

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.4447 OF 1998

Local Government Engineering Directorate,
Narsingdi, represented by the Executive
Engineer, Narsingdi.

..... Petitioner

-VERSUS-

Abdus Sobhan being dead his legal heirs:
Mrs. Laki Begum and others
..... Opposite Parties.

No one appears

..... For the petitioner.

Mr. M. Khaled Ahmed, with

Mr. Abu Sadeque Abdullah, Advocate

---- For the opposite parties..

Heard on 01.06.2025 and 03.08.2025

Judgment on 12.08.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and order dated 12.07.1998 passed by the learned Additional District Judge, Narshingdi in Arbitration Appeal No.01 of 1997 disallowed cross appeal of the respondent-petitioner, and allowed the appeal, preferred by the plaintiff-opposite party by way of modifying the award passed in Arbitration Court in Revision No. 05 of 1994

should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

Facts in brief for disposal of the Rule are that the Opposite Party No. 01 herein as applicant filed an Arbitration Revision being Salisha Revision No. 05 of 1994 before the Subordinate Judge (Joint District Judge) and Arbitrator, Narshingdi for revision of award No. 3 and 4 passed in Land Acquisition Case No. 25/93-94 T J being value for 26 ½ (twenty six and a half) acres of land and compensation thereof Tk.3,58,558/- and of Tk.78,232.25/- being value of 8½ decimals of land and compensation of Tk.89,11,693/- passed by the land acquisition authority Narshingdi on the allegations inter alia an area of .35 decimals of land appertaining to Plot No. 69 under S.A. Khatian No.6 of Taraua Mouja under Police Station and District-Narshingdi was acquired by the Government for the office of the Executive Engineer, Local Government Engineering Bureau Narshingdi and notice under section 7(3) of the Ordinance 2 of 1982 was served by the Opposite Party No. 02 upon the petitioner for the acquisition of the land fixing Tk.7,17,117/- for the land measuring 26½ (twenty six and a half) decimals at the rate of Tk.25,16,200/- per acre, 50% additional on the same value Tk.3,58,558/- and valuing remaining .8½ acres of the chala land

at Tk.1,78,232.25/- and additional 50% on the said value as compensation at Tk.89,116.13/-.

The Opposite Party filed objection against the valuation stating that the entire 35 decimals of land was Bithi land and situates on the north of the road of Zilla Board and is adjacent to Narshingdi Stadium; Circuit House, to the east of the land Office of the Superintendent of Police, Court of Sessions Judge and Office of the Deputy Commissioner situates there and the land is more valuable than other lands. The value of one decimal of land was more than Tk.90,000 at the time of acquisition, etc. The petitioner further stated that he had 10 roofed, pucca rooms, one tubewell, and one latrine on the land. He claimed Tk. The total cost is 31,50,000/- for 35 decimals of land, plus other costs for the house, tubewell, and latrine, totaling Tk. 36,27,000/- in all. Additionally, there is an amount of Tk.18,13,500/- as compensation at 50% of the total. The award was given for Tk.16,27,551/-, including value and compensation, etc. He claimed further amount of Tk.38,12,948.82 beside the award determined by the Respondent No. 01. Opposite Party No. 2 filed objection against the revision petition, denying all the contentions of the opposite party No. 01 stating inter alia that 26½ decimals of Bithi land and 8½ of chala land out of 69 decimals of were

acquired from the opposite party and notice was issued on 07.06.1996 assessing value of the acquired to for an award of Tk.10,75,675.5 and compensation Tk.2,67,348/- the opposite party No. 01 as Awardee received the award money at the said rate in award No. 03 and 04. One Nasirul Huq was paid Tk.75,486/- for compensation of 2 decimals of land. An objection against the award was entered in the peon book of the General Section of the department.

The opposite party No. 2 (Requiring Body) filed an objection against the revision petition, denying all the contentions of the Revision Petition, stating, inter alia, that by petition No. 67 dated 15.06.1994, the objector had been paid compensation on 15.06.1995. The opposite party also stated, by filing an additional objection, that notices under sections 3 and 10 were served on him on 9 December 1993 and 10 January 1994, respectively. The value of per-acre Bhati land chala lands is Tk. 25,16,200/- and Tk. 20,96,850/-respectively as per the price index of the Sub-Registrar, Narshingdi, and accordingly the Deputy Commissioner approved the value of the land on 14.02.1995, and the opposite party was paid the value for the land at the said rate, and possession of the acquired land was delivered to the requiring body on 07.06.1994, and there was no scope for enhancement.

The learned Subordinate Judge and Arbitrator of Narshingdi framed the necessary issues to substantiate the dispute between the parties.

Subsequently, the learned Subordinate Judge (now a joint district judge) and Arbitrator of Narshingdi, by the Judgment and order dated 06.04.1997, allowed the revision in part in favour of the applicant, directing the opposite parties to pay the further amount of Tk. 12,81,986/- as compensation to the applicant of the Arbitration Revision Case No. 05 of 1994.

