

Present:

Mr. Justice Faruque Ahmed
And
Mr. Justice Obaidul Hassan

Civil Revision No. 5831 of 2007

IN THE MATTER OF

Chairman, Rajdhani Unnayan Katripakkha,
RAJUK Bhaban, RAJUK Avenue, Motijheel,
Dhaka-1000.

..... Opposite Party-Respondent- Petitioner

Versus

Mosammat Rahima Khatun and others

.... Petitioners-Respondents Opposite Parties.

Mr. Md. Hefzul Bari, Advocate.

.....For the Petitioner.

Mr. K.M. Hafiqul Alam, with

Mr.Mahbub Shafique, Advocates.

.....For the Opposite Parties

Heard on : 01.06.2011

And

Judgment on : 02.06.2011.

Obaidul Hassan, J.

This Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and order dated 28.05.2006 of the learned District Judge, Dhaka in Arbitration Appeal No. 127 of 2002 affirming those dated 08.10.2002 of the learned Joint District Judge and Arbitrator, Dhaka in Arbitration Revision No. 110 of 1992 should not be set aside or pass such other or

further order or orders as to this court may seem fit and proper.

The facts of the case, in short, are that the present applicants were the owners of a land measuring .12 acres pertaining to C.S. Plot No. 122 of Mouza Brahmin Chiron under Motijheel Commercial Area, Dhaka and the said land was acquired by the opposite party No.4 in a L. A. Case being No. 1/85-86 for expansion of Motijheel Commercial Area, Dhaka. The opposite party No.4, Deputy Commissioner of Dhaka fixed the value of the said acquired land against which the present opposite parties filed Arbitration Revision No. 110 of 1992 before of Court of Joint District Judge and Arbitration Court, Dhaka challenging the assessment of value along with compensation of the said acquired land fixed by the opposite party No.4. The present opposite party N. 1-3 in his application stated that the present opposite party No.4 acquired the land in question against L.A. Case No. 1/85-86 for expansion of Motijheel Commercial Area, Dhaka for the present petitioners. They did not get any notice under section 7(3) of the Acquisition and Requisition of Immovable Property Ordinance, 1982

(herein after referred to as the Ordinance). The present opposite party Nos.1-3 received the compensation money with objection through their lawful attorney. The compensation money was inadequate. Thus the opposite party Nos.1-3 were entitled to get a total some of Tk. 5 crore 76 lacs from the opposite party No.4 as the value of the land along with compensation for the acquired land.

The present opposite party No.4 being the opposite party No.1 contested the said Arbitration Revision No. 110 of 1992 by filing a written objection stating that the compensation in question fixed by the Deputy Commissioner, was correct and reasonable. Notice under section 3 of the Ordinance was served upon the opposite party Nos. 1-3 (petitioners of Arbitration Revision No. 110 of 1992) on 12.07.1986. The notice under section 7(3) of the Ordinance upon the opposite party No. 1 was served on 22.12.1991. The compensation for the acquired land in question was assessed by aggregating the value of 19 low lands (*nul*) which had been sold during 12 months preceding the date of publication of the notice under section 3 of the Ordinance. Therefore, the Arbitration

Revision No. 110 of 1992 filed by the present opposite party Nos. 1-3 as petitioners was liable to be dismissed.

Considering the pleadings of both the parties, the learned Joint District Judge and Arbitration Court was pleased to frame as many as 4 issues. The petitioners in Arbitration Revision examined one witness and the present opposite party No.4 adduced one.

Upon hearing the parties and perusing the records the learned Joint District Judge and Arbitration Court, Dhaka allowed the Arbitration Revision No. 110 of 1992 by his judgment dated 08.10.2002 and awarded compensation in favour of the present opposite party Nos. 1-3 directing the present opposite party No.4 to pay the compensation money fixing at Tk. 15,67,180.80 only within 30(thirty) days from the date of judgment.

