

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
WRIT PETITION NO. 8141 of 2014**

**Present**

**Mr. Justice Bhishmadev Chakrabortty**

**-And-**

**Mr. Justice Abdur Rahman**

**IN THE MATTER OF:**

An application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh

**-And-**

**IN THE MATTER OF:**

Dr. Nozmus Sakib

.... Petitioner

**-versus-**

Bangladesh and others

.... Respondents

Mr. Sk. Mohammad Morshed, along with Md.  
Anisul Hasan, Advocates

...for the petitioner

Mr. Mohammad Imam Hossain, Deputy Attorney  
General with Ms. Mahbubua Tasnim Akhi,  
Assistant Attorney General

....for the Respondent 3

Mr. Pratikar Chakma, Advocate

.....for the respondent 6

Date of Hearing: 19.04.2026, and 20.04.2026 A.D.

Date of Judgment: 30.4.2026 A.D. Thursday,

17 Boishakh 1433 B.S.

***Abdur Rahman, J:***

This *Rule Nisi*, at the instance of the petitioner, was issued on an application under Article 102 of the Constitution of the People's Republic of Bangladesh, upon the respondents to show cause as to why the inclusion of 1.2366 acres out of 5.71 acres of land of the petitioner situated under Mouza Dakkhin Kamrup Dolong. J.L. No. 208, Police Station and District-Sunamgonj in L.A. Case 46/76-77 situated under Mouza-Dokhin Kamrup Dolong, J.L. No. 208, Police Station-Sunamgonj, bearing Dag No. 1241 to the area of 3.71 acres, so far as it relates to the share of the petitioner in respect of 1.2366 acre of land still under the possession of the petitioner shall not be declared to have been done 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.

***Eodem tempore***, this Division passed an order directing the parties to maintain the ***status quo*** as to possession and position of the property in dispute for 6 (six) months, which

was thereafter extended from time to time, the last extension being for 1 (one) year on 27.02.2020.

The gravamen of facts leading to issuance of this Rule Nisi in brief are that the Deputy Commissioner and Land Acquisition Officer, Sylhet vide his order dated 07.02.1977 initiated the L.A. Case 48/1976-77 for acquisition of the land under Mouza Dokhin Kamrup Dolong, J. L. No. 208, Police Station-Sunamgonj, bearing Dag No. 1241 to the area of 3.71 acres, so far it relates to the share of the petitioner in respect of 1.2366 acre of land still under the possession of the petitioner. The land in question, along with other land, recorded in S.A. Khatian No. 154, belonged to 3(three) groups of owners, namely- (i) Abul Hasan Chowdhury, (ii) Azmon Ali, and (iii) Emran Ali, and all of them had an equal share in plot No. 1241. The acquisition proceeding was, in fact, conducted against two groups of owners, namely Azman Ali and Emran Ali, as the notices were served upon them, and they made their representations in the acquisition proceeding and received compensation. No notice of acquisition or delivery of possession was ever served upon the petitioner's predecessor, who, along with the petitioner and co-sharers, remained in

continuous possession of the land and paid taxes thereon. Out of the total land, the requiring body (Respondent No.1) constructed office and residential buildings over 2.50 acres on the western side, while the remaining 1.21 acres of land on the eastern side has been possessed by the petitioner as a paddy field.

Thereafter, on 09.07.2012, the petitioner and his other co-sharers filed an application to the respondent 3 for releasing their land from the acquisition proceeding. Pursuant to an order dated 05.08.2012, a local inspection confirmed the said possession. However, by order dated 11.03.2014, Respondent 5 refused release of the land and directed acceptance of compensation. The order sheet further records that the petitioner's predecessors were neither included in the compensation roll nor paid any compensation thereto, and no notice of acquisition was served upon them. Then the petitioner, finding no other equally efficacious remedy but to file this application, invokes writ jurisdiction.

Conversely, the respondent 3 entered appearance and filed an Affidavit-in-Opposition, contending, *inter alia*, that the initiation of L.A. Case 48/1976–77 for the acquisition of land

appertaining to Mouza Dakhin Kamrup Dolong, J.L. No. 208, P.S. Sunamganj, comprising Plot 1241 under Khatian 154, measuring 3.71 acres, was duly and lawfully undertaken. However, it is emphatically denied that the petitioner has any right, title, or possession over the said land. It is further stated that the land in question has long been in the actual possession of the Executive Engineer, Bangladesh Telephone and Telegraph, Sylhet, and was subsequently handed over for the construction of the Pagla Wireless Office. At present, the said Wireless Office is fully operational in the building constructed thereon. As such, the claim of the petitioner regarding possession was wholly misconceived, baseless, and devoid of any legal foundation, inasmuch as the petitioner does not hold any ownership interest in the said land.

