

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL NO. 47 OF 1972

Province of East Pakistan, (now) Government of
Bangladesh

...Appellant

-Versus-

Kanu Mia

... respondent

Mr. Md. Shaif Uddin Raton, Deputy Attorney General
with

Mr. Junaed Hossen Khan, Assistant Attorney General

... For the appellant.

None appears

....For the opposite party.

Heard and Judgment on 21.05.2026.

S M Kuddus Zaman, J:

This First Appeal at the instance of the defendant, the Government of Bangladesh, is directed against the judgment and decree dated 17.02.1971 passed by the learned Additional Sub-ordinate Judge and Arbitrator, Dhaka in Arbitration Case No.661 of 1968 arising out of Requisition and Acquisition Case No.17 of 1957-58 allowing above case and modified the award.

Facts in short are that 0.525 acre chala land was acquired by the Government on 06.06.1966 pursuant to L. A. Case No.17 of 1957-58 for construction of Wireless Transmitting Centre. The Collector assessed

the value of above land at the rate of Taka 16,000 per acre and gave an award of Taka 21,735 to the petitioner. Being aggrieved by and dissatisfied with above award above petitioner as appellant moved to the Court of Sub-judge and Arbitrator with above Arbitrator Case who allowed above case, enhanced the value of above land and passed a modified award.

Being aggrieved by and dissatisfied with above judgment and order of the learned Arbitrator above opposite party as appellant moved to this Court and preferred this First Appeal.

Mr. Md. Shaif Uddin Raton, learned Deputy Attorney General for the appellant submits that an Arbitrator was lawfully authorized to make further investigation as to the market value of the acquired property to ascertain if the award passed by the Collector was fair or not. Above investigation must be held on the basis of sale deeds and other oral or documentary evidence to be adduced by the dissatisfied awardee to the arbitrator. It turns out the impugned judgment and order passed by the learned Sub-ordinate Judge that the respondent could not produce any sale deed showing that any land contiguous to the disputed land and of the same advantage and character was sold at a higher price within the relevant period. The learned Arbitrator enhanced the value of land from Taka 16,000/- per acre to Taka 27,000/- per acre on the basis of documents of another case which is not tenable in law. No one appears on behalf of the respondent when the

First Appeal was taken up for hearing although the matter appeared in the list for hearing on several dates.

We have considered the submissions of the learned Deputy Attorney General and carefully examined the impugned judgment and award passed by the learned Arbitrator, the memorandum of appeal and other materials on record.

Admittedly 0.525 acre chala land of the respondent was acquired by the appellant on 06.06.1966 pursuant to Land Acquisition Case No.17 of 1957-58 under Section 5 of the East Bangle Emergency Requisition of Property Act, 1948 for construction of a Government Office and the Collector assessed the value of above land at Taka 16000/- per acre and accordingly passed an award for Taka 21,735/- to the respondent.

As to the mode of assessment of the value of the acquired land and fixation of compensation award by an Arbitrator Section 7 Clause (d) of the above Act of 1948 provides as follows:

“Section 7: (d) at the commencement of the proceedings before the arbitrator, the Deputy Commissioner, the person to be compensated and the requiring person, if any, shall state what, in their respective opinions, is a fair amount of compensation and shall produce all the documents in their

possession or power on which they intend to rely;

(e) the arbitrator in making his award shall have regard to the provisions of Section 23 and 24 and sub-section (2) of Section 35 of the Land Acquisition Act, 1894, so far as the same can be made applicable.”

Section 23 of the Land Acquisition Act, 1894 provides as follows:

“Section 23: Matters to be considered in determining compensation -(1) In determining the amount of compensation to be awarded for land acquired under this act, the Court shall take into consideration-

first, the market-value of the land at the date of the publication of the notification under Section 4, sub-section (1).

Explanation-For the purpose of determining the market-value, the Court shall take into account transfer of land similarly situated and in similar use. The potential-value of the land to be acquired if put to a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use

has, before the date of the notification under sub-section (1) of Section 4, been transferred with a view to being put to the use relied upon as affecting the potential value of the land to be acquired.

Provided that-

- (i) If the market value has been increased in consequence of the land being put to a use which is unlawful or contrary to public policy that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if it were put to ordinary use; and
- (ii) If the market-value of any building has been increased in consequence of the building being so overcrowded as to dangerous to the health of the inmates, such overcrowding shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as can be accommodated in it without risk of danger to health from overcrowding.

Secondly, the damage sustained by the person interested, by reason of the taking of any

standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence, of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under Section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition, if the acquisition has been made for a public purpose and a sum of twenty-five per centum on such market-value if the acquisition has been made for a Company.”

It is crystal clear from above provisions of the law that the respondent was required to produce sale deeds of similar land or the land situated adjacent to the disputed land and of the similar location and same advantage sold at higher price at the relevant time. As mentioned above no such sale deed or any other document was produced to the Arbitrator who reassessed the value of above land on the basis of the records of other cases of the same mouza. In the same mouza the several pieces of land may carry different values on the basis of location, character, advantage and other causes. Moreover, each and every case is decided on consideration of facts and circumstances of the case and the evidence adduced by the parties in support their respective claim. A case cannot be decided on the basis of evidence or document adduced in another case. The Arbitrator committed an error in reassessing and enhancing the value of the disputed land not on the

basis of evidence adduced in above case but on the documents of other case which is not tenable in law.

In above view of the facts and circumstances of the case and materials on record we hold the learned Arbitrator committed serious illegality in enhancing the valuation of above land by Taka 14,175/- and passing an award on the basis of the same which is unlawful and this First Appeal deserves to be allowed.

In the result, this First Appeal is allowed. The impugned judgment and award dated 17.02.1971 passed by the Additional Subordinate Judge and Arbitrator, Dhaka in Arbitration Case No.661 of 1968 arising out of Requisition and Acquisition Case No.17 of 1957-58 is set aside.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.