

Bench:

Mr. Justice BhishmadevChakraborty

And

Mr. Justice Abdur Rahman

Writ Petition No.10557 of 2011

Sobura Khatun and others petitioners

-Vs-

Bangladesh and others respondents

with

Writ Petition No.10559 of 2011

Abul Bashar petitioner

-Vs-

Bangladesh and others respondents

with

Writ Petition No.10561 of 2011

Md. Mokhlesur Rahman being dead his heirs:

1(a) Angkurar Nessa and others petitioners

-Vs-

Bangladesh and others respondents

with

Writ Petition No.10562 of 2011

Abul Bashar petitioner

-Vs-

Bangladesh and others respondents

with

Writ Petition No.12770 of 2022

Md. Abul Hashem and others petitioners

-Vs-

Bangladesh and others respondents

and

Writ Petition No.12771 of 2022

Md. Siraj Uddoula petitioner

-Vs-

Bangladesh and others respondents

Mr. Muhammad Hemayet Kabir Khan, Advocate

.....for the petitioners
(In all the writ petitions)

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Mustafizur Rahman Mukul, Mr. Ashraful Alam and Mr. Ruhani Siddique, Assistant Attorney Generals.

..... for the respondents
(In all the writ petitions)

Judgment on 03.05.2026

Bhishmadev Chakraborty, J:

Since in all the Rules the respondents are same and common question of fact and law in respect of acquisition of lands of same mouza are involved, these have been heard together and are being disposed of by this judgment.

The Rule in Writ Petition 10557 of 2011 at the instance of 11 petitioners was issued in the following terms-

“The Rule *Nisi* be issued calling upon the Respondents to show cause as to why the Proviso of Section 31 of the Acquisition and Requisition of the Immovable Property Ordinance, 1982 should not be declared to be *ultra vires* with the Constitution as being violative of the fundamental rights of the petitioners as guaranteed by Articles 26, 27, 31 and 42 of the Constitution and as to why the impugned Notice vide Process No. 279(1)/L.A. dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali fixing the award of

compensation for the land (mentioned in the scheduled) owned by the petitioners should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The Rule in Writ Petition 10559 of 2011 at the instance of sole petitioner was issued in the following terms-

“The Rule *Nisi* be issued calling upon the Respondents to show cause as to why the Proviso of section 31 of the Acquisition and Requisition of the Immovable Property Ordinance, 1982 should not be declared to be *ultra vires* with the Constitution as being violative of the fundamental rights of the petitioners guaranteed by Articles 26, 27, 31 and 42 of the Constitution and as to why the impugned Notice vide Process No. 279(1)/L.A. dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali fixing award of compensation for the land (mentioned in the schedule) owned by the petitioner should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The Rule in Writ Petition 10561 of 2011 at the instance of sole petitioner was issued in the following terms-

“The Rule *Nisi* be issued calling upon the Respondents to show cause as to why the Proviso of section 31 of the Acquisition and Requisition of the Immovable Property Ordinance, 1982 should not be declared to be *ultra vires* with the Constitution as being violative of the fundamental rights of the petitioner guaranteed by Articles 26, 27, 31 and 42 of the Constitution and as to why the impugned Notice vide Process No. 279(1)/L.A. dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land

Acquisition Officer, Noakhali fixing the award of compensation for the land (mentioned in the scheduled) owned by the petitioners should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Subsequently, on an application filed by the petitioners supplementary Rule was issued in the following terms-

“Issue a supplementary Rule Nisi calling upon the respondents of the writ petition to show cause as to why the notices vide process Nos. 276(1)/LA, 269(1)/LA, 292(1)/LA, 286(1)/LA and 298(1)/LA all dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali fixing the award of compensation for the land (mentioned in the schedule) owned by the petitioners should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders to this court may seem fit and proper.”

