

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION**

PRESENT:

Mr. Justice Syed Refaat Ahmed,
Chief Justice
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Zubayer Rahman Chowdhury
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.35 OF 2025.

(From the judgment and order dated 22.02.2024 passed by the High Court Division in Writ Petition No.15376 of 2023).

The Project Director, MRT Line-1, Dhaka Mass
Transport Company Limited, Probashi Kalyan Bhaban,
71-72, Old Elephant Road, Eskaton Garden, Dhaka. :Appellant

-Versus-

Mrs. Nilufar Hossain alias Mrs. Fina Nilufar
Shawkat and others. : ...Respondents

For the Appellant. : Mr. Md. Asaduzzaman. Attorney General with Mr.
Imam Hasan, Senior Advocate instructed by Mr. Md.
Shafiqul Islam Chowdhury, Advocate-on-Record.

For the Respondents. : Mr. Ehsan A. Siddiq, Senior Advocate with Mr. Israk
Ahmed Siddiq, Advocate, instructed by Ms.
Mahdhumalati Chowdhury Barua, Advocate-on-Record.

Date of Hearing. : **24.06.2025 and 01.07.2025.**

Date of Judgment. : **01.07.2025.**

J U D G M E N T

Farah Mahbub, J: This Civil Appeal by Leave is directed against the
judgment and order dated 22.02.2024 passed by the High Court Division in
Writ Petition No.15376 of 2023 making the Rule absolute.

The facts, leading to filing this Civil Appeal, in brief, are as follows:

The land in question measuring an area of 8(eight) katha, 11(eleven) chatak of Holding No.10, Block-J, Pragati Sharani Road, Baridhara R/A, Dhaka was allotted by Rajdhani Unnayan Kartripakkha (in short, RAJUK) to one Mrs. Anwara Hossain, wife of late Khandakar Mohammad Hossain, on execution of a registered lease deed bearing No.9564 dated 08.07.2002 along with possession thereof. The original allottee subsequently transferred the said property with possession in favour of her daughter, the respondent writ petitioner, vide a deed of Heba dated 20.08.2002 supported by an affidavit. RAJUK having approved the said transfer mutation case was duly opened in her name. Since then she has been enjoying possession of the case property without any objection from any quarter whatsoever.

Later, with a view to make a 14(fourteen) storied building, the respondent-writ petitioner entered into an agreement with a developer company on 25.05.2017. In due course of time RAJUK also, gave approval on 22.03.2022 for the construction of building.

At this juncture, a banner was erected by the authority concerned indicating that the property in question had been selected for the construction of MRT Line-1 including Entry/Exit Point at the said plot. In the given context, the respondent writ petitioner made an application to the Project Director concerned on 24.09.2023 with a prayer for reconsideration of the location of S08-Natun Bazar Station, DMTCL, MRT Line-1 or in the alternative to redesign in a manner which would minimize the total land acquisition, and thereby ensuring optimal utilization of the land proposed to be acquired, but there was no response. On 09.10.2023, the respondent writ

petitioner filed another application to the Project Director concerned with similar prayer.

While awaiting the decision thereupon, a notice under Section 4(1) of the “স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭” (in short, the Act, 2017) was issued by the writ respondent no.4 on 29.10.2023 upon the last recorded tenants (as per Dhaka City Survey) notifying all concerned about the proposed acquisition of the land in question for public purpose and public interest, fixing 06.11.2023 for joint survey. In the said notice, persons concerned having interest were also directed to remain present with all relevant documents during the course of joint survey; to that effect, they were requested to apply accordingly. The respondent writ petitioner, however, raised objection thereto on 12.11.2023 under Section 5(1) of the Act, 2017. The Deputy Commissioner, Dhaka, writ respondent no.3, upon hearing the respondent writ petitioner, along with others, disposed of the objection on 10.01.2024.

