

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 2837 OF 2024

In the matter of:

Application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

In the matter of:

Iqbal Anwarul Islam Bhuiyan, son of Sirajul
Islam Bhuiyan and Mst. Shahida Piari of
House No. 152/2, Road No. Golachipa,
College Road, Golachipa, Post Office-
Narayanganj-1400, Narayanganj Sadar,
Narayanganj City Corporation, Narayanganj
and others.

... Petitioners

-Versus-

The People's Republic of Bangladesh
represented by the Secretary, Ministry of Road
Transport and Bridges, Bangladesh Secretariat,
Ramna, Dhaka and others.

... Respondents

Mr. Shahed Ahmed Sadi, Advocate

...For the petitioners

Mr. Syed Ejaz Kabir, DAG with

Mr. Md. Esa, AAG and

Ms. Mahbuba Tasnim Akhi, AAG

...For the government

Mr. Md. Mahfuzur Rahman (Milon), Advocate

...For the respondent nos. 9 and 10

Heard on 01.09.2025.

Judgment on 02.09.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

This matter has been referred by the learned Judge-in-Chamber of the Appellate Division by his order dated 13.07.2025 to dispose of the rule.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule *Nisi* was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned notices Vide Memo No. 05.41.6700.302.14.018.21-29 dated 15.01.2023 in L.A. Case No. 08/2021-22 under section 8(3)(ka) of the “স্বাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭” issued under the signature of respondent nos. 6, 7 and 8 fixing compensation amounting to BDT (32,86,997.78+ 32,86,997.78+ 34,84,217.64)= 1,00,58,213.20 (Taka one crore fifty eight thousand two hundred thirteen and twenty paisa) by classifying scheduled

(0.025+0.025+0.0265)= 0.0765 acres of land as “ভিটি” instead of “বানিজ্যিক” (commercial) should not be declared to have been issued without lawful authority and is of no legal effect and as to why a direction shall not be given upon the respondents to issue a fresh/amended notice in favour of the petitioners under section 8(3)(ka) of the “স্বাধীন সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭” in L.A. Case No. 08/2021-22 by classifying the scheduled (0.025+0.025+0.0265)=0.0765 acres of land as “বানিজ্যিক” (commercial) and as to why a direction shall not be given upon the respondent no. 1 for sanctioning the additional money required by the respondent no. 4 for compensating the petitioners in L.A. Case No. 08/2021-22 by classifying the scheduled land as “বানিজ্যিক” (commercial) pursuant to section 21 of the General Clauses Act, 1897 and/or pass such other or further order or orders as to this court may seem fit and proper.”

At the time of issuance of the rule, operation of the impugned notice issued vide Memo No. 05.41.6700.302.14.018.21-29 dated 15.01.2023 under the signatures of respondent nos. 6, 7 and 8 was stayed

for a period of 6(six) months which was lastly extended on 10.11.2024 for another 6(six) months.

The short facts leading to issuance of the rule are:

The present petitioners, four in number are the owners of the land in question measuring 14 decimals appertaining to Plot Nos. 1237 and 1238 by way of purchase vide registered sale deed dated 12.05.1988 (hereinafter referred to as scheduled land). It has been stated in the writ petition that the petitioner no. 1 became the owner of 14 decimals of land appertaining to aforesaid plots by way of purchase from one, Md. Shahidullah and others vide sale deed dated 12.05.1988. The petitioner nos. 1, 2 and 4 purchased 14 decimals of land from R.S Plot No. 1220 appertaining to R.S Khatian No. 116 from one, Sobmeher Bibi and Monowar Ali vide sale deed dated 11.02.2009. The petitioner nos. 1, 2 and 4 became the owner for a total area of 42 decimals of land. Subsequently, the petitioner no. 1 executed a declaration of *heba* on 12.11.2015 in favour of the petitioner no. 2 in respect of 4.08 decimals of land appertaining to R.S Plot Nos. 1212 and 1212/1337 corresponding to R.S Khatian Nos. 790, 344 and 311. The petitioner no. 5 purchased land measuring an area of 8.17 decimals of R.S Plot Nos. 1212 and 1212/1337 under R.S Khatian Nos. 790, 344 and 311 vide registered sale deed dated 15.11.2015 from one, Shahida Piari and others. The petitioner no. 3 also purchased 8.17 decimals of land appertaining to R. S. Plot No. 1212 and 1212/1337 corresponding to same R. S. Khatians vide sale deed dated 15.11.2015 from one, Shahida Piari and others. Consequently, the petitioner nos. 1, 2, 3, 4 and 5 became owners of the

scheduled land under R. S. Plot Nos. 1212 and 1220 along with adjacent lands and since then they have been peacefully possessing the same.

