IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Md. Rezaul Haque

Mr. Justice S.M. Emdadul Hoque

Mr. Justice A.K.M. Asaduzzaman

Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.78 OF 2024.

(From the judgment and order dated 11.12.2017 passed by the High Court Division in Writ Petition No.9911 of 2016).

Begum Sitara Chowdhury, wife of late Justice A.F.M. Abdur Rahman Chowdhury, being dead her heirs: (2) Ruseli Rahman Chowdhury, House No.661/A, Road No.32, Dhanmondi R/A, Dhaka-1209 and others. : ...Appellants.

-Versus-

Rajdhani Unnaiyan Kartipakkha (RAJUK), represented by it's Chairman, RAJUK Bhaban, Motijheel Commercial Area, under Police Station-Motijheel, District-Dhaka and others. : ....Respondents.

For the Appellants. : Mr. Kamal-ul-Alam, Senior Advocate with Mr. Saifullah Mamun, Advocate and Ms. Shahanaz Akhter, Advocate instructed by Mr. Md. Shahidul Islam, Advocate-on-Record.

For the Respondent No.1. : Mr. Md. Asaduzzaman, Attorney General with Mr. Mohammad Arshadur Rouf, Additional Attorney General, Mr. Abdullah Al Mahmud, Deputy Attorney General and Mr. Md. Hefzul Bari, Senior Advocate instructed by Ms. Khalifa Shamsun Nahar, Advocate-on-Record.

For the Respondent Nos.2-3. : Not represented.

Date of Hearing. : 23.07.2025, 30.07.2025, 14.08.2025 and 30.10.2025.

Date of Judgment. : 06.11.2025.

J U D G M E N T

***Farah Mahbub,J*:**

This civil appeal arises out of Civil Review Petition No.325 of 2023 for review of the judgment and order dated 19.02.2023 passed by this Division in Civil Petition for Leave to Appeal No.3633 of 2018 disposing of the same and thereby setting aside the judgment and order dated 11.12.2017 passed by the High Court Division in Writ Petition No.9911 of 2016 without granting leave.

Facts of this civil appeal, in brief, are that the case property, situated at 40/5 North Avenue, Gulshan Model Town, Circle II, Dhaka, was originally allotted to late Justice A.F.M. Abdur Rahman Chowdhury, (a former Judge of the Supreme Court of Bangladesh) by the authority concerned of erstwhile Dhaka Improvement Trust [now, Rajdhani Unnayan Katripakhya (RAJUK)]. Said allotment was subsequently confirmed with execution of lease deed along with possession thereof and also, issuance of final measurement certificate. On the demise of the original allottee the petitioners, as being the successive heirs, were duly substituted by RAJUK as lessees of the said property who are in continuous and uninterrupted possession thereof upon constructing a two storied building and on payment of all statutory dues.

The case property, however, is located on a road connecting Gulshan-Baridhara Bridge and Gulshan-2 Circle, which has long ceased to retain any residential character and has, in fact, evolved into a

predominantly commercial area, with surrounding properties having been redeveloped into multi-storied commercial buildings. In light of the complete transformation of the locality, the petitioners had decided to redevelop the property by constructing a commercial building in conformity with prevailing planning norms.

At this stage, they were confronted with the impugned demand of RAJUK requiring payment of an exorbitant conversion fee, which, when applied to the size of the property, i.e., 9 (nine) katha and $8\frac{1}{2}$ (eight and half) chattak results in an aggregate demand of TK. 5,00,00,000/- (Taka five crore) to RAJUK as conversion fee at TK. 50,00,000/- (Taka fifty lac) per "katha", thereby rendering redevelopment financially unfeasible.