Pending disposal of the said objection by the authority concerned meanwhile, the respondent writ petitioner filed Writ Petition No.15376 of 2023 before the High Court Division under Article 102 of the Constitution challenging the impugned show cause notice issued by the writ respondent no.4 under Section 4(1) of the Act, 2017 vide Memo dated 29.10.2023, to be declared to have been issued without lawful authority and hence, of no legal effect. At the same time, the writ petitioner sought for a direction upon the writ respondents, in the form of *mandamus*, to relocate or redesign the entry-exit, fire exit, ventilation duct point of Natun Bazar Metro Rail Station DMTCL, MRT Line-1 at the land in question. In this regard, the categorical contention of the writ petitioner was that she being the absolute owner of the property in question

under RAJUK as such, without serving notice upon her as well as RAJUK, serving notice under Section 4(1) of the Act, 2017 upon the Dhaka City recorded tenant was without lawful authority. Further assertion of the respondent writ petitioner was that the project is being financed by Japan International Cooperation Agency (in short, JICA) covering 75% of the total cost as loan and that as per the JICA's Guidelines for Environmental and Social Considerations, 2010 land acquisition and resettlement having impact on affected individuals should be avoided or minimized through alternative design options. In the light of the said guidelines, she made several representations to the authority concerned to reconsider the location of 508-Natun Bazar Station, DMTCL, MRT Line-1, but there was no response.

Having found *prima facie* substance, the High Court Division issued a *Rule Nisi* vide order dated 04.12.2023 along with interim direction upon the writ respondent no.4 to dispose of the objection of the writ petitioner filed under Section 5(1) of the Act, 2017 within a prescribed period.

Challenging the interim direction of the High Court Division dated 04.12.2023, the writ respondent no.1 filed Civil Petition for Leave to Appeal No.80 of 2024 before this Division. The learned Judge-in-Chamber upon hearing the parties vide order dated 14.01.2024 ultimately, directed the High Court Division to dispose of the *Rule Nisi* within a prescribed period.

The writ respondent no.5, the appellant in the instant Civil Appeal, contested the Rule by filing affidavit-in-opposition stating, *inter alia*, that Dhaka City is the capital of the People's Republic of Bangladesh. The Dhaka Metropolitan Area has a population of 22.40 million in 2022. Currently, urban transportation in the Dhaka Metropolitan Area relies mostly on road transport, where car, bus, auto-rickshaw, rickshaw, etc. coexist. This creates serious

traffic congestion in addition to health hazards being caused by traffic pollution including air pollution. With the rapid national economic growth, the urban population is expected to increase and so will the number of privately owned automobiles. Therefore, improving the urban (public) transportation system in the Dhaka Metropolitan Area, to ease traffic congestion and arrest environmental deterioration, have become a critical issue.

Considering the pressing situation, the Government of Bangladesh formulated the “Strategic Transport Plan for Dhaka (STP)” in 2005 in cooperation with World Bank. However, JICA conducted Dhaka Urban Transportation Network Development Study Phase-1 from March, 2009 with the Dhaka Transportation Coordination Authority as its counterpart agency, with the objectives to conceptualize the basic urban development scenario for the Dhaka Metropolitan Area by 2025, and to select priority projects that would help build such a scenario. That study recommended the MRT Line-6 as a priority project. As a result, JICA conducted the feasibility study on MRT Line-6 under Dhaka Urban Transportation Network Development Study Phase-2. Following these studies, the Government of Bangladesh and JICA concluded the loan agreement on the Dhaka Mass Rapid Transit Development Project in February, 2013 to construct MRT Line-6. Meanwhile, World Bank finished the feasibility study and basic design of Bus Rapid Transit Line 3. On the other hand, Asian Development Bank already completed the basic design of the Bus Rapid Transit Line 3 extension project (from the airport to Gazipur). Under these circumstances, the Government of Bangladesh and JICA made several preliminary discussions upon conducting detailed research on the feasibility of the design in order to identify priority projects in the field of transport sector

and accordingly, had agreed to make preparation for Dhaka Mass Rapid Transit Development Project (Line 1 and Line 5).