Being aggrieved by and dissatisfied with the said Judgment and order, the petitioner-opposite party No. 1, as appellant, preferred Arbitration Appeal No. 1 of 1997, and the petitioner herein, the requiring body, as appellant, also preferred a cross-appeal before the Arbitration Appellate Tribunal and the learned District Judge, Narshingdi.

Eventually, the learned Arbitration Appellate Tribunal and the learned District Judge of Narshingdi, by the Judgment and order dated 12.06.1998, disallowed the cross-appeal and affirmed the award of Tk.12,81,986/- and of the giving award of the additional award of Tk.1,11,707/-

No one appears on behalf of the petitioner.

Mr. M. Khaled Ahmed along with Mr. Abu Sadeque Abdullah the learned Advocate appearing on behalf of the opposite party, submits that the Arbitration Appellate Court below having considered all the materials, facts and others relevant law enhance the compensation. Therefore, the appellate court below did not commit any error of law, resultantly error in decision occasioning failure of justice. That the section 31 of the Arbitration Ordinance is not applicable in the instant case as the amendment was made; this section inserted after amendment in the year of 1994. Where the compensation was fixed 15.06.1994.

We have carefully considered the Judgment of the courts below and perused the other material evidence on record. It appears that, in this case, it is necessary to consider whether the provision of Section 31 of the Acquisition and Requisition of Immovable Property Ordinance, 1982, is applicable or not.

From the Judgment and order of the Arbitration Appellate Tribunal. It appears that the court of appeal below considered the materials on record and awarded additional compensation at the higher rate, along with a direction to pay an additional amount with interest at the rate of ten percent from the date of taking over the position until payment of the revision award. In this backdrop, the relevant law may be quoted as below:

Section 31 of the Acquisition and Requisition of Immovable Property Ordinance, 1982.-

“In determining the amount of compensation to be awarded for any property acquired or requisitioned under this Act, the Arbitrator shall be guided by the provisions of sections 8 and 9 or 20, as the case may be:

Provided that the compensation determined by the Arbitrator in respect of each owner shall not exceed the amount specified in the award of the Deputy Commissioner by more than ten per centum.”

The above-quoted proviso had been inserted in section 31 by section 9 of the Acquisition and Requisition of Immovable Property (Amendment) Act, 1994 (Act No. XX of 1994).

Admittedly, the land in question has been acquired, and the assessment of compensation was made by the Deputy Commissioner before the insertion of the said proviso, as stated above. We also, upon considering the said proviso, do not find any indication that the said proviso is given any retrospective effect and, as such, the proviso as inserted in section 31 of the Ordinance, 1982, has no manner of application in the present case.

In view of such circumstances, our considered opinion is that the proviso to section 31 of the Ordinance, 1982, has got no manner of application in the instant case.

It is evident from the record that, against the Judgment and order of the Arbitration court, the petitioner herein (the acquisition authority), as appellant, preferred a cross-appeal to the Court of Appeal below. Subsequently, the Court of Appeal below rejected the cross-appeal as it was not maintainable under the Acquisition and Requisition of Immovable Property Ordinance 1982, with the finding that:-

“বিজ্ঞ সালিস আদালত কর্তৃক প্রদত্ত রায়দাদে প্রতিপক্ষ আইনত: ক্ষুদ্র হয় নাই। তদহেতু ইহার বিরুদ্ধে কোন আপীল দায়ের করেন নাই। তবে অত্র সালিস আপীল মোকদ্দমার ২ নং প্রতিপক্ষ ১৯-০৮-১৯৯৭ তারিখে ক্রস আপীল নামে একটি দরখাস্ত দাখিল করিয়াছেন। ১৯৮২ সনের স্থাবর সম্পত্তির অধিগ্রহণ ও দখল গ্রহণ অধ্যাদেশের বিধান মতে কেবল আপীল দাখিল করা যায়। কোন ক্রস আপীল কিংবা আপত্তি দাখিলের আইনগত বিধান না থাকায় ২ নং প্রতিপক্ষ কর্তৃক দাখিলকৃত ক্রস আপীল নামীয় দরখাস্তটি বিবেচনা যোগ্য নয়।

It appears that the petitioner herein, being the requiring body, preferred a cross-appeal against the Judgment and order of the Arbitration Court. However, the petitioner does not have any locus standi to agitate the mixed question of fact and law, as there is no provision in the Ordinance of 1982 to make the requiring body either a necessary party or a proper party to the arbitration

proceeding for compensation to the landowner. Therefore, it appears that the appellate court rightly rejected the cross-appeal preferred by the petitioner herein as the Responding Body.

Having regard to the facts, circumstances, and the discussions referred to above, constrained to hold such a view that in the impugned Judgment and order, there is no illegality or infirmity or misreading or non-reading of evidence or non-consideration of material facts resulting in an error in the decision occasioning failure of justice, by which it can be interfered with. Therefore, we do not find any merit in this Rule.

Resultantly, the Rule is discharged with cost.

Communicate the Judgment and send down the lower court records at once.

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(Md. Salim, J).

Rakib(ABO)