The basis for imposition of the enhanced conversion fees is stated to be found in the first impugned Meeting No.12/2012 dated 20.12.2012, wherein writ respondent no.1 resolved to increase the land conversion fee or charge for plots on both sides of the approved main roads situated between Gulshan Baridhara Bridge and Gulshan-2 Circle to Tk. 50,00,000.00/- (Taka fifty lac) per "katha" and the second impugned Meeting No. 01/11 wherein writ respondent no.1 resolved to increase the land conversion fee or charge for plots on both the sides of the approved main roads situated in Gulshan and Banani from TK. 8,00,000.00/- (Taka eight lac) to TK. 20,00,000.00 (Taka twenty lac) per "katha". The genesis of the two meetings are to be found in the notification of writ respondent no.2, Ministry of Housing and Public Works under Reference No.৭/৩ এল-

২/৯৭(অংশ)/৪৫৬ dated 20.09.2004 and subsequently, on the recommendations of the Parliamentary Standing Committee, Ministry of Housing and Public Works dated 06.11.2012.

In these circumstances, the petitioners approached the High Court Division by filling Writ Petition No.9911 of 2016 under Article 102(2) (a) of the Constitution of the People's Republic of Bangladesh (in short, the Constitution) seeking appropriate relief against the impugned resolutions and actions of the writ respondents and obtained a *Rule Nisi* thereby.

The categorical contentions of the writ petitioners, however, are that, the impugned recommendations have no force of law and cannot replace the statutory procedure as laid down in the Town Improvement Act, 1953 (in short, Act, 1953), which neither permits nor envisages the imposition of conversion fees in the manner adopted by RAJUK, particularly when no rules have been lawfully framed or published in the official gazette, as required under the Act, 1953 and the constitutional framework on delegated legislation. By demanding and extracting disproportionately large sums of money in the name of conversion fees, the respondent authority has effectively transformed the Act,1953 into a fiscal statute, thereby failing to discharge it's responsibility under the constitutional scheme, for, the said Act is intended for planned development and not for revenue generation They further contended that the compulsory demand of conversion fees, regardless of it's nomenclature, amounts in substance to compulsory exaction of money and is, therefore, tantamount to taxation, which, lacking legislative

sanction or validly promulgated rules, is unconstitutional and violative of the mandate that no tax shall be levied or collected except by authority of law (Article 83 of the Constitution). The levy is also arbitrary and unlawful, as it lacks any element of *quid pro quo* and is unsupported by any identified service or development scheme to be provided by RAJUK. By imposing such excessive financial burden, the respondent authority has effectively restricted the petitioners' lawful right to develop and enjoy their property, thereby infringing the right to property as guaranteed under Article 42 of the Constitution. It has created, accordingly, a real apprehension of coercive action that includes disruption of existing commercial use, as the municipal authority has already refused renewal of trade license due to absence of conversion permission from RAJUK.

The writ respondent no.2 contested the Rule by filling affidavit-in-opposition contending, *inter alia*, that the enhancement of conversion fees for residential plots, intended for commercial use was lawfully fixed in accordance with prevailing legal provisions. Furthermore, the claims of the writ petitioners are misleading, being based on misconceived facts and a misapprehension of the applicable law, and therefore do not disclose any violation of constitutional rights. It was also asserted that the revised fees are consistent with regulatory standards and advance public policy objectives aimed at ensuring planned and appropriate urban development in the commercial zones of Dhaka.

Upon hearing both the parties the High Court Division accordingly made the Rule absolute vide judgment and order dated 11.12.2017 with

direction upon the writ respondents to withdraw and/or rescind its decision to levy such conversion fee upon the writ petitioners and the property forthwith.

Being aggrieved thereby, the writ respondents filed Civil Petition for Leave to Appeal No.3633 of 2018 before this Division, which was heard and ultimately disposed of without granting leave, providing certain observations by setting aside the judgment and order dated 11.12.2017 passed by the High Court Division.

Subsequently, the present petitioners, i.e. the writ petitioners filed Civil Review Petition No.325 of 2023 before this Division whereupon leave was granted on 6 (six) counts vide order dated 24.10.2024.

Hence, the instant Civil Appeal.

