

In the Supreme Court of Bangladesh,
High Court Division
(Special Original Jurisdiction)

WRIT PETITION NO. 8713 OF 2010

IN THE MATTER OF :

An application under Article
102(2)(a)(II) of the Constitution of the
People's Republic of Bangladesh;

A N D

IN THE MATTER OF

Mrs. Maleka Siraj, and others

... Petitioners

-Versus-

Bangladesh represented by the
Secretary, Ministry of Land,
Bangladesh Secretary, Ramna, Dhaka
and others

... Respondents.

Mr. Sheikh Awsafur Rahman,
Advocate.

... For the Petitioners.

Mr. A.B.M. Altaf Hossain, D.A.G

... For the Respondents.

Heard and judgment on: 25th August, 2011.

Present:

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Gobinda Chandra Tagore

A.H.M. Shamsuddin Choudhury, J.-

The Rule under adjudication, issued on 04.11.2010, as in

following terms:

“Let the supplementary affidavit be formed part of the main

writ petition.

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the acquisition of more or less 0.2644 acres of land under R.S. Dag No.3332, R.S. Khatian No. 1150 situated in District Dhaka, Police Station Raman, Mouza Baro Maghbazar, J.L No.1 as described in L.A. Case No.06 of 2008-2009 under section 11 of Acquisition and Requisition of Immovable Property Ordinance 1982 through Bangladesh Gazette Published on 25th February, 2010 issued under the signature of respondent No.3, should not be declared to have been made without lawful authority and is of no legal effect and/or why pass such other or further order or orders as to this Court may seem fit and proper.”

Averments figured in the petition summarized below:-

Petitioner No.1 is the wife of late Md. Sirajul Haq, the petitioners Nos.2-7 are offsprings of late Md. Sirajul Haq and all the petitioners have become owners of the property mentioned in the L.A Case No. 06/2008-2009 as heirs to said late Md. Sirajul Haq.

One Birendra Nath Roy who was the owner of 3 acres of land in C.S Dag no. 309, 319 and 332 under C.S Khatian No.127 of Baro Maghbarar Mouja, situated within Ramna Police Station's, catchments area, transferred 19½ kathas of land to aforesaid. Sirajul Haq, who, by and delivered possession thereof to the latter, who, having had his name mutated in and keeping the rant paying process afloat, and constructing tin shed building and planting various trees, had been possessing the land in question.

Although at one stage a certificate case was initiated by the opposite party No.2, the same was disposed of after the petitioner paid of the demanded rent.

After the R.S survey, the relevant Khatian was prepared depicting the names of the petitioner's predecessor in respect of 29 decimals of land, but as the R.S recorded a wrong dag the petitioners have instituted a title Suit in the Court of the Joint District Judge-4, Dhaka, for declaration of title which is now pending therein.

The petitioner's predecessors, on taking settlement of the land in L.A Case, constructed 20 tin shed rooms and commence habitation on the land along with the petitioners.

The petitioners opened a holding through City Corporation and took Gas line, water connection and electric line. They have been regularly paying electric bills, gas bills, water bills and holding tax.

Out of blue, the petitioners, came to learn that the disputed land has been acquisitioned through an L.A Case. They did then collect a copy of the Bangladesh Gazette, published on 25 February, 2010 on 3rd October, 2010 to be sure about it.

The petitioners managed to collect copies of the notices served under section 3 and 6 of Acquisition and Requisition of Immovable Properties Ordinance 1982 through which proposal was made for acquiring the land in L.A Case No. 6/2008-2009 for B C. S (Proshason) Kalyan Bahumukhi Samabaya Samity Ltd. Those notices were not published at convenient places or near the property wherefor, the petitioners had no knowledge of the notices of acquisition. The

member of the above Samity and the notice for acquisition is nothing but merely paper transaction and this has been done malafide.

The petitioners, as owners of the land, had been living on it. One Mohiuddin tried to dispossess them, but RAB and the Police protected them.

During the pendency of the Title Suit, stated above, and during the period of injunction through which the respondent nos. 2,5, and 6 were restrained from disturbing the peaceful possession of the petitioners, the respondents evicted the petitioners forcibly whereafter the petitioners have been living in misery on the street.

The father of petitioner Nos.2-7 and husband of the petitioner No.1 was a valiant freedom fighter, who acted as commander at the time of liberation war. He is popularly known as Sirajul Haq commander.

All the members of the B C.S (Proshason) Kalyan Badumukhi Samabya Samity Ltd are high salaried employees of the Republic and they could have purchased the land for their samity but without doing

so, in the pretext of public purpose and public interest, although the requiring body, a purely private society, has grabbed the property. No public purpose would be served by the purported acquisition, yet, the society has collusively obtained the acquisition order through gazette notification.