However, according to the Final Report of “The Project on the Revision and Updating of the Strategic Plan for Dhaka” (2016 Nov.), Dhaka’s MRT Line-1 originates from Gazipur region and passes through Tongi, then the International Airport; when it reaches Kuril, it divides into a southern branch and an eastern branch. The southern line is aimed to go further to the “Jhilmil Project”, while the eastern line aims to serve the Purbachal development area. The total length of Line-1 is 52 km. and is expected to have the highest passenger demand estimated at 1.9 million per day by 2035 among the sever corridors.

Since land acquisition is one of the critical issues for effective implementation of the project concerned several opinions were placed before the authority concerned of Dhaka Transport Coordination Authority in order to minimise land acquisition for maintaining alignment of the MRT line. Moreover, considering the fact that there is an elevated highway between Malibagh and Rampura Stations, it was quite hard to accommodate an elevated MRT structure. In the given scenario, the Project Evaluation Committee proposed for underground option. Accordingly, the said Committee held a meeting on 14.07.2019 on Dhaka Mass Rapid Transit Development Project (Line-1). Following the recommendation of the Project Evaluation Committee, cost of the project was fixed at Tk.52,561.4342 crore, out of which Government of Bangladesh is to bear Tk.13,111.1142 crore, while JICA is to provide Tk.39,450.32 crore as loan. In the said meeting estimated time for implementation of the project was fixed from 01.09.2019 to 31.12.2026. The

Government of the People's Republic of Bangladesh, Roads and Highways Division, Foreign Assistant Branch vide office letter dated 16.08.2018 approved the MRT Line-1 project. Subsequently, Planning Division, NEC-ECNEC issued approval letter of the project on 05.11.2019 to the Secretary, Ministry of Road Transport and Bridges. The writ respondent no.2 vide office letter dated 20.11.2019 gave administrative approval of the project. Finally, the Roads and Highways Division vide letter dated 26.04.2022 amended the project. Team leader of the Consultancy Firm vide letter dated 28.08.2022 requested the Project Director of Dhaka Mass Rapid Transit Development Project (Line-1) for land acquisition plan for North Badda, Notun Bazar Station, based on the requirement of land for the project.

Accordingly, the writ respondent no.5 vide office letter dated 14.09.2022 requested the Secretary, Road Transport and Highways Division for acquisition of 2.307 acres of land. In response thereof, the writ respondent no.2 vide letter dated 17.10.2022 gave approval to acquire 2.307 acres of land under Mouza-Vatara, Joar Sahara. Pursuant to the office letter dated 29.12.2022 issued by the writ respondent no.5, the respondent no.2 vide letter dated 09.02.2023 requested the Deputy Commissioner, Dhaka to take necessary steps imposing restriction upon the transfer, any types of construction and or plantation whatsoever, towards changing the nature of the said 2.307 acres of land.

Moreso, on the prayer of the writ respondent no.5, RAJUK vide letter dated 09.02.2023 and the Ministry of Housing and Public Works vide letter dated 14.02.2023 respectively issued no objection certificates regarding acquisition of 2.307 acres of land for construction of the 3(three) underground station of MRT Line.

Accordingly, writ respondent no.5 vide letter dated 27.02.2023 forwarded all the required documents regarding the project to the Secretary, Road Transport and Highways Division for taking necessary steps for acquisition. The writ respondent no.2 in its turn vide letter dated 28.03.2023 requested the writ respondent no.1 to take necessary steps regarding acquisition of 2.307 acres of land. The writ respondent no.1 vide letter dated 15.05.2023 requested the Deputy Commissioner, Dhaka to send proposal to the Ministry of Land for acquisition after verification of the concerned documents such as map, plot etc. Pursuant thereto the Land Acquisition Officer, Dhaka vide letter dated 07.06.2023 fixed 11.06.2023 at 9.00 a.m. for verification of the boundary of the proposed land. Ultimately, vide letter dated 20.08.2023 respective report was forwarded on 01.08.2023 to the Ministry of Land. Subsequently, the Ministry of Land vide letter dated 05.09.2023 directed the Deputy Commissioner, Dhaka to complete the process of acquisition. Accordingly, respective notices under Section 4(1) of the Act, 2017 were issued by the authority concerned upon the city recorded tenants on 29.09.2023 following all legal formalities, as prescribed by law.