Mr. Kamal-Ul-Alam, learned Senior Advocate along with Mr. Saifullah Mamun, and Ms. Shahanaz Akhter, learned Advocates on behalf of the petitioners submits that, Articles 103 and 104 of the Constitution do not authorise the Appellate Division to set aside a judgment and order of the High Court Division without first granting leave to appeal. Correspondingly, the Supreme Court (Appellate Division) Rules, 1988, being a delegated legislation, cannot lawfully enlarge or transcend the jurisdiction conferred by the Constitution. More so, neither Order XXIV nor Order XXXIV, Rule 8 of the said Rules,1988 contemplates disposal of a Civil Petition for Leave to Appeal by setting aside the judgment of the High Court Division without granting leave, whether by invocation of

inherent power or otherwise. The course adopted in the present case, he submits, is thus procedurally impermissible, constitutionally unsustainable, and discloses a gross error apparent on the face of the record, thereby rendering the impugned judgment liable to be reviewed in the interest of justice.

He further contends that, the writ respondents were under a clear statutory and legal obligation to issue prior notice to the petitioners as being the affected land-owners, and to afford them an opportunity of being heard before determining and imposing enhanced conversion rates through the impugned memoranda. The admitted failure to comply with this mandatory requirement constitutes a flagrant breach of statutory duty and a gross violation of the principles of natural justice. Such action, taken without notice and hearing, is *ex facie* without lawful authority and beyond jurisdiction, thereby squarely attracting the writ jurisdiction of the High Court Division under Article 102 of the Constitution and thereby establishing the maintainability of the writ petition.

He goes to add that, the imposition of exorbitant and arbitrary conversion fees has, in effect, frustrated the petitioners' lawful and beneficial use of their property and has rendered their proposed construction commercially and practically impossible. This amounts to an unjust and unreasonable restriction upon the petitioners' fundamental right to property guaranteed under Article 42 of the Constitution. In this backdrop, the finding that the writ petition was not maintainable is

manifestly erroneous, suffers from non-application of mind, and constitutes an error apparent on the face of the record.

Additionally, as he contends, the purported levy of conversion fees pursuant to recommendations of the Parliamentary Standing Committee is devoid of legal sanction, as the same has not been published in the official gazette. Publication being a mandatory prerequisite for the enforceability of delegated legislation under Article 152 of the Constitution and Section 23 of the General Clauses Act, 1897 hence, such unpublished recommendations cannot acquire the force of law nor override the mandatory provisions of the Town Improvement Act, 1953. Consequently, the impugned memoranda are *ultra vires* and as such, without lawful authority.

Considered cumulatively, he submits that, these legal infirmities render the impugned judgment unsustainable and call for its review and to set aside in the interest of justice.

Mr. Md. Asaduzzaman, the learned Attorney General frankly concedes to the legal proposition that without granting leave setting aside the judgment and order dated 11.12.2017 passed by the High Court Division in Writ Petition No. 9911 of 2016 making the Rule absolute is not tenable in the eye of law. On the issue of enhancement of conversion fees he submits that, the enhancement of the conversion fees for plots sought to be converted from residential to commercial use, as fixed by the respondent authority, has been made strictly in accordance with law;

consequently, no constitutional or legal right of the petitioners has been infringed in this respect.

Upon meticulous consideration of the materials on record, the submissions advanced, and the authorities cited, it appears that Civil Petition for Leave to Appeal No.3633 of 2018 was disposed of by this Division by setting aside the judgment and order dated 11.12.2017 of the High Court Division without granting leave.

Vide Article 103(2) of the Constitution an appeal to the Appellate Division from the judgment, decree, order or sentence of the High Court Division lies as of right in three cases, namely, (a) where the High Court Division certifies that the case involves a substantial question of law as to interpretation of the Constitution; (b) where the High Court Division confirms a death sentence or sentences a person to death or to imprisonment for life; and (c) where the High Court Division punishes a person for contempt.