It has further been stated therein the writ petition that after acquiring the suit land, the petitioners have been enjoying the said land setting up as CNG and LPG Filling Stations, namely, “Ananta Motors Limited” since 2008 upon obtaining relevant permissions from the concerned authorities and accordingly, they renewed the trade licence and other relevant licences in timely manner till date. It has also been stated that the petitioners had executed a deed of agreement with one, “M/S. Navana CNG Limited” to run CNG and LPG Filling Station on 27.11.2007. After establishing CNG and LPG Filling Station, the petitioners have been paying all government fees and taxes and received the electricity bills and other bill generated and paid in proper head that is, under “Tariff-MT-3” and that of gas bills under the head “Tariff-35”. In addition to that, the petitioners also paid land development taxes at Gognogor Union Land Office regularly in respect of the schedule land recorded under R.S. Plot Nos. 1212 and 1220 in commercial rate and in the latest record the said land has been prepared as “নাল হালে পাম্প” (plain currently pump).

It has further been stated that all of a sudden, the petitioners on 17.01.2023 received three notices vide similar Memo No. 05.41.6700.302.14.018.21-29 all dated 15.01.2023 to have issued in L.A. Case No. 08/2021-22 under section 8(3)(ka) of “স্বাভাবিক সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭” (Act No. 21 of 2017) made under the signatures of respondent nos. 6, 7 and 8 asking the recipients to receive compensation

amounting to taka 1,129,552/50, 1,129,552/50 and 1,197,325/65 respectively of R.S Plot Nos. 1212, 1212 and 1220 classifying the lands under acquisition as of *bhiti* (ভিটি homestead) land.

Being aggrieved by the said notices, the petitioner no. 1 then filed an application before the Deputy Commissioner, Narayanganj (respondent no. 4) on 23.01.2023 (Annexure-‘F to the writ petition) where it has been asserted that they have been running CNG and LPG Filling Station on the schedule land since 2008 by paying government fees, taxes and land development tax at commercial rate and therefore, the compensation so fixed in the impugned notices cannot be sustained allegedly classifying the same as *bhiti* land in place of commercial land. It has further been stated therein that for the upgrading and widening existing road and that of construction of elevated road from Panchabati-Mukterpur Bridge, 31.6125 acres of land was acquired under Mouzas- Syedpur, Masinaband, Hariharapara, Kashipur and Boro Deobhog under Police Station- Narayanganj Sadar, District- Narayanganj and in total 23 applications including the applications of the petitioners dated 23.02.2023 were filed for changing the category of the land acquired and increasing the compensation treating it as commercial land. In view of the applications filed by those 23 affected persons, a committee was then formed comprising members of the project and the representative for the Deputy Commissioner who then conducted physical inspection on 21.03.2023 and submitted a report on 22.03.2023 allowing the grievance of 6 applicants including the petitioner’s one, 3 applications were allowed-in-part and remaining 14 applications were kept in record.

It has further been stated that the inspection teams consisting of respondent nos. 6, 7, 8 and 10 categorically stated in their report that “যৌথ তদন্তে আবেদিত ভূমি আরএস ১২১২ নং দাগের ০.০৫ একর ও আরএস ১২২০ দাগের ০.০২৬৫ একর ভূমি ভিটি হিসাবে ধার্য ছিল। পুনঃ যাচাইয়ে উক্ত ভিটি অংশে সিএনজি ফিলিং স্টেশনের জন্য ব্যবহৃত হওয়ায় আরএস ১২১২ নং দাগের ০.০৫ একর ও আরএস ১২২০ দাগের ০.০২৬৫ একর ভূমি ভিটির স্থলে বানিজ্যিক ভিটি হিসাবে বিবেচনা করা যেতে পারে।”.