Moreover, the inquiry report submitted by the concerned officer unequivocally confirms that possession of the acquired land measuring 3.71 acres was duly delivered to the Telephone and Telegraph Authority. The petitioner was duly requested to receive the compensation amount vide Office Memo No. 52, dated 11.03.2014. Subsequently, C.C. Case 01 of 2014 was initiated for the recovery of Tk. 4,020/- from the successor of

late Mr. Azmal Ali, and the said amount was refunded through Treasury Challan No. 11 dated 12.03.2015. It is also worth mentioning that the surveyors' inquiry report did not support the petitioner's claim of possession; rather, it merely records the respective claims of both parties, namely the petitioner and the representatives of the Pagla Wireless Office, without affirming possession in favor of the petitioner. Additionally, all statutory provisions and due procedures were meticulously followed in the acquisition process. The Government lawfully took possession of the land upon payment of compensation to the rightful owners and thereafter transferred the same to the Telephone and Telegraph Authority, under whose supervision the Wireless Office is presently functioning. Consequently, the Rule is devoid of merit and thus liable to be discharged with costs.

Correspondingly, respondent 6 (added respondent), upon entering appearance, filed an Affidavit-in-Opposition, averring, *inter alia*, that the land in question, measuring 3.71 acres under Dag No. 1241 of Mouza Dokhin Kamrup Dolong, Sunamganj, was lawfully acquired on 20.01.1977 in L.A. Case 48/1976–77

for the establishment of a Wireless Station under the then Bangladesh Telegraph and Telephone Board (T&T), Sylhet (subsequently merged into Bangladesh Telecommunication Company Ltd.—BTCL). Pursuant thereto, compensation was duly paid by the requiring body through the Deputy Commissioner, Sylhet, and possession of the acquired land was formally handed over to T&T/BTCL, whereafter respondent 6 came into lawful ownership and possession, erected structures, and demarcated the boundaries, while regularly paying government rent/taxes.

It is further contended that the recorded owners received due compensation. A Title Suit, being No. 38 of 1977, instituted by one Kutub Uddin and others seeking a declaration of title, was subsequently dismissed for default due to non-prosecution by the learned Subordinate Judge, 1st Court, Sylhet, who, by order dated 15.05.1979, further directed disbursement of the remaining compensation to the recorded owners (Annexure-F). In compliance therewith, the Land Acquisition Officer, Sunamganj, by communication dated 11.03.2014, decided to pay outstanding compensation for

1.2367 acres to the recorded owners (Annexure-G). However, the petitioner, after an inordinate delay, filed an application on 09.07.2012 before the Deputy Commissioner, Sunamganj, seeking release of the land, which, upon inquiry, was found untenable, the Surveyor's report dated 01.10.2012 confirming prior payment of compensation to the lawful owners. Subsequently, respondent 6 repeatedly requested gazette publication of the acquired land, which culminated in Gazette Notification dated 17.01.2017 under section 5(7) of the (Emergency) Requisition of Property Act, 1948. In the aforesaid premises, the petitioner has no subsisting right or entitlement to any relief in writ jurisdiction, the claim being hopelessly barred by limitation and devoid of merit; accordingly, the writ petition is not maintainable in law, and the Rule is liable to be discharged.

This is how the matter has been placed before us for the disposal of the instant Rule in its quintessence.

Mr. Sk. Mohammad Morshed, the learned Sr. Counsel, appearing for the petitioner submitted that from the record of the acquisition proceeding and subsequent report of the local

inspection it appears that no notice was issued upon the predecessor of the petitioner who was the recorded owner of the land, no compensation roll was prepared nor any compensation was given to him, and it further appears that the petitioner owned the land, thereby meaning that the land in question was not handed over to the requiring body, and therefore the entire acquisition proceeding, so far it relates to the land-in-question, is being held without complying the law and has never been acted upon, and therefore the acquisition proceeding relating to the land in question is liable to be declared to have been done without lawful authority and is of no legal effect.

Learned Counsel has further submitted that the acquisition proceeding was deemed to be initiated under the Land Acquisition Act, 1894 and section 4 of the Act says about publication of preliminary notification and as well as marking of the land which is going to be acquired and in the instant case no such publication as well as marking was done in respect of the land in question and as such the acquisition of land in question is being done in violation of the statutory provision

of law and liable to be declared to have been without lawful authority and is of no legal effect.

Learned Counsel has further submitted that in the Land Acquisition Act, 1894; it provides that after issuing preliminary notice and hearing objection a final notice is to be served and after awarding compensation the collector shall take over the possession of the land under the provision of Section 16 of the said Act and only after taking over possession under section 16 of the Act, the land shall be vested absolutely in the Government free from all encumbrances and in the instant case, possession of the land in question was never taken over at any point of time during the proceeding and as the petitioner and his other co-sharers have been possessing the same till now and as such the acquisition proceeding in respect of the land in question is liable to be declared to have been done without lawful authority and is of no legal effect.

Learned Counsel for the petitioner has further submitted that the entire acquisition proceeding so far it relates to the land in question is being held illegally and on flagrant violation of law and the possession of the land was never taken over at any

point of time and over and above the authority had received the rent from the petitioner, and as such the acquisition proceeding so far it relates to the land in question is liable to be declared to have been done without lawful authority and is of no legal effect.