The Rule in the Writ Petition 10562 of 2011 was issued at the instance of sole petitioner in the following terms-

“The Rule *Nisi* be issued calling upon the Respondents to show cause as to why the Proviso of section 31 of the Acquisition and Requisition of the Immovable Property Ordinance, 1982 should not be declared to be *ultra vires* with the Constitution as being violative of the fundamental rights of the petitioners as guaranteed by Articles 26, 27, 31 and 42 of the Constitution and also as to why the impugned Notice vide Process No. 285(1)/L.A. dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali fixing the award of compensation for the land (mentioned in the schedule) owned by the

petitioner should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The Rule in Writ Petition 12770 of 2022 was issued at the instance of 4 petitioners in the following terms-

“The Rule *Nisi* be issued calling upon the respondents to show cause as to why the impugned Notices vide Process No. 296(1)/L.A dated 22.02.2010, 270(1)/L.A dated 22.02.2010, 293(1)/L.A dated 22.02.2010 and 294(1)/L.A dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali, Annexures-B, B(1), B(2) and B(3) fixing the award of compensation for the land (mentioned in the schedule) owned by the petitioners should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The Rule in the Writ Petition 12771 of 2022 was issued at the instance of sole petitioner in the following terms-

“The Rule *Nisi* be issued calling upon the respondents to show cause as to why the impugned Notice vide Process No. 288(1)/L.A dated 22.02.2010, Process No. 291(1)/L.A dated 22.02.2010 and Process No. 295(1)/L.A dated 22.02.2010 issued by the Deputy Commissioner, Noakhali under the signature of Land Acquisition Officer, Noakhali Annexures-B, B(1), B(2) fixing the award of compensation for the land (mentioned in the schedule) owned by the petitioner should not be declared to have been issued without lawful authority and is 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 issued in Writ Petition 10557 of 2022, in brief, are that .45 acres of land of these petitioners was acquired by the Government for construction of a Health Complex of newly constituted Kabirhat Upazila within the District of Noakhali through LA Case 03/2006-7. Notices under sections 3 and 6 of Acquisition and Requisition of Immovable Property Ordinance, 1982 (the Ordinance, 1982) were served upon the petitioners and finally notices under section 7 of the same Ordinance were served upon them fixing compensation of neat amount at Taka 2,89,011/- after deduction of income tax. The petitioners alleged in the writ petition that the fixation of compensation was undervalued considering the market price of the lands at that time. According to the Government rate of Sub-Registry Office, value of each decimals of land was at 9500/-. Moreover, the deeds Annexures-D and D1 shows that there the price of each decimal of land was Taka 10,000/- to 20,000/- but the Government fixed the rate of compensation at Taka 5,700/- per decimal which was much lower than the actual price. The petitioners without receiving compensation filed this writ petition challenging the *vires* of law of proviso of section 31 of the Ordinance, 1982 and also challenging the notice dated 22.02.2022 issued by respondent 2 and obtained this Rule.

In Writ Petition 10559 of 2011 sole petitioner in the similar way has challenged the *vires* of law of the proviso of the aforestated section as well as the notice under section 7 of the Ordinance, 1982 fixing compensation at Taka 48,902.69 for .09 acres of land of same mouza after deduction of income tax stating the facts as stated in the aforesaid Writ Petition 10557 of 2011.

In Writ Petition 10561 of 2011 three petitioners have challenged the *vires* of law of the proviso of same section as stated hereinabove and notice under section 7 of the Ordinance fixing compensation at Taka 27,161.16 for .05 acres of land; Taka 67920.10 for .035 acres; Taka 43,469.06 for .08 acres; Taka 19,017.70 for .125 acres and Taka 13,0407.18 for .24 acres of land of same mouza after deduction of income tax.

In Writ Petition 10562 of 2011 sole petitioner have challenged the *vires* of law as well as the notice under section 7 of the Ordinance of selfsame date fixing compensation at Taka 43,469.06 for .08 acres of land of same mouza after deduction of income tax.

In Writ Petition 12770 of 2022 four petitioners have challenged the notice published under section 7 of the Ordinance through which compensation was fixed at Taka 48,902.69 for .12 acres of land; Taka 65,203.59 for another .12 acres; Taka 9,508.86 for .0775 acres and Taka 42,110.65 for .0125 acres of land of same mouza after deduction of income tax.