Article 103(3) of the Constitution unequivocally mandates that in all cases not falling within the purview of clause (2), an appeal shall lie to the Appellate Division only upon the grant of leave to appeal.

Article 103(2) and (3), being relevant for disposal of the issue in question, are quoted below for ready reference:

> *"103(2) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division shall lie as of right where the High Court Division-*

(a) *certifies that the case involves a substantial question of law as to the interpretation of this Constitution; or*

(b) has confirmed a sentence of death or sentenced a person to death or to imprisonment for life ; or

(c) has imposed punishment on a person for contempt of that Division.

And in such other cases as may be provided for by Act of Parliament.

(3) An appeal to the Appellate Division from a judgment, decree, order or sentence of the High Court Division in a case to which clause (2) does not apply shall lie only if the Appellate Division grants leave to appeal."

Thus, it is apparent that leave to appeal is a constitutional precondition under Article 103(3) to exercise appellate jurisdiction to interfere with, modify, or set aside a judgment, decree, order or sentence of the High Court Division.

Article 104 provides that the Appellate Division shall have the power to issue such orders or directions as may be necessary for doing complete justice in any cause or matter pending before it. Article 104 is quoted below for cursory glance.

"104. The Appellate Division shall have power to issue such directions, orders, decrees or writs as may be necessary for doing complete justice in any cause or matter pending before it, including orders for the purpose of securing the attendance of any person or the discovery or production of any document."

However, this conferment of power does not create a new source of jurisdiction rather operates within the framework of the Constitution having the concept of justice as predominant factor to remove manifest and undoubted injustice**.** *Abdul Malek vs. Abdus Salam, (2009) 61 DLR(AD) 124***.**

In *Prem Chand Garg v. Excise Commr*. *AIR 1963 SC 996* the Indian Supreme Court observed as follows:

> *"An order which this court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."[para-12]*

The Supreme Court (Appellate Division) Rules, 1988 (in short, Rules, 1988), framed under Article 107(1) of the Constitution, likewise do not confer any authority to set aside a judgment of the High Court Division at the stage of disposal of a leave petition. Certain provisions of the Appellate Division Rules merit particular attention and quoted below being relevant for disposal of the issue in question.

Order XIII, Rule 1 of the Rules, 1988 provides as under:

> *"A petition for leave shall be lodged in this Court within 60 (sixty) days of the judgment or order sought to be appealed from or as the case may be within 30(thirty) days from the date of the refusal of grant of certificate under Article l03(2)(a) of the Constitution, by the High Court Division."*

Order XIII, Rule 10 of the Rules, 1988 states as follows:

> *"After the grant of leave to appeal by this Court, the case shall be registered as an appeal and the Registrar shall transmit a certified copy of the order of the Court to the Court appealed from."*

Order XIX, Rule 3 of the Rules, 1988 provides as under:

> *"No party to an appeal shall be entitled to be heard by the Court unless he has previously lodged his concise statements: Provided that where a respondent who has entered an appearance does not desire to lodge his concise statement in the appeal he may give the Registrar notice in writing of his intention not to lodge any concise statement, while reserving his right to address the Court on the question of costs."*

On the other hand, Order XIX, Rule 5 states that:

> *"Each party shall, after filing his concise statement, forthwith give notice thereof to the other party; and shall thereafter be entitled to receive two copies of the concise statement filed by the opposite party on his applying therefor."*

Order XX Rule 5 of the Rules, 1988 stipulates as under:

> *"The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal and the concise statement."*

Order XXI, Rule 2 of the Rules, 1988 refers that:

> *"A respondent may apply for the summary determination of an appeal on the ground that it is frivolous or vexatious or has been brought for the*

> *purpose of delay, and the Court shall make such order thereon as it thinks fit."*

A conjoint reading of Orders XIII, XIX, XX and XXI of the Rules, 1988 makes it evident that the procedural scheme presupposes that, upon the grant of leave, the *lis* matures into an appeal wherein the respondent acquires a corresponding right to file a concise statement and to be heard.