Contrarywise, learned Deputy Attorney General for Bangladesh, Mr. Md. Imam Hossain (Tareq), submitted stating that the L.A. Case 48/1976–77 for acquisition of land under Mouza Dakhin Kamrup Dolong, J.L. No. 208, P.S. Sunamganj, comprising Plot No. 1241, Khatian No. 154, measuring 3.71 acres, was lawfully initiated and completed. The petitioner's claim of right, title, or possession is emphatically denied. The land has long been in the possession of the Executive Engineer, Bangladesh Telephone and Telegraph, Sylhet, and was utilized for the construction of the Pagla Wireless Office, which is presently operational thereon. The inquiry reports confirm that possession of the acquired land was duly handed over to the Telephone and Telegraph Authority. The petitioner was asked to receive compensation by a memo dated 11.03.2014; thereafter, C.C. Case 01 of 2014 resulted in the

recovery of Tk. 4,020/-, refunded via Treasury Challan dated 12.03.2015. The survey report does not support the petitioner's possession, but merely records rival claims.

He further submitted that all statutory procedures were duly complied with; that compensation was paid to the rightful owners; and that possession was lawfully vested in the Government and transferred to the said Authority. He finally referred to the decision as contained in 3 BLC (1998) 330, where a Division Bench of the High Court Division, in dealing with Section 6(3) of the Acquisition and Requisition of Immovable Property Ordinance, 1982, discharged the Rule concerned. Accordingly, the instant Rule is devoid of merit and liable to be discharged with costs.

However, Mr. Pratikar Chakma, learned Counsel for respondent 6, by an affidavit-in-opposition, submitted *inter alia* that 3.71 acres of land under Dag No. 1241, Mouza Dokhin Kamrup Dolong, Sunamganj, was duly acquired on 20.01.1977 in L.A. Case 48/1976–77 for the establishment of a Wireless Station of Bangladesh Telegraph and Telephone Board (T&T), Sylhet at Pagla. Compensation was paid by T&T/BTCL

through the Deputy Commissioner, Sylhet, who thereafter delivered possession to T&T/BTCL. Since then, respondent 6 has been in lawful ownership and possession, having constructed structures, demarcated boundaries, and regularly paid rent/taxes to the Government, while the original owners received due compensation.

Learned Counsel further submitted that, after a long lapse of time, the petitioner applied on 09.07.2012 before the Deputy Commissioner, Sunamganj, for the release of the land. Upon inquiry, a report dated 01.10.2012 confirmed that compensation had already been paid by the requiring body (T&T Board) and received by the recorded owners. It was also found that Title Suit No. 38 of 1977, filed by Kutub Uddin and others, was dismissed for non-prosecution, and by order dated 15.05.1979, the learned Subordinate Judge directed payment of the remaining compensation to the recorded owners (Annexure-F). Pursuant thereto, the Land Acquisition Officer, by letter dated 11.03.2014, decided to pay compensation for 1.2367 acres to the recorded owners (Annexure-G).

In view of the above, the petitioner is not entitled to any relief in writ jurisdiction, as the competent authority has already decided to compensate the recorded owners. The claim, having been made after an inordinate delay, is also barred by limitation; hence, the writ petition is not maintainable, and the Rule is liable to be discharged.

He also submitted that respondent 6, after taking possession, constructed structures on the land and resisted unlawful attempts of encroachment with the assistance of the authorities, including by lodging GD and criminal proceedings. Subsequently, the land was recorded in the name of the Government (Ministry of Telegraph and Telecommunication) and finally gazetted on 17.01.2017 under section 5(7) of the Emergency Requisition of Property Act, 1948. Accordingly, the petitioner has no subsisting interests over the acquired land, and respondent 6 has been regularly paying government rent/taxes. He conclude argument by referring to decisions as contained in 61 DLR (AD) 121, regarding non-service of statutory notices upon the affected party, and another case of Indian Supreme Court, as contained in 13 SCC (2010) 98],

where Court dealt with non service of notice as contemplated under S. 9(3) of the Land Acquisition Act, 1894, and discharged the Rule concerned. Similarly, the learned Counsel prayed for discharging the instant Rule.

Upon hearing the learned Counsels appearing for the petitioner and the respondents, and upon perusal of the writ petition, affidavits-in-oppositions, and the documents annexed thereto, it transpires that the Rule was issued concerning the inclusion of the petitioner's 1.2366 acres of land out of the total land measuring 5.71 acres, in L.A. Case No. 46/1976–77 of Mouza Dakkhin Kamrup Dolong, J.L. No. 208, Plot No. 1241, within the acquired land measuring 3.71 acres under Police Station and District Sunamgonj.

However, a scrutiny of Annexure-A to the writ petition and Annexure-10 to the affidavit-in-opposition unmistakably reveals that the relevant acquisition proceeding was, in fact, L.A. Case No. 48/1976–77. The question, therefore, arises as to whether the Rule Nisi requires rectification in this regard.