In this regard, the categorical assertion of the appellant is that to effectuate the crucial requirements for a prolific design of a Standard Entry/Exit, to reduce the cost and loss of existing public/private property and based on the availability of land at Natun Bazar area, the authority concerned had no other option but to select the land in question.

Meanwhile, pursuant to the interim direction given by the High Court Division, the Deputy Commissioner, Dhaka upon hearing the writ petitioner

disposed of her objection filed under Section 5(1) of the Act, 2017 on 10.01.2024 with the following remarks:

ক্রমিক নং	আবেদনকারীর নাম ও ঠিকানা	দাগ নম্বর	শুনানীর ধার্য তারিখে আপত্তিকারীর আবেদন এবং প্রত্যাশী সংস্থার মতামত	সিদ্ধান্ত
১৩	নিলুফার হোসেন বাসা-১৪, রোড নং-১৮, সেক্টর-৭, উত্তরা- ১২৩০।	৮৯০৬, ৮৯০৮	প্রস্তাবিত ভূমি অধিগ্রহণের বিরুদ্ধে আপত্তি দাখিল।	প্রস্তাবিত জমি জনস্বার্থে দেশের উন্নয়নমূলক কাজের জন্য Fast track প্রকল্পভুক্ত এবং প্রত্যাশী সংস্থার টেকনিক্যাল Team জানান বিকল্প Design সম্ভব নয় বিধায় এ জমি বাদ দিয়ে প্রকল্প বাস্তবায়ন করা সম্ভব নয় বিধায় আপত্তি নথিভুক্ত।

The High Court Division upon hearing the respective contending parties ultimately, made the Rule absolute vide the judgment and order dated 22.02.2024, declaring the issuance of notice under Section 4(1) of the Act, 2017 illegal with necessary direction. Relevant part of the observations and findings of the High Court Division is quoted below for ready reference:

- “(a)
- (b) From the facts, it is clear that the petitioner was not served with notice under Section 4 of the 2017 Act. The notice was served upon a third party with whom petitioner has no connection. That cannot be termed as service of notice under the 2017 Act;
- (c)
- (d) The process of acquisition is tainted with jurisdictional error and violated the fundamental rights guaranteed under Articles 42 and 31 of the Constitution;
- (e) The respondents should consider slight adjustment to the "Entry-Exit, fire exit, ventilation duct point of Notun Bazar Metro Rail Station DMTCL MRT Line-1" so that petitioner's property is not affected;
- (f)
- (g) ”

Being aggrieved thereby, the writ respondent no.5 as petitioner filed Civil Petition for Leave to Appeal No.178 of 2024 before this Division. However, upon hearing both the parties, leave was granted accordingly.

Mr. Md. Assaduzzaman, the learned Attorney General with Mr. Md. Imam Hasan, the learned Senior Advocate appearing on behalf of the appellant submits that the High Court Division erred in making the Rule absolute without properly considering the documents being placed before the said Division during the course of hearing of the Rule and also, on an erroneous interpretation of law.

While elaborating his said contention, he goes to argue that the High Court Division made the Rule absolute on the count that no notice under Section 4(1) of the Act, 2017 was served upon the respondent-writ petitioner as being the owner of the case property. In this connection, referring to the respective documents he submits that from record it is apparent that the respondent writ petitioner had knowledge about the proposed acquisition of the case property in connection with the L.A. case in question even, prior to issuance of the impugned notice under Section 4(1) of the Act, 2017 on 29.10.2023. For instance, she filed the respective representations to the appellant as well as the Secretary of the concerned Ministry on 24.09.2023, 05.10.2023 and 17.10.2023 respectively, i.e., prior to issuance of notice dated 29.10.2023, with a prayer for reconsidering the location of S08-Natun Bazar Metro Rail Station DMTCL, MRT Line-1 or to redesign with a view to minimize the land acquisition. Even, in response to the impugned notice issued under Section 4(1) of the Act, 2017 on 29.10.2023 the respondent writ petitioner filed objection before the Deputy Commissioner, Dhaka on 12.11.2023. Said

authority duly heard the representative of the writ petitioner and ultimately, disposed of the same on 12.11.2023, negating her prayer.