The impugned disposal, however, by passed the statutory framework governing appellate adjudication. By setting aside the judgment of the High Court Division without granting leave, the petitioners were effectively deprived of their right to place a defence through concise statements and to address the Court on merits, as envisaged under Order XIX, Rules 3 and 5 read with Order XX, Rule 5 of the Rules, 1988. Denial of such opportunity strikes at the very root of the principles of natural justice particularly the rule of *audi alteram partem* ("hear the other side"). As authoritatively reiterated in *Chairman, Board of Intermediate and Secondary Education, Jessore and others. vs. Md. Amir Hossain and others: 56 DLR (AD)(2004)24.* Relevant part is quoted as follows:

> *"...It is now a settled principle that even where provision for show cause notice and affording opportunity of personal hearing are not available, the principle of natural justice shall be applied unless it is specifically barred. In the instant case we have already observed that though the rule provides for show cause notice with reasonable opportunity for defence, the same has been grossly violated before taking penal*

> *action against the petitioner. This violation, according to us, amounts to a total miscarriage of justice."*

In the present case, the invocation of inherent power under Order XXXIV, Rule 8 of the Rules, 1988, as contemplated therein: *"Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court"* cannot support, nor can the saving clause under Order XXXIV, Rule 9, as enumerated: *"Where at any stage of the proceedings in the Court, there has been a failure to comply with these Rules, the failure shall be treated as an irregularity and shall not nullify the proceedings or the judgment. The Court may on such terms as to costs or otherwise, as it thinks just, set aside either wholly or in part the proceedings in which failure has occurred"* be pressed into application, for, non-compliance to procedure resulting in failure of natural justice cannot be treated as a mere irregularity. The reasoning adopted by the Supreme Court of Ghana in *Azinogo v W.E. Augustt and Co. Ltd [1989-90] 2 GLR 278 by Ampiah JA,* (as he then was) lends persuasive support to this conclusion that in certain situations non-compliance with the rules was not an irregularity which could be waived and that a plaintiff not having complied with the rule was not entitled to proceed by default and that any judgment or order obtained after such non-compliance would be set aside.

It is the rules of natural justice that no judicial order can ever be passed by any court without providing a reasonable opportunity of being

heard to the person to be affected or likely to be affected by such order and particularly when such order results in violation of his fundamental rights guaranteed under the Constitution.

Articles 103 and 104 of the Constitution read with Orders XIII, XIX, XX and XXI of the Rules, 1988 have, in clear terms, ensured procedural safeguards by granting leave. Consequent thereto the rights of the parties concern to place his defence through concise statements and to address the Court on merit have been guaranteed. On the face of the said legal position setting aside the judgment and order passed by the High Court Division without granting leave tantamounts to curtailing the right of the parties to be heard. Resultantly, it goes to violate the rule of *audi alteram partem* ("hear the other side") as well as the provisions of Articles 103 and 104 of the Constitution.

Said view of ours finds support in the decision of the case of *Mohammad Sohel Rana and others vs. The Public Service Commission, represented by its Chairman and others*, in connection with *Civil Appeal No.84 of 2024* along with 2(two) other appeals, where it has been categorically observed, *inter alia*, by this Division,

"Generally understood, leave is granted to consider the appellant(s) case on certain grounds of law and facts, giving an opportunity to the concerned respondent(s), in whose favour the impugned judgment had been passed, to have an opportunity to reply, in writing, to the grounds upon which the appellant(s) case is predicated. This is in accordance with the constitutional mandate of "due process", as enshrined in Article 31 of our Constitution.

Hence, the practice of setting aside any judgment and/or order passed by the High Court Division or the Administrative Appellate Tribunal, as the case may be, without granting leave, is not only a gross violation of the principle of natural justice, it also deprives the concerned respondents from placing their case before the apex Court, a fundamental right granted to them under the Constitution. The principle audi alteram partem-no man should be condemned unheard- is now so well entrenched in the judicial system that any deviation therefrom is bound to be interfered with, even at the stage of review."