In this perplex, we observed that at the time of hearing of the Rule, it was detected that the Rule had inadvertently been issued mentioning “46” instead of “48”, which appears to be nothing but a clerical inadvertence occurring in the cause title and prayer portion of the writ petition on the part of the learned Advocate for the petitioner. On careful examination of the writ petition, it is further found that the petitioner correctly mentioned L.A. Case 48/1976–77 in paragraph 4 of the writ petition (page 5), which is also fully consistent with the contents of Annexures A, E, F, G, and H annexed thereto.

Moreover, the learned Counsels for the contesting respondents fairly conceded during the hearing that the correct acquisition proceeding is L.A. Case 48/1976–77, and the affidavits-in-opposition, together with the annexed documents, unequivocally support the said position in place of L.A. Case No. 46/1976–77. Furthermore, Section 21 of the General Clauses Act, 1897, recognizes and preserves the power of the competent authority to amend or correct clerical, accidental, or inadvertent errors. It is well recognized in law that the power to issue notifications, orders, rules, or bye-laws carries with it the

concomitant authority to supplement, alter, modify, amend, or rescind the same. Nevertheless, the exercise of such authority must remain prospective in operation, and cannot be invoked retrospectively to defeat vested rights, unsettle completed proceedings, or render ineffective lawful acts already concluded and finalized.

In view of the foregoing facts and circumstances, as well as legal schemes, we are constrained to hold that the instant Rule, by way of amending in its own motion of this Division Bench, shall be deemed to have been issued in respect of L.A. Case 48/1976–77 instead of L.A. Case No. 46/1976–77.

Admittedly, the then Deputy Commissioner and Land Acquisition Officer, Sylhet, vide his order dated 07.02.1977, initiated the L.A. Case 48/1976-77 for acquisition of the land under Mouza Dokhin Kamrup Dolong, J. L. No. 208, Police Station-Sunamgonj, bearing Dag No. 1241 to the area of 3.71 acres, including the land of the predecessors of the petitioner. The pivotal issue for determination, at this stage, is whether the land in question belonged to the petitioner, was lawfully acquired, or not. At this juncture, it becomes imperative to

consider the legal regime and governing doctrines pertaining to the acquisition of private property by the Government in furtherance of public interest. The relevant provisions of Section 4 of the Land Acquisition Act, 1894, are reproduced hereunder:

4. Preliminary Investigation, Publication of preliminary notification and powers of officers thereupon—

(1) Whenever it appears to the Collector of the District that land in any locality is needed or is likely to be needed for any public purpose or for a Company, a notification to that effect shall be published in the official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

From a plain reading of the aforesaid provisions, it is found that the Government must publish a notification for the acquisition of land in the official Gazette, and the Collector shall also provide public notice at convenient places in the said locality.

On perusal of Annexures A and 9 to the writ petition and affidavit-in-opposition, respectively, it is perceived that the alleged L.A. case was started under the provisions of “The (Emergency) Requisition of Property Act, 1948 (East Bengal Act XIII of 1948)”, while the Land Acquisition Act, 1894, was prevalent for the acquisition of the immovable properties for public purposes. However, both the said Acts were subsequently repealed by the Acquisition and Requisition of Immovable Property Ordinance, 1982, which incorporated saving provisions under Sections 47 and 48 thereof.

However, the fundamental propositions of both Acts are alike: public notice, notice to the persons interested, objections, making an award, and finally gazette notification. Thus, we are required to examine the legal propositions connecting the factum matrix of the instant case, as the provisions of section 5 of the Land Acquisition Act, 1894 denoted that where land is to be acquired for a public purpose, the Commissioner, is satisfied, at any time, that any particular land included in a locality notified under sub-section (1) of section 4 is needed for a public purpose or a Company, as the case may be, a

notification to that effect shall be published in the official Gazette, the purpose for which it is needed, its approximate area and situation, and the Collector shall cause public notice to be given of the substance of the notification at convenient places on or near the land to be acquired. Thereafter, provisions of Section 5-A relate to the hearing of objections, where any person interested in any land which has been notified under Section 5 as being needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be. Then, the provisions of Section 6 provided declaration that the particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of the Commissioner or of some officer duly authorized to certify such order. Thereafter, a very important matter to notice for the persons interested is provided in section 9 as under: -

9. Notice to persons interested –

- (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be

taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may, in any case, require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address, or place of business and registered under Part III of the Indian Post Office Act, 1866. The Collector shall also serve notice of the enquiry to be held under section 11 (such notice not being less than fifteen days prior to the date fixed under sub-section (2) for determination of claims and objections) on the Department of Government, local authority or Company, as the case may be, for which land is being acquired, and require it to depute a duly authorized representative to attend the enquiry on its behalf for the purpose of making objections (if any) to the measurement of the land, claims to any interest in the land or the amount of any compensation. Such authorized representative shall be a party to the proceedings.