The property in question has purportedly been acquired for to construct residential buildings for the member of the requiring body.

The requiring private body is serving their personal purpose and not serving the interest of the public as a whole and as such the acquisition is nothing but malafide.

None filed any affidavit in opposition.

As the Rule matured Mr. Sk. Awasafur Rahman put forward argument for his client with all the mastery of oration, emphasising in the most stentorian term that acquiring a citizen's land for the benefit of a society of private individuals, is obviously not what the applicable legislation contemplated. Such a move, according to Mr. Rahman is confrontive to Article 42 of the Constitution. The

Acquisition and Requisition of Property Ordinance 1982 empowers a Deputy Commissioner to acquire land only for public purposes, or in public interest, not private purposes, or in private interest.

Mr. ABM Altaf Hussain, the learned Deputy Attorney General has been left without instruction and could, hence, not be of much assistance, save submitting that the authorities are empowered to acquire land for public purpose only, not beyond that. He had no choice but to concede that Ordinance II of 1982 does not and, rather, can not, empower a DC to acquire a citizen's land for any private purpose.

Several questions are to be addressed before turning upon the decisive issue, namely whether the impugned decision is impregnated with lawful authority or not.

They are, whether the government is equipped with any legislative scheme to acquire any land, and, if it is so empowered, whether that power is unfettered or not and, if the answer is in the negative, what are the faltering circumstances.

Facts as remain beyond qualm are that the land concerned property belong to the petitioners and that the respondent no. 4 had granted a “no objection” certificate to facilitate the acquisition of some land, inclusive of that of the petitioner, for a housing society, named Admin Housing Society. Admittedly again, the society is a private body and the purpose behind the intended acquisition is to enable the society to construct dwellings for its members. The purported process of acquisition also been concluded.

It goes without saying that Bangladesh is a Peoples’ Republic and that by Article 7, the Constitution has conferred all powers to the people. The Constitution has also enumerated a list of fundamental rights in its part III, which are guaranteed and enforceable vide Article 44 read with Article 102.

The index includes Article 42 which illuminates every citizen’s right to property.

Right to acquire, hold, transfer or otherwise dispose of property has been ensured to the extent that no citizen's property may be acquired, nationalised or requisitioned save by authority of law.

Sub Article 2 of Article 42 enables legislative enactment, permitting the state to acquire, nationalise or require land, but with compensation.

A law has in fact been enacted under the title Acquisition and Requisition of the Immovable Property Ordinance 1982 (Ordinance II of 1982), which, though initially emerged as an Ordinance, subsequently acquired the status of an Act of Parliament. Section 3 of the legislation empowers a Deputy Commissioner (DC) to acquire land of another person if and, we stress, only if, the property is needed for "any public purpose or in the public interest", by serving a notice to that effect (section 3 of the ordinance).

So, clearly, the DC's power is not and can not be an untrammelled one, but is circumscribed by the necessity to be satisfied that acquisition is "needed or likely to be need for public

purpose or in the public interest”. Such a rider is a must, because, after all, taking away a citizen’s property can not be viewed lightly.

We would also go far enough to express that if a purported legislation is ever passed, empowering anyone to acquire a citizen’s land at whim, without reference to public purpose, public benefit or public interest, it would almost invariably be struck off as being repugnant to Article 42 of our Constitution.

Since, as we have narrated above, the core requirement to confer legitimacy on an act of acquisition, is satisfaction about public purpose or public interest, this is the *sine qua non* for occasioning a lawful acquisition. We are hence required to locate the meaning of phrases, “public purpose” and “public interest”.

The phrase “public” is not a term of art, nor is it a metaphor or a simile. It is not even a legal jargon, it is simply a word of common and daily vocabulary.

Oxford dictionary defines “Public” as “Ordinary people”.

Black Law Dictionary defines “public” as “Relating to or belonging to entire community”, “The people of a nation or community as a whole.”

Oxford dictionary defines “public interest” as “useful to ordinary people”.

So, these definitions clearly exclude an association of a class of people, or class or group, interest.

Blacks Law Dictionary defines Public Purpose as an action by or at the direction of a government for the benefit of the community as a whole.

The same dictionary, defines “Public Interest”, as “the general welfare of the public that warrants recognition and protection (1)

Something in which the public as a whole has a stake; esp, on interest that justifies governmental regulation”.

There have been a couple of decisions directly touching upon the question that we are poised to resolve.

One of such a decision remains published in 9 DLR 272. In that case (*Jogesh Chandra Ladh-v-The province of East Pakistan*), the then East Pakistan High Court enunciated, in interpreting the relevant provision of the East Bangle (Emergency) Requisition Act, 1948, that public purpose is the foundation of the power and the same is a condition precedent for the exercise of the power, insisting, in unequivocal terms; “this Act does not empower the government to give the property of one private individual to another private individual”, further emphasizing, “where no benefit to the public is involved, the state can not acquire private property for the private interest of some individual or individuals”.