In view of the above, we have no manner of doubt to find that without granting leave setting aside the judgment and order dated 11.12.2017 passed by the High Court Division making the Rule absolute, and thereby depriving the petitioners of their right to be heard, cannot be mandated as lawful.

With regard to the authority of respondent no.1 (RAJUK) to impose conversion charges, the impugned judgment proceeds on the premise that such imposition constitutes an "internal policy" of RAJUK under the Act, 1953.

A careful examination of the said Act, 1953 however, reveals no express provision authorising the levy of conversion fees. In this connection Section 102 of the Act, 1953 provides as follows:

> *"The Government may make rules, not inconsistent with the provisions of this Act, for carrying out the purposes of this Act. In particular, and without prejudice to the generality of the foregoing power, the Government may make rules for all or any of the following matters, namely:-*
>
> .....

(g) fees in respect of any matter not specifically provided for in this Act;"

Section 155 of the Act, 1953 states that when any rule has been made under Section 102 or Section 151 and when any rule [or regulation] has been made under Section 33 or Section 152 and duly sanctioned, it shall be published by the Government by notification, and such publication shall be conclusive proof that the rule [or regulation] has been duly made.

Article 152 of the Constitution defines "public notification", which means a notification in the Bangladesh Gazette. Moreover, Section 23 of the General Clauses Act, 1897 provides that where, by any [Act of Parliament] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) *the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;*

(5) *the publication in the official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made*.

Therefore, any fiscal levy imposed by a delegated authority under the Act of 1953, whether described as a "conversion fee" or otherwise, must be founded upon an express statutory authorization and can be lawfully enforced only through properly framed rules duly notified in the official gazette, in accordance with the legal requirements discussed hereinabove.

In the absence of such due process, the assumption of lawful authority cannot arise, as clarified in *Maula Bux and others. vs The Appellate Tribunal of State Transport Authority, Jaipur: AIR 1962 Raj 19* and *Harla v. State of Rajastha: AIR 1951 SC 467*, wherein it was held that law, to be operative, must be made known through recognised modes of publication. In *Ahmedabad Urban Development Authority vs. Sharadkumar Jayantikumar Pasawalla and others: AIR 1992 SC 2038* the Supreme Court of India, while considering whether levy of development

fee by the Ahmedabad Urban Development Authority was *ultra vires* the provisions of the Constitution of India and the Gujrat Town Planning and Urban Development Act, 1976, held as follows:

> *"...it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power."*

Furthermore, the materials indicate that the conversion charge was imposed pursuant to the recommendations of the Parliamentary Standing Committee, Ministry of Housing and Public Works without following the mandatory rule-making procedure as prescribed by statute. Such recommendations, however weighty, cannot acquire the force of law nor override the express statutory provisions. This principle finds support in *DIF Housing and Construction Ltd. v. State of Haryana and others* (2007) *4 PLR 312*, wherein the legality of increase in licence renewal fee by the Council of Ministers for developing land under the Haryana Development and Regulation of Urban Areas Act was scrutinized, and accordingly the court held as follows:

> *"It has been concluded that the rates of licence fee depicted in the schedule appended to the 1976 Rule have the force and authority of law and no executive authority can over-ride the same, irrespective of its stature or authority. ... In sum and substance, therefore, to amend/modify/revise the licence fee described in the Schedule appended to the 1976 Rules, it would be imperative to follow the procedure prescribed by Section 24 of the 1975 Act, and unless the said procedure is followed, the "prescribed" fee cannot be altered, not even by the Council of Ministers."[para-11]*

The nature of the conversion charge also warrants close scrutiny. The charge is compulsorily exacted as a precondition to the exercise of the petitioners' right to develop their property. Applying the settled jurisprudence as laid down in *The State of Maharashtra and others v .The Salvation Army, Western Indian Territory: AIR 1975 SC 846,* that:

> *"A tax is a compulsory exaction of money by a public authority for a public purpose enforceable by law and is not payment for any specific service rendered. There is no element of quid pro quo between the tax payer and the public authority."*

Accordingly, in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt: AIR 1954 SC 282,* the Supreme Court of India while assessing whether contribution made annually by religious institutions to the Hindu Religious Endowments Board was in reality tax and not fee held that:

> *"A careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of*

> *imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees."*

In the present case, such compulsory exaction is totally absent of any element of *quid pro quo*, and resultantly, bears the characteristics of a tax. Article 83 of the Constitution unequivocally mandates that no tax shall be levied or collected except by or under the authority of an Act of Parliament. The absence of express statutory sanction for such levy renders the impugned imposition constitutionally vulnerable, a principle further reinforced by the Indian Supreme Court in *Ahmedabad Urban Development Authority v. Sharadkumar Javantikumar Pasawalla and others: AIR 1992 SC 2018*.

Additionally, it is evident that the affected landowners, i.e. the petitioners, were not afforded prior notice or an opportunity of hearing before the determination of the conversion rates, despite the substantial financial consequences flowing therefrom that ultimately resulted in derogation of "natural justice". The settled principle is that natural justice is deemed to be incorporated into every statute unless expressly excluded, as held in *Abdul Latif Mirza Vs. Government of Bangladesh and others: 31 DLR AD 1*, that:

> "*It is now well recognised that the principle of natural justice is a part of the law of the country in the broad sense of the term and is deemed to be incorporated in every statute providing for interference with any of the*

rights of a citizen in the absence of a positive contrary provision made in the said statute."

Compliance of the said principle is found absent prior to taking the impugned action.

In view of the foregoing, this Court is of the considered opinion that the impugned judgment and order dated 19.02.2023 passed by this Division suffers from errors apparent on the face of the record, both in its procedural approach to disposal of the leave petition and in its substantive appreciation of the statutory and constitutional limits governing the imposition of conversion charges. Such errors go to the root of jurisdiction and natural justice and, therefore, warrant interference in review to secure the ends of justice.

However, the fact remains that vide the judgment and order dated 11.12.2017 passed in Writ Petition No.9911 of 2017, the High Court Division has declared the respective decisions taken by the Board of RAJUK in Meeting No.6/04 to levy conversion charge or fee at Tk.8,00,000/- (Taka eight lac) per "katha", Meeting No.1/11enhancing said conversion charge to Tk.20,00,000/- (Taka twenty lac) per "katha" and vide Meeting No.12/2012 dated 20.12.2012, again enhancing the conversion charge at Tk.50,00,000/- (Taka fifty lac) per "katha" respectively for use of the leasehold property, located on both sides of the road connecting Gulshan-Banani Bridge and Gulshan-Baridhara Bridge, from residential to commercial, to have been passed without lawful authority and hence, of no legal effect.

In view of the given context, and also in light of the observations and findings so made above while disposing of the instant Civil Appeal, this Division, in exercise of power vested under Article 104 of the Constitution, hereby directs the respondent no.1, RAJUK to fix conversion charge of the property in question from residential to commercial use, at Tk.22,00,000/-(Taka twenty two lakh) only per "katha", as and when respective application is filed on behalf of the appellants to that effect. However, this order/directive shall be applicable only in respect of the property in question located at 40/5, North Avenue, Gulshan Model Town, Dhaka.

Accordingly, by a unanimous decision, the appeal is allowed without any order as to costs so far as it relates only to the property in question, at 40/5, North Avenue, Gulshan Model Town, Dhaka.

Consequently, the judgment and order dated 19.02.2023 passed in Civil Petition for Leave to Appeal No.3633 of 2018 is set aside and the judgment and order dated 11.12.2017 passed in Writ Petition No.9911 of 2017 is restored.

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06.11.2025.
Jamal/B.R./Words-*5324*