In this context, the petitioner is concerned that no notice was served upon them, as the acquisition body did not serve any notice under Section 9 of the Land Acquisition Act, 1894, or

notice under Section 4 of the (Emergency) Requisition of Property Act, 1948. On a careful examination of the contents of Annexure-B, it is noticeable that the alleged acquired land belongs to S.A. Khatian No. 154, plot No. 1241, measuring 3.71 acres of land possessed by 3 groups of co-sharers, headed by Hachhan, Erman, and Azmol on equal shares. Thus, annexures 5 and 6 to the affidavit-in-opposition disclosed that notices were only served upon 2 groups of co-sharers of the said S.A. Khatian, excluding Abul Hachhan Chowdhury, i.e., predecessor of the petitioner.

On examining the Annexure-G to the writ petition it is noticeable that on 09.07.2012, the petitioner filed an application for releasing the acquired land, so far it relates to 1.2367 acres, and then the Land Acquisition Officer, Sunamganj, replied in the following way-

“স্মারক নং: ০৫.৩৫২,০০০,০০৯,০০,০০০,২০১৪.৫২, তারিখ: ১১ মার্চ ২০১৪

বিষয়: এলএ কেইস নং-৪৮/১৯৭৬-৭৭ াতিল করার আবেদন প্রসংগে।

সূত্র: ডাঃ নজমুস সাকিব চৌধুরী গং, পিতা-মৃত শায়েকুল ইসলাম চৌধুরী, সাং-প্রীরগাঁও, থানা-দঃসুনামগঞ্জ এর ০৯/০৭/২০১২ তারিখের আবেদন মোতাবেক।

উপর্যুক্ত ঐষয় ও সূত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, আপনার দাখিলকৃত আবেদনের ঐষয়ে ইতিপূর্বে শুনানী গ্রহন করা হয়েছে। উল্লেখ্য যে, এলএ কেইস নং-৪৮/১৯৭৬-৭৭ সম্পর্কিত ১৫/০৫/১৯৭৯ তারিখে সিলেট সার্বভৌম ১ম আদালতে ৩৮/১৯৭৭ নং স্বত্ব মোকদ্দমার আদেশে প্রকৃত রেকর্ডীয় মালিক প্রাথমিক ক্ষতিপূরণ প্রদানের সিদ্ধান্ত হয়েছিল। সে মোতাবেক আব্দুল হাসান চৌধুরী গং পিতা-মৃত আব্দুল ওয়ারিশ চৌধুরী ১২৪১ নং দাগে ৩.৭১ একর ভূমির মধ্যে ১.২৩৬৭ একর ভূমির প্রকৃত রেকর্ডীয় মালিক। আপনি আবেদনকারী ডাঃ নজমুস সাকিব চৌধুরী গং, পিতা-মৃত শায়েকুল ইসলাম চৌধুরী, সাং-প্রীরগাঁও রেকর্ডীয় মালিকের উত্তরাধিকারী হিসেবে ১.২৩৬৭ একর ভূমির ক্ষতিপূরণ প্রাপ্ত ৭,৬৭৯/৯১ টাকা প্রাপ্য হবেন। আপনার প্রাপ্য ৭,৬৭৯/৯১ টাকার মধ্যে নথিখাতে ৩.৬৬২/৭৯ টাকা জমা আছে। অশিষ্ট ৪,০১৭/১২ টাকা অপর ২জন রেকর্ডীয় মালিক জনাব আজমল আলী গং, পিতা-ইয়াছিন আলী এবং জনাব এরমান আলী গং, পিতা-ইউসুফ আলী এর নিকট থেকে পিডিআর আইনে আদায় করে আপনার অনুকূলে মোট ৭,৬৭৯/৯১ সাত হাজার ছয়শত উনআশি টাকা একানব্বই পয়সা) টাকা প্রদানের সিদ্ধান্ত গৃহীত হয়েছে।

এমতাবস্থায় অধিগ্রহণকৃত ভূমি ফেরত পাওঁতিল করার আইনগত কোন সুযোগ না থাকায় আপনার আবেদনটি না-মঞ্জুরক্রমে নথিভুক্ত করা হয়েছে।", which concomitantly relates to the proposition that the predecessors of the petitioner were rightful owner of 1.2367 acres of land, and his compensational money were not remained in his name, whereas the lion portion of the said money were disbursed to

other persons by which best reasons known to the pertinent authority.