It has also been stated that even the respondent no. 4 sent a letter to the respondent no. 3 that is, Divisional Commissioner, Dhaka on 28.03.2023 recommending, in view of changing category of land as of commercial one, additional money would be required and emphasized to amend the award list. Then the respondent no. 3 in reply to that vide its letter dated 18.04.2023 expressed his inability to allocate additional fund as sought by the respondent no. 4 though asked to take necessary step pursuance to section 17 of the Act of 2017. The petitioners then on 18.06.2023 filed an application before the respondent no. 3 stating that the compensation fixed for the scheduled land is much lower than its actual price and they will suffer loss and damages if the compensation fixed remained in place claiming further that the classification of land has not been determined by any joint investigation and then prayed for fixing compensation pursuant to section 21 of the General Clauses Act, 1897. However, the respondent no. 4 prepared an estimated additional money amounting to taka 3,77,79,114/22 in respect of 7 applications of seven affected persons including the petitioner’s one by classifying those to be commercial land and forwarded the same to the office of the respondent no. 1 on 25.11.2023. However, in the said letter, the

respondent no. 4 categorically asserted that there is no specific provision in the Act of 2017 with regard to payment of additional compensation for changing the classification of the land already acquired then to increase the compensation treating any land as of commercial one after finalizing complete estimation (পূর্ণাঙ্গ প্রাক্কলন প্রস্তুতের পর). In the above backdrop, the petitioners finding no other alternative filed the instant writ petition.

Mr. Md. Shahed Ahmed Sadi, the learned counsel appearing for the petitioners upon taking us to the writ petition and all the Annexure appended therewith at the very outset submits that the notice under *section 8(3)(ka) of the “স্বাভার সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭”* (hereinafter referred to as Land Acquisition Act, 2017) award/compensation as mentioned in the impugned notices (Annexure-‘E’ series to the writ petition) classifying the schedule land of the petitioners as of “*bhiti* land” in spite of the fact that a joint survey conducted by an inquiry committee has clearly recommended to the Deputy Commissioner, Narayanganj (respondent no. 4) that the land acquired to be considered as commercial land (ভিটির স্থলে বাণিজ্যিক ভিটি শ্রেণি হিসাবে বিবেচনা করা যেতে পারে) (Annexure-‘G’ to the writ petition) yet the respondents have issued the impugned notices which cannot be sustained in law.

The learned counsel by referring to the latest R.S record in respect of the scheduled property for which the impugned notices have been issued also contends that in the said R.S. record (page 132 to the writ

petition) it has clearly been asserted that the schedule land as “Nul currently Pump” (নাল হালে পাম্প) yet the respondents misconstrued the said classification even if there remained a CNG and LPG Filling Station there and hence, the compensation so have been mentioned in the impugned notices cannot be sustained in law.

The learned counsel by referring to Annexure-‘B’ to the Writ Petition also contends that, the trade licence issued also depicts that the schedule land is a commercial land and therefore, the compensation fixed by the respondents cannot be taken as true.

By referring to the provision of sections 4, 5 and 30 of the Land Acquisition Act, 2017, the learned counsel next contends that since the arbitrator cannot change the classification of land so the petitioners have not taken resort to the provision of section 30 of the Land Acquisition Act, 2017 and has rightly filed this writ petition.

The learned counsel also contends that since the arbitrator cannot enhance the compensation 10% above the compensation determined by the respondents so taking resort to the arbitrator is not any equally efficacious remedy open to the petitioner and therefore, the petitioners have not invoked the jurisdiction of arbitration challenging the impugned notices issued under section 8(3) of that very Land Acquisition Act, 2017.

The learned counsel by referring to Annexure-‘J’ to the writ petition further contends that the Deputy Commissioner in his letter to the respondent no. 1 has clearly asserted how the classification of land acquired and belonged to the petitioners can be modified as of

commercial land and the compensation be enhanced but in spite of such cogent reasoning, the Ministry of Land, respondent no. 1 as well as the respondent no. 3 has failed to take into consideration of the recommendation.

The learned counsel by referring to Annexure-‘G’ to the writ petition also contends that even a five-members committee clearly recommended to consider the acquired property of the petitioners to be commercial land (বানিজ্যিক ভিটি) yet the respondents have most illegally issued the impugned notice going beyond such recommendation.

The learned counsel lastly contends that since the petitioners have got no other equally efficacious remedy provided in the Act of 2017 so they have rightly invoked Article 102 of the Constitution and filed the instant writ petition and finally prays for making the rule absolute.