It is to be noted that the relevant provision in the Act of 1948 was not dissimilar to the pertinent provision of the instant Ordinance II of 1982, in that, the Act of 1948 also empowered the authorities to acquire a citizen’s land for “public purpose” or “in public interest”.

Their Lordships in the above cited case interpreted public interest, saying, “Anything that furthers the general interests of the community as opposed to the particular interests of the individual, must be regarded as public purpose”.

Their Lordships went on to elaborate, “No reason of general public policy will be sufficient to validate an order of requisition unless such order is made for public purpose or in public interest, that is, for the benefit of the public. The mere assertion by the Learned advocate for the respondent that the impugned requisition was made for the development the Jute Industry through a certain private agency for the benefit of the public, is not sufficient to hold that the requisition was made for public purpose or in public interest.”

Their Lordships iterated with approval an individual’s fundamental rights to hold property as guaranteed by the Constitution of the relevant time.

In that case, where, Pakistan Jute Board, a statutory emanation requisitioned the petitioner’s land and allotted the same to a private

jute mill, the East Pakistan High Court held that the requisition order was not valid. The High Court also ordered the respondents to pay cost.

The above decision was affirmed by the Pakistan Supreme Court (11 DLR S.C. 411).

The other case of significant import was that of Radha Kanta-v-Province of East Pakistan, 22 DLR (SC)166, where the Pakistan Supreme Court expressed, “It is clear, having regard to the facts and circumstances of the case that from start to finish the proceedings by way of requisition and acquiring the appellant’s properties was solely for the benefit of a private party So, the requisition and acquisition was made not for public purpose or interest”.

In that case purported acquisition for a private body, which was the agent of a multinational company, named, Celtax Ltd., was held to have been without lawful authority despite the claim that the purpose was conducive to public interest as it was aimed to enable the private

body to carry on the business of supply of petrol of petroleum products.

The Pakistan Supreme Court observed, “whoever may be agent in respect of this petrol pump, the consumer will get supply of petrol and petroleum products as usual, and the person holding the petrol pump as an agent will earn commission on the sale thereof.

Thus the impugned requisition and acquisition will directly benefit M/S Ashish Corporation, but the facility for supply to the consumers shall remain the same. In this view of the matter, it is plainly clear that the impugned requisition and acquisition for the business purpose of a private party like M/S Ashish Corporation were not for public purpose, nor were these made in the public interest”.

The Supreme Court imposed cost in this case as well.

In the case of Sankar Gopal Chatterjee-v-Additional Commissioner Dhaka, 41 DLR 326, this Division came up with the ratio that acquisition for a co-operative society per se is not a public purpose. The purpose for which the co-operative society proposes to

use the acquired land is the ultimate test for a decision as to whether the acquisition is for a public purpose or not.

Now, in the case before us, admittedly the purported acquisition was geared to enable a co-operative society of some members of Bangladesh Civil Service, to build their residential dwellings on the proposed land.

We remain vision impaired to understand how this will meet the public purpose or public interest criterion. Members of the BCS are not paupers. Such members, who are not provided at the government owned accommodation, are paid sufficient sums by way of house rents. We are quite perplexed to see that land of the petitioner was acquired in the pretext of the power conferred by a legislation, which allows such acquisition for public purpose or in public interest only. We remain confounded to visualise as to how, enabling a co-operative society of some civil servants to build their residential houses, be for public purposes or in public interest. It can only serve the individual or group interest of the numbers, not the

purpose or the interest of the public. The scenario could be different if the government acquired the land for the same to be owned by the government, but for providing accommodation for serving civil servants.

We are of the view that the authority concerned was motivated with the solitary idea of according generous favour to a class of people for some oblique purpose through colourable exercise of power, at the predicament of some less privileged people, whose lands have purportedly been acquired.

The whole exercise was without lawful authority and with a purpose quite distinct from what the Ordinance II of 1982 contemplates.

The Rule is hence, bound to endowed with success, wherefor the same is made absolute.

The impugned certificate to facilitate requisition and acquisition as well as the impugned act of acquisition along with the gazette notification to that effect in respect of the subject land are set aside.

The respondents are directed not to proceed with purported acquisition or requisition of the petitioners land and vacate the land forthwith and allow the petitioners to retur there without hindrance.

In line with the decision in the cases reported in 9 and 22 DLR we are also inclined to pass an order for cost, requiring the respondents No. 2 and 7 to pay, cost of 50,000/- (each to pay Tk. 25,000/-), to the petitioner.

Gobinda Chandra Tagore, J.-

I agree.