On a careful read-through of the Annexure-H to the writ petition, it appears that the Additional Deputy Commissioner (Revenue) Sunamganj passed an order on 3.3.2014, and mentioned that:

“প্রত্যাশী সংস্থা অধিগ্রহণকৃত ভূমির পশ্চিম পার্শে একটি আবাসিক ভবন ও দুইটি অফিস ভবন নির্মাণপূর্বক প্রত্যাশী সংস্থা ভোগদখল করে আছেন। অধিগ্রহণকৃত ভূমির পশ্চিম ও উত্তর পার্শে কিছু অংশে কাটা তারের বেড়া থাকলেও দক্ষিণ ও পূর্ব দিকে কোন কাটাতারের বেড়া বা সিমানা প্রাচীর নেই।

He further mentioned that: এমতাবস্থায়, (ক) যেহেতু ১৫-০৫-১৯৭৯ তারিখে সিলেট সাব জজ ১ম আদালতে ৩৮/১৯৭৭ নং স্বত্ব মোকদমার আদেশে প্রকৃত রেকর্ডীয় মালিক বরাবরে ক্ষতিপূরণ প্রদানের আদেশ প্রদান করেন, যেহেতু ১ নং ক্রমিকে বর্ণিত রেকর্ডীয় মালিক আবুল হাসান চৌধুরী গং, পিতা- আব্দুল ওয়ারিশ চৌধুরী ১২৪১ নং দাগে মোট ৩.৭১ একর ভূমির মধ্যে ১.২৩৬৭ একর ভূমির রেকর্ডভুক্ত প্রকৃত মালিক। সেহেতু ১ নং ক্রমিকে বর্ণিত রেকর্ডীয় মালিক আবুল হাসান চৌধুরী গং ১.২৩৬৭ একর ভূমির ক্ষতিপূরণ বাবদ ৭,৬৭৯/৯১ (সাত হাজার ছয়শত

উনআশি টাকা একানব্বই পয়সা মাত্র) টাকা প্রাপ্য হবেন। প্রাপ্য ৭,৬৭৯/৯১ টাকার মধ্যে নথিখাতে ৩,৬৬২/৭৯ টাকা জমা আছে। অবশিষ্ট ৪,০১৭/১২ টাকা পিডিআর আইনে ২ ও ৩ নং ক্রমিকে বর্ণিত আজমল আলী গং, পিতা- ইয়াছিন আলী এবং এরমান আলী গং, পিতা- ইউসুফ আলী এর নিকট থেকে আদায় করে ১ নং ক্রমিকে বর্ণিত রেকর্ডীয় মালিক আবুল হাসান চৌধুরী গং বরাবরে ৭,৬৭৯/৯১ (সাত হাজার ছয়শত উনআশি টাকা একানব্বই পয়সা মাত্র) টাকা প্রদান করা যেতে পারে। এখানে উল্লেখ্য যে, প্রত্যাশী সংস্থা কর্তৃক হুকুম দখলকৃত ভূমির সম্পূর্ণ টাকা পরিশোধ করার পর ক্ষতিগ্রস্ত মালিকগণের নামে রোয়েদাদ বহি প্রস্তুত ও ৭ ধারার নোটিশে জারীর পর গেজেট প্রকাশনার জন্য পরবর্তী পদক্ষেপ গ্রহণ করা হয়। সে মোতাবেক রোয়েদাদ বহিতে ও ৭ ধারার নোটিমে আবেদনকারীগণের নাম অন্তর্ভুক্ত করে গেজেট প্রকাশনার জন্য পরবর্তী পদক্ষেপ গ্রহণ করা যেতে পারে।“

[*Emphasi addita*]

The aforementioned context indicates that the names of the predecessors of the petitioner were not included in the Award Book, as well as in the Notice under Section 7 of the said Act. The full quantum of the petitioner's compensation money was not deposited in the Government Treasury until 03.03.2014. The Requiring Body did not possess the claimed land of the petitioner by demarcating its boundary or by

accruing title through the final Gazette publication of the acquisition. In this regard, we may refer to a Circular of the Ministry of Land, which is as follows:

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

ভূমি মন্ত্রণালয়

শাখা-১১

নং-ভূঃমাঃ/শা-১১/ছঃ দঃ/শাখা-১৪/৯৭/৪৩৫ (৬৪)

তাং- ১১-০৮-১৪০৪ ঞাং

২৫-১১-১৯৯৭ ইং

প্রাপক: জেলা প্রশাসক (সকল)

প্রিষয় : ১৯৪৮ সনের সম্পত্তি (জরুরি) হুকুমদখল আইনে ঞা তৎপূর্বেকার আইনে এল এ  
কেসসমূহের নিষ্পত্তি প্রসংগে।

১৯৪৮ সনের সম্পত্তি (জরুরি) হুকুমদখল ঞা তৎপূর্বেকার আইনে রজুকৃত ঞহ  
এল.এ. কেস এখনও অনিষ্পন্ন অঞস্থায় রহিয়াছে মর্মে দৃষ্টিগোচর হইয়াছে। জেলা প্রশাসক  
কর্তৃক চূড়ান্তকৃত প্রাক্কলন প্রস্তুত না করা, প্রত্যাশী সংস্থা কর্তৃক প্রাক্কলিত অর্থ প্রদানে  
প্র্যর্থতা, কাগজপত্রের অভাঞ, দেওয়ানি মামলার সম্পৃক্ততা ইত্যাদি কারণে উক্ত কেসসমূহ  
ঞসরের পর ঞৎসর অনিষ্পন্ন থাকায় নানাঞধি আইনগত জটিলতার সৃষ্টি হইতেছে।  
গেজেট প্রিজ্ঞপ্তির মাধ্যমে কেসগুলির অধিগ্রহণ কার্চক্রম চূড়ান্ত না হওয়ায় প্রত্যাশী  
সংস্থার ঞরাঞরে সংশ্লিষ্ট জমির জমাখারিজ করাও সম্ভঞ হইতেছে না। ফলে সরকার প্রতি  
ঞৎসর ঞিপুল পরিমাণ ভূমি উন্নয়ন কর হইতে ঞক্ষিত হইতেছে।