Being aggrieved by and dissatisfied with the said judgment and order dated 08.10.2002 passed by the learned Joint District Judge and Arbitration Court, Dhaka in Arbitration Revision No. 110 of 1992 the present opposite party No.4 as appellant preferred Arbitration Appeal No.127 of 2002 before the Court of

District Judge, Dhaka. The present opposite party Nos. 1-3 as respondents contested the said appeal and after hearing both the parties the learned District Judge dismissed the Arbitration Appeal No. 127 of 2002 and affirmed the judgment and order dated 08.10.2002 passed by the Court of Joint District Judge and Arbitration Court, Dhaka in Arbitration Revision No. 110 of 1992.

Being aggrieved by and dissatisfied with the judgment and order dated 28.05.2006 Rajdhani Unnayan Katripakha (RAJUK) filed this Civil Revision with an application for condonation of delay of 91 days only and obtained the present Rule. At the time of issuance of the Rule their lordships were pleased to provisionally condone the delay of 91 days subject to just objection if raised by the opposite parties at the time of hearing.

During pendency of the Rule the opposite party Nos. 1-3 filed an application for discharging the Rule on the point of suppression of fact regarding the delay in filing the revisional application. After hearing the application filed by the opposite party No.1-3 the same was kept with

the record. Today we have taken the matter for delivery of judgment. In the meantime the opposite party Nos. 1-3 filed a counter affidavit controverting the statements made in the application under section 115(1) of the Code of Civil Procedure filed by the petitioner, and submitted that the instant Rule has been obtained by practicing fraud upon the Hon'ble Court and, as such, for the ends of justice the instant Rule may be discharged. In the said counter affidavit the opposite party Nos. 1-3 referred an unreported decision passed in Civil Rule No. 683(con) of 2007, where delay of 389 days occurred in filing the Civil Revision. In that case their lordships discharged the Rule on the ground of delay in filing the Civil Revision which was ultimately affirmed by the Appellate Division of the Supreme Court.

Mr. Hefzul Bari learned Advocate appearing on behalf of the present petitioner at the very outset submits that it is a transferred brief, the revisional application and the application for condonation of delay under section 5 of the Limitation Act was drafted by the previous lawyer Mr. A.K.M Nazrul Islam. He has just stepped in to the shoes of Mr. A.K.M Nazrul Islam. He

submits that the explanation has been given in paragraph 3 and 4 of the application for condonation of delay as to how the delay has been occurred. It appears that the learned filing lawyer has explained how the delay was occurred, but in calculating the total days of delay in filing the present revisional application he committed a mistake. In place of delay of 457 days he mentioned that there had been a delay of 91 days only. On the basis of his statement the delay was provisionally condoned by this Court.

Mr. Mahbub Shafique appearing with Mr. Hafizul Alam learned Advocate on behalf of the Opposite Parties submits that the petitioner intentionally suppressed the fact that there was a delay of 457 days in filing the revisional application. Without mentioning the delay of 457 days he has mentioned only 91 days delay has been caused in filing the revisional application, and in this way he was able to obtain the Rule by condoning the delay provisionally. Mr. Shafique Mahbub further submits that for the reason of suppression of fact alone, the Rule is liable to be discharged with cost.

We have gone through the revisional application, judgment passed by the courts below, counter affidavit, application filed by the petitioner under section 5 of the Limitation Act and the application filed by the respondent No.1-3 for discharging the Rule.

It appears that the learned previous advocate Mr. A.K.M. Nazrul Islam drafted the application under section 5 of the Limitation Act. In paragraph 3 and 4 of the application he tried to explain the cause of delay. He has explained how the delay was occurred. It appears to us that there was negligence on the part of the petitioner (RAJUK) in filing the present revisional application in time. Although, Mr. A.K.M. Nazrul Islam learned Advocate (previous) explained how delay was occurred but in calculating the total days of delay he committed a mistake. In place of 91 days it should have been 457 days. However the explanation given in paragraph 3 and 4 for causing the delay in filing the revisional application does not appear to us satisfactory. Thus we are inclined to discharge the Rule on the ground of delay without touching the merit of the case.

Accordingly, the Rule is discharged however without any order as to costs.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

Send down the lower court records along with a copy of this judgment immediately to the court concerned.

Faruque Ahmed, J:

I agree.

Bilkis