In Writ Petition 12771 of 2022 sole petitioner has challenged notice under section 7 of the Ordinance fixing compensation at Taka 10,867.20 for .04 acres of land; Taka 21,734.53 for .02 acres and Taka 1,52,14.71/- for .28 acres of land after deduction of income tax.

In all the writ petitions as above it has been alleged that valuation of the land was assessed by the concerned authority at Taka 5700/- for each decimal where the value of land as per annexed deeds was from Taka 10,000/- to 20,000/-. In the 4 first writ petitions it has been stated that as per the

Government rate of Sub Registry Office per decimal land was valued at Taka 19,500/- wherein the Deputy Commissioner fixed compensation at Taka 5700/- per decimal which is much lower than the Government rate. In the last two writ petitions, the petitioners claimed that as per Government rate value of each decimal land there was at Taka 66,638/- but the Deputy Commissioner fixed it at Taka 5,700/- which is much lower than the value of the land in that mouza at the material time.

Mr. Muhammad Hemayet Kabir Khan, learned Advocate for the petitioners in all the Rules taking us through the annexures of the writ petitions submits that in determining compensation under section 8 of the Ordinance, 1982 to be awarded for any property, the Deputy Commissioner shall take into consideration the market price of the property at the material time but without following the statutory provisions of law, respondent 2 most arbitrarily fixed compensation below the price fixed by the Government. The deeds annexed with the writ petitions shows that price of the land is much higher than that of the price fixed by the Deputy Commissioner. He then submits that the respondents issued the impugned notices with *mala fide* intent under influence of vested quarter and as such the impugned orders are liable to be declared to have been passed without lawful authority and is of no legal effect. The compensation assessed by respondent 2 being much lower than that of the market rate, the same are liable to be declared without lawful authority and of no legal effect. He refers to the cases of Government of Bangladesh and others vs. Most. Nurjahan Begum, 16 BLT (AD) 190, Satish Sabharwal and others vs. State of Maharashtra and others, 2 SCC 362 and Hosne Ara Begum vs.

Chairman Court of Settlement and another, 46 DLR (AD) 9 and relied on the *ratio* laid in those cases. He further submits that since the petitioners have not yet received compensation and as such they are entitled to the thrice of present market price of the land as per the provisions of “স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুম দখল আইন, ২০১৭ (the Ain, 2017).” The Rules issued, therefore, would be made absolute.

Mr. Mohammad Imam Hossain (Tarek), learned Deputy Attorney General on the other hand refers to the case of Government of Bangladesh and others vs. Md. Hadisur Rahman and others, 26 BLC (AD) 294 and relying on the *ratio* laid therein advanced his argument solely on point of law. He submits that notices under sections 3 and 6 of the Ordinance upon the petitioners in all the writ petitions were served. The Deputy Commissioner assessed the compensation in respect of the acquired land and issued a notice upon them under section 7 of the Ordinance, 1982. If, any dispute arises regarding payment of compensation, it should be dealt in accordance with law more particularly as per provisions of section 10 of the Ordinance, 1982. The writ petitions challenging the notices issued under section 7 of the Ordinance, 1982 only on the ground of inadequate compensation are not maintainable. The Rules, therefore, would be discharged.

We have considered the submissions of both sides, gone through the materials on record, the annexures appended with the writ petition, the provisions of law and *ratio* of the cases cited by the parties.

It is admitted fact that the petitioners were the owners of the lands described in the schedules to the writ petitions. They were served with notices

under sections 3 and 6 of Ordinance, 1982 but they did not raise any objection thereto. But while the notices under section 7 of the Ordinance all dated 22.02.2010 were served upon them then they raised objection that compensation assessed by respondent 2 in respect of the lands were below the market price. They did not receive any compensation as per the notice issued under section 7 of the Ordinance, 1982. It is admitted by the petitioners that they did not raise any objection in the acquisition because it was for public purpose. It is also admitted by them that in the meantime the health complex has already been constructed over the suit land and the hospital is running.