২। এই অঞস্থা নিরসনের লক্ষ্যে মন্ত্রণালয়ের ২২-৯৯-৯৩ ইং তারিখের ভূঃমাঃ/শা-  
১১ছঃদঃ/সাধারণ-৪/৯৩/৪৭৭/১(৬৪)-একুইন নং স্মারক মারফত ১৯৪৮ সনের সম্পত্তি  
(জরুরি) হুকুমদখল আইন ঞা তৎপূর্বেকার আইনে চালু অনিষ্পন্ন এল.এ. কেসসমূহ ৩১-৩-  
৯৪ খ্রিঃ তারিখের মধ্যে নিষ্পন্ন করার জন্য অনুরোধ করা হইয়াছিল। কিন্তু অদ্যাঞধি সকল  
অনিষ্পন্ন কেস নিষ্পন্ন করা হইয়াছে ঞলিয়া প্রতীয়মান হয় না।

৩। উপরোক্ত অস্থায়ী ১৯৪৮ সনের সম্পত্তি (জরুরি) আইন অনুযায়ী চালুকৃত এল.এ. কেসসমূহ আগামী ৩০-৬-৯৮ খ্রিঃ তারিখের মধ্যে গেজেট প্রজ্ঞাপ্তি প্রকাশের জন্য মন্ত্রণালয়ে প্রেরণ করিতে অনুরোধ করা হইল। ঐ সকল কেস বিভিন্ন কারণে নিষ্পন্ন করা সম্ভব নয় তাহারও একটি তালিকা, কারণ/কারণসমূহ উল্লেখপূর্বক নির্দিষ্ট তারিখের মধ্যে প্রেরণের জন্য অনুরোধ করা হইল।

স্বা/-(মোঃ আব্দুল হাই)

উপ-সচিব (উঃ)

তাং ২৫-১১-১৯৯৭ইং। ১১-৮-১৪০৪ পাং

From the aforesaid circular, it becomes evident that the respondents were very reluctant to take steps as per the said circular, and the acquisition proceeding was not completed as per law. We also observed that the Rule to this writ petition was issued on 16.09.2014, and the Annexure-10 to the Affidavit-in-opposition revealed that the Acquiring Body published its Gazette Notification on 20.04.2017, without arranging and providing the compensation money against 1.2367 acres of land in favor of the petitioner.

Considering the above scenario of the instant Rule, we observe that the substratum of facts culminating to meet up the mandatory legal perspectives are- (i) the names of the predecessors of the petitioner were not included in the Award

Book, (ii) Notice under Section 7 of The (Emergency) Requisition of Property Act, 1948 (East Bengal Act XIII of 1948) was not served upon the predecessors of the petitioner, (iii) the full quantum of the petitioner's compensation money was not deposited in the Government Treasury until today, and (iv) the Requiring Body did not accrue the title through the final Gazette publication of the acquisition till to filing this writ petition. These intertwined legal cohorts are required to be examined in their entirety for the purpose of rendering a complete, effective, and exhaustive adjudication of the Rule Nisi.

At this juncture, it is incumbent upon this Court to examine whether the decisions referred to and relied upon by the learned Counsels for the respondents are capable of overriding, displacing, or otherwise adequately addressing the aforesaid factual backdrop and legal matrix involved in the instant Rule Nisi. Learned Counsel appearing on behalf of respondent 6 has placed reliance upon the decision reported in 61 DLR (AD) 121, wherein the factual background reveals that the writ-petitioner-respondent was the undisputed owner of a

residential house popularly known as “Hriday Nibash,” which had initially been requisitioned by the Collector of Mymensingh and, thereafter, formally acquired through publication of the requisite Gazette Notification in accordance with law. In the said case, there existed no controversy whatsoever regarding non-service of statutory notices upon the affected party, nor was there any dispute concerning the lawful making of the award by the competent authority. As such, the issues involved therein were materially and substantially different from those arising in the present case. Consequently, the ratio and principles enunciated in the aforesaid decision are clearly distinguishable on facts and circumstances and, therefore, have no direct application to the case at hand.

