of the Courts below, the evidence adduced and produced by the parties and other materials available on record. In order to prove the case, the opposite party as petitioner of the revision case deposed as P.W.1 and stated that he received the compensation money on 15.02.2011 under protest and the Deputy Commissioner undervalued the acquired land. He also produced four registered sale deeds which were marked as Exhibit Nos. 1-4. The petitioner RAJUK also adduced one witness and denied the case of the opposite party.

Though the opposite party in his application of revision made out a case that the compensation award was inadequate and he filed four registered sale deeds to show the valuation of property for the relevant time but he could not make out a case that the Deputy Commissioner did not determine the compensation award in view of the provisions under section 8 of the Acquisition and Requisition of Immovable Property Ordinance, 1982. For better understanding section 8 is quoted below:

“8. Matters to be considered in determining compensation-

(1) In determining the amount of compensation to be awarded for any property to be acquired under this part, the Deputy Commissioner shall take into consideration-

(a) The market value of the property at the date of publication of the notice under section 3:

Provided that in determining such market value, the Deputy Commissioner shall take into account the average value, to be calculated in the prescribed manner, of the properties of similar description and with similar advantages in the vicinity during the 12 months preceding the date of publication of the notice under section 3;

- (b) the damage that may be sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the property at the time of taking possession thereof by the Deputy Commissioner;
- (c) the damage that may be sustained by the person interested, at the time of taking possession of the property by the Deputy Commissioner, by reason of severing such property from his other property;
- (d) the damage that may be sustained by the person interested, at the time of taking possession of the property by the Deputy Commissioner, by reason of the acquisition injuriously affecting his other properties, movable or immovable, in any other manner, or his earnings;
- (e) if in consequence of the acquisition of the property, the person interested is likely to be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and
- (f) the damage that may be resulting from diminution of the profits of the property between the date of service of notice under section 6 and the date of taking possession of the property by the Deputy Commissioner.

(2) In addition to the market value of the property as provided in sub-section (1), the Deputy Commissioner shall in every case award a sum of fifty *per centum* on such market value in consideration of the compulsory nature of the acquisition."

The provisions under section 8 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 clearly stipulates that while making the award the Deputy Commissioner must determine the compensation on matters as mentioned in section 8 of the Ordinance. If any person interested challenges the determination of the compensation made by the Deputy Commissioner under

section 8(1)(a) of the Ordinance, he/she is required to prove that the average value of the properties of similar description and with similar advantages in the vicinity during the 12 months preceding the date of publication of the notice under section 3 was higher than that of determined by the Deputy Commissioner and if such aggrieved party challenges other matters in determining compensation as mentioned in section 8, sub-section (1) clause Nos. (b)-(f) and sub-section (2) of the Ordinance he must prove that while making the award the Deputy Commissioner did not determine the compensation on matters as mentioned in those Clause Nos. (b)-(f) of sub-section (1) and sub-section (2) of section 8.

In the case in hand, the opposite party filed four registered deeds (exhibit Nos. 1-4) for the purpose of proving that the value of the land was higher than that of determined by the Deputy Commissioner but those deeds did cover the criteria as mentioned in section 8 of the Ordinance in determining the award. But on the basis of valuation of the properties mentioned in those deeds the Arbitrator illegally enhanced 10% of compensation money which was misconceived and against the provisions of law.

Now question arises whether the arbitration revision case filed under section 28 of Ordinance was maintainable.

This point has been decided by another Single Bench of this Division in *Thomarshu @ Majhi vs. Bangladesh 52 DLR 516* wherein it has been held as follows:

Moreover, after consulting section 28 and section 10 of the Ordinance a single Bench of this Division in a similar situation held as follows:

"So, under section 28 of the Ordinance, a person who has not accepted any award is entitled to make an application to the Arbitrator for revision of the award and secondly, he must make the application within forty-five days of the date of notice of the award.

And under second proviso to section 10 of the Ordinance, a person who has received any amount under the award is also entitled under section 28 of the Ordinance to make an application to the arbitrator for revision of the award provided he received the money 'otherwise than under protest'.

So, it is a condition precedent for one who has received any amount under an award to be entitled to make an application to the Arbitrator for revision of the award under section 28 must be a person who received the money of the award 'under protest' and not otherwise. Accordingly, under section 28 if a person fails to fulfil either of the two conditions his application, must be held to be not maintainable.

I am in respectful agreement with the above views expressed in *Thomarshu @ Majhi* (supra). The Arbitrator, it appears that, found that the plaintiff received the compensation money on protest and the defendant could not adduce any evidence to disprove this version of the plaintiff. This finding of the Arbitrator is totally misconceived because of the fact that except his solitary testimony, the opposite party could not produce any document to prove that he received the compensation money under protest. As per the law of evidence, the burden was upon the opposite party (the petitioner of

the arbitration revision) to prove his plea that he received the compensation money under protest but the opposite party failed to show that he received the money of award under protest and therefore, he is not a person entitled under section 28 of the Ordinance to make the application to the Arbitrator for revision of the award and for this reason, his revision under section 28 was not maintainable. In view of the above, it appears that the Court of appeal upon misreading and non-consideration of evidence and misconception of law came to erroneous findings and erroneously affirmed the judgment and order of the Arbitrator and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

In view of the above, I find merit in this Rule.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order dated 27.11.2022 passed by learned Senior District Judge, Dhaka in Arbitration Appeal No. 3 of 2021 dismissing the appeal and affirming judgment and order dated 29.06.2021 passed by learned Joint District Judge and Arbitration Court, Dhaka in Arbitration Revision No. 74 of 2011 allowing the revision in-part are set-aside.

The order of stay granted earlier is hereby vacated.

Send down the LCR along with a copy of this judgment to the Courts below at once.

(Justice Md. Badruzzaman)