In the writ petitions they have only raised objection as to the assessment of compensation for lands being less to the market price. In support of their claim they have submitted and annexed the market price of some lands of the concerned Sub Registry office of same mouza which they collected for the year 2011. They claimed that the price of each decimals null land was found there at Taka 19,861/-. They also annexed in the first four writ petitions same documents showing the price of land was Taka 10000/- to 20000/- per decimal. In the last 2 writ petitions they have annexed the documents to show the Government value of the land as per Sub Registry Office of Kabirhat, Noakhali and some deeds as contained in Annexures-C and C1 to the writ petitions showing price of land of that area at Taka 66,631/- per decimal. Although the Rule issued in first 4 writ petitions the *vires* of section 31 of the Ordinance, 1982 was challenged but the learned Advocate for the petitioners did not make any submission on first part of the Rules. However, on going through the provisions of law of proviso of section 31 of the Ordinance, 1982 and the

provisions of section 33 of the Ain, 2017 we do not find that the provisions of section 31 of the Ordinance, 1982 was or is *ultra vires* the constitution.

The petitioners submits that respondent 2 assessed the compensation by violating the provisions of section 8 of the Ordinance, 1982 because the price of the acquired land was much more higher than that the compensation assessed. As per the provisions of section 8(1)(a) of the Ordinance, the Deputy Commissioner in determining the compensation to be awarded, shall take into consideration the market value of the property at the date of publication of the notice under section 3 of the Ordinance, 1982. In the instant case, it is admitted fact that the notices under section 3 were sent upon the petitioners on 11.10.2006 and as such the compensation is to be assessed fixing price at the rate of preceeding 12 months to that date. In all the writ petitions, the petitioners annexed the documents to show the market price in respect of land of said mouza of 2010 and 2011. Therefore, it cannot be said that the compensation assessed by the Deputy Commissioner was not in accordance with law or it was much more less than the market price at the material time. The petitioner's learned Counsel argued that subsequently, a new law has been enacted in 2017 for acquisition and requisition of the immovable property and section 9 therein provides for payment of compensation thrice to the market value. Since the petitioners have not yet received the compensation at least they are entitled to get thrice of the amount of the present market price.

It is admitted that process of acquiring the land has been completed and reached its finality. The health complex has been constructed and it is in operation. Section 50(2)(Ga) of the Ain, 2017 (the savings clause) provides

that “কোন কর্তৃপক্ষ আরবিট্রেটর এবং আরবিট্রেশন আপিলেট ট্রাইব্যুনাল সমীপে কোনো কার্যধারা নিষ্পন্নধীন থাকিলে, নিষ্পন্ন না হওয়া পর্যন্ত, উহা এমনভাবে চলমান থাকিবে যেন উক্ত অধ্যাদেশ রহিত হয় নাই।” which clearly means that in respect of payment of compensation to the petitioners for the land so acquired the provisions of the Ordinance, 1982 shall apply. In the case of Government of Bangladesh and others vs. Md. Hadisur Rahman and others, 26 BLC (AD) 294 it has been held that the Government cannot pay compensation for the land acquired beyond the rate fixed for the same which was notified earlier by publication of gazette. It has been further held therein that writ petition was not maintainable because the dispute therein is regarding the payment of compensation of the acquired land. The procedure of payment of compensation of acquired land has been described in section 10 of the Ordinance, 1982. It has been provided therein, if the persons entitled to compensation do not receive 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.

Therefore, we find that since the petitioners disputed regarding payment of compensation, it shall dealt with in accordance with law, more particularly as per section 10 of the Ordinance, 1982. In writ jurisdiction, we have no scope to interfere with the service of notice under section 7 of the Ordinance, 1982, if it is not found that the provisions under the Ordinance, 1982 as embodied in sections 31, 34 and section 8 of the Ordinance *ultra vires* the unconstution. We find no relevancy in the cases referred to by the learned Advocate for the

petitioners. Therefore, we find that these Rules having no merit would be discharged.

In view of the discussion made hereinabove, the Rules are discharged. There will be order as to costs.

However, the judgment passed in these writ petitions will not preclude the petitioners from taking legal steps to get their compensation in accordance with law. If the petitioners being dissatisfied with the award amount approach before the Arbitration Tribunal as per the provisions of the Ordinance, 1982 the limitation prescribed in the law shall not be stand as bar.

Communicate this judgment and order to the respondents.

Abdur Rahman, J.

I agree

Sumon-B.O.