Learned Counsel for respondent 6 further referred to another decision of the Indian Supreme Court [in MAY George Vs. Special Tahshilder and others, 13 SCC (2010) 98], where it is found that acquisition of large tract of land belonging to different persons - Challenge to acquisition after possession taken by State, by one person owning negligible area vis-à-vis the total acquired land- Appellant challenging

acquisition proceedings on ground that she had no knowledge thereof, and that she was not served with notice as contemplated under S. 9(3) of the Land Acquisition Act, 1894- Court Held, once award was made and possession taken, land stood vested in State free from all encumbrances and it cannot be divested even if some irregularity is found in award - Further held, appellant's land was of negligible area in comparison to total land acquired and therefore, at behest of only one person, acquisition proceedings cannot be disturbed. In this regard, we hold that the said facts and legal propositions do not aid our case in hand.

Learned Deputy Attorney General for Bangladesh referred to a decision contained in 3 BLC (1998) 330, Abdur Rouf Choudhury (Md) and 4 others Vs. ADC (Land Acquisition) & others, where a Division Bench of the High Court Division, in dealing with Section 6(3) of the Acquisition and Requisition of Immovable Property Ordinance, 1982, was pleased to hold that although the petitioners were interested in the property under acquisition but no notice was served under section 6(3) of the Act which is an irregularity in the procedure

will not *ipso facto* render the acquisition illegal provided the acquisition was for a public purpose and the compensation amount was adequate and fixed in accordance with law. In this regard, our considered view is that the case in our hand dealt with the provisions of the earlier Act, and the referred decision does not cure the patent violation detected earlier in the instant case.

Learned Deputy Attorney General for Bangladesh, strenuously opposed the Rule and contended that once a property is lawfully acquired and the final Gazette Notification is published under section 5(7) of the Emergency Requisition of Property Act, all right, title, and interest, if any, of the original owners or claimants stand absolutely extinguished and vested in the Government free from all encumbrances. At this point, quite apart from the admitted facts of the present case, the argument made by the learned DAG is of considerable legal importance.

However, upon a cautious scrutiny of the materials on record, we are constrained to observe that the predecessors-in-interests of the petitioner were admittedly recorded tenants in

respect of the land in question, yet no notice whatsoever was served upon them at any stage of the acquisition proceeding. Furthermore, their names were conspicuously omitted from the Compensation Assessment Roll/Award Book, thereby effectively depriving them of the opportunity to participate in the statutory process, including the filing of objections and seeking arbitration in accordance with law. It also transpires from the records that the final Gazette Notification was published after an inordinate delay of nearly 40 years from the initiation of the acquisition proceeding, while the Requiring Body itself failed to establish exclusive and uninterrupted possession over the acquired land.

In such circumstances, it can reasonably and safely be inferred that the petitioner and his predecessors were unlawfully deprived of the opportunity to submit objections, participate in the acquisition proceeding, seek proper adjudication of their claims, and avail the statutory remedy of arbitration in relation to compensation. The deprivation of such procedural safeguards has undeniably caused serious prejudice to the petitioner.

Moreover, had the petitioner or his predecessors been afforded the opportunity to receive compensation contemporaneously with the acquisition proceeding, they could have meaningfully utilized the said compensation at the relevant point in time. By reason of the prolonged delay and procedural omission on the part of the authorities, the compensation amount, even if offered now, would be grossly disproportionate and insignificant in comparison to the present market value of the property, thereby causing immense economic detriment, financial hardship, and prolonged mental agony to the petitioner.

Considering the above facts and legal propositions as well as submissions of the learned Counsels for both sides, we are of the view that the law of acquisition gives the Deputy Commissioner the power to acquire property for a public purpose within the mandatory legal purview, and of Constitutional guarantees, thus inherent violation of mandatory provisions of law caused a paucity to stand the acquisition against the petitioner in the instant case, and thereby the Rule got essence to sustain; consequently, the inclusion of 1.2366

acres out of 5.71 acres of land of the petitioner through L.A. Case No. 48/76-77 situated under Mouza-Dokhin Kamrup Dolong, J.L. No. 208, Police Station+ District: Sunamgonj, bearing Dag No. 1241 to the area of 3.71 acres, so far as it relates to the share of the petitioner in respect of 1.2366 acre of land still under the possession of the petitioner is hereby declared to have been done without lawful authority and is of no legal effect.

Accordingly, the Rule is made absolute without any order as to costs.

Be that as it may, the respondents shall remain at liberty to proceed afresh with the acquisition of the land in question, so far as the petitioner's alleged right and interest are concerned, provided that the entire process is carried out anew in strict adherence to the governing laws of the land, maintaining scrupulous compliance with all statutory mandates, procedural requirements, and safeguards recognized under the laws of Bangladesh.

The order directing maintenance of the *status quo*, granted earlier, is hereby recalled and vacated.

The Office is directed to communicate this judgment and order to the respondent No. 3 immediately.

The Court places on record its appreciation for the able assistance rendered by the learned Counsels for both parties, which has greatly aided in the expeditious disposal of the Rule.

**( Abdur Rahman, J )**

**Bhishmadev Chakrabortty, J:**

**I agree**

**(Bhishmadev Chakrabortty, J)**