On the contrary, Mr. Syed Ejaz Kabir, the learned Deputy Attorney-General appearing for the government vehemently opposes the contention taken by the learned counsel for the petitioners and submits that the writ itself is not maintainable for having an alternative efficacious remedy.

To supplement the said submission, the learned counsel then refers to the provisions provided in sections 4, 5, 30 and 33 of the Arbitration Act and contends that since there has been alternative remedy open to the petitioners against the impugned notices issued under section 8(3) of the Land Acquisition Act, 2017 so before exhausting those statutory forum, the writ itself cannot be entertained.

When we pose a question to the learned Deputy Attorney-General with regard to authority of the Deputy Commissioners to recommend as regards to changing the nature of the schedule land to be a commercial one in place of *nul*(plain) land, the learned Deputy Attorney-General contends that, the respondent no. 4 has got no authority to give such opinion with regard to classification of land as the provision so have been enshrined in the Act of 2017 does not authorize any respondents to change the nature of the land.

When we pose another question to the learned Deputy Attorney-General with regard to the amount so have been claimed by the petitioners in respect of value of the land, the learned Deputy Attorney-General then contends that since the assessment of the value has not been based on any document, so the petitioners' claim can never be sustained. With those submissions, the learned Deputy Attorney-General finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioners and that of the learned Deputy Attorney-General for the government. Together, we have also taken into consideration of the writ petition and the documents so have been appended therewith.

There has been no gainsaying the fact that in the instant writ petition, we don't find any clear assertion to the effect that, before issuing impugned notices under section 8(3) of the Act of 2017, the petitioners have not been informed about the procedure to have performed earlier, initiated at the office of respondent no. 4 that is,

notice issued under section 4 and objection thereagainst under section 5 of the Act of 2017. In paragraph no. 8 to the writ petition, we only find that the petitioners out of the blue at first received notices on 15.01.2023 issued in respect of L.A. Case No. 8/2021-2022 yet there has been no assertion that the petitioners have not received any notice issued under sections 4 and 7 of the said Act of 2017.

Furthermore, though the petitioners claimed the scheduled land to be commercial land (instead of *bhiti* land suitable to build homestead) so found in the impugned notices yet in support of his contention nothing has been produced by the petitioners to substantiate their claim other than the joint report filed by a five-member committee as well as the recommendation made by the Deputy Commissioner to the Ministry of Land annexed as of Annexure-‘G’ and ‘J’ to the writ petition still those documents *ipso facto* does not create any basis to claim the scheduled land as of commercial land.

Moreover, though the petitioners have claimed that the value of the scheduled land is double the price fixed by the respondents mentioned in the impugned notices, but the alleged claimed made by the petitioner is totally self-explanatory having no material basis at all.

On top of that, since there has been clear provision in section 5 of the Act of 2017 to raise any objection with regard to any action taken by the acquiring authority in respect of acquisition of land however the petitioners did not take the opportunity of the said provision.

Then again, the learned Deputy Attorney-General has rightly pointed out that section 30 of the Act of 2017 has provided alternative

remedy to the petitioners and for that obvious reason, the writ itself is not maintainable. Though the learned counsel for the petitioners have asserted that since the arbitrator has got no authority to change the classification of the land acquired as well only got authority to enhance 10% the value so determined by the Deputy Commissioner under section 8(3) of the Act of 2017 so on those two scores, the petitioners have not invoked the alternative remedy in other words, invoke the jurisdiction of the arbitrator something is totally baseless because on the one hand, the petitioners submit that there has been no equally efficacious remedy but on the other hand, they claimed the remedy provided in section 30 of the Act of 2017 is not adequate. So such kinds of contradictory stance cannot be entertained.

On top of that, Act of 2017 does not mandate any officials of respondent no. 4 involved in the acquiring process to recommend changing classification of the land already acquired.

Last but not the least, since section 47 of the Act of 2017 prohibits to take any legal action challenging any action taken by the acquiring authority except for what has been provided in the said Act, so this court as well, has got no authority to entertain the grievance made by the petitioners since there provides alternative remedy for them.

Regard being had to the above facts and circumstances, we don't find any iota of substance in the rule.

Accordingly, the rule is discharged however without any order as to costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.