As such, he submits, branding the process of acquisition by the High Court Division as being tainted with jurisdictional error and thereby causing violation of the fundamental rights of the writ petitioner as guaranteed under the Constitution, is absolutely misconceived and unlawful. In the given context, he submits, making the Rule absolute by the High Court Division on the findings that no notice under Section 4(1) of the Act, 2017 was served upon the writ petitioner, is liable to be knocked down having no mandate of law.

Learned Attorney General again goes to contend that the judgment and order of the High Court Division is further tainted with illegality while giving direction upon the appellant to consider slight adjustment to the “Entry-Exit, fire exit ventilation duct point of Natun Bazar Metro Rail Station DMTCL, MRT Line-1”, so that the case property is not affected. In this connection, drawing attention to Annexure-9 of the affidavit-in-opposition filed by the appellant before the High Court Division, he submits that the objection being raised by the respondent writ petitioner under Section 5(1) of the Act, 2017 on 12.11.2023 was heard by the authority concerned on 04.12.2023 and ultimately, her prayer was turned down considering the opinion of the technical team of the requiring body. In that view of the matter, giving direction by the High Court Division upon the appellant in the form of *mandamus* without being able to show that her said claim is rooted in statute, falls through.

Lastly, he submits that subsequent to passing the impugned judgment and order dated 22.02.2024 by the High Court Division, the respondent writ petitioner made a prayer before the Deputy Commissioner, Dhaka on

28.02.2024 for change of classification of the property in question. Her prayer was duly allowed by the authority concerned following due process of law. Said stand of the respondent writ petitioner negates her right to contest the instant Civil Appeal.

Conversely, Mr. Ehsan A. Siddique, learned Senior Advocate with Mr. Israk Ahmed Siddiq, the learned Advocate appearing for the respondent writ petitioner submits that the High Court Division by its judgment and order dated 22.02.2024 passed in Writ Petition No.15376 of 2023 has rightly observed that the appellant is required to consider the prayer for redesign of the Entry No.3 allowing acquisition of such part of the case land which is proportionate to the need of the appellant.

In this regard, he goes to argue that the correction of the misdescription of the structures situated on the land of the respondent no.1 was consistent with the case before the High Court Division, for, the respondent no.1 had from the very beginning countenanced the possibility that a part of her land (proportionate to the need of the appellant) could be acquired in public interest. In this connection, the appellant was under an obligation to ensure that the acquisition of land for public purpose was not disproportionate to the right to hold property by this respondent. It is, in this context, the High Court Division has rightly directed the appellant for consideration of a "slight adjustment".

Moreover, he submits that the High Court Division also, concluded that notices were not served on the respondent no.1 resulting in jurisdictional error, but the acquisition process was not set aside. In fact, the core findings of the High Court Division was non consideration of the alternative proposal.

He again submits that the area of the case plot is 8 kathas and 11 chattaks, out of which 6.62 kathas are proposed to be acquired for building an Entry Point, i.e. Entry No. 3 for an underground station. This is one out of 5 entry points and thus, is disproportionate for one Entry Point. Accordingly, he submits that the appellant was thus, under a clear obligation to consider the alternative plan providing “adequate and intelligible” reasons. It was required to consider the alternative plan of the respondent showing that the same Entry Point could be constructed on 3.6 kathas. The test of proportionality requires the appellant not to acquire more land than is necessary for the specific public interest.

In view of the above, he submits that instant Civil Appeal is liable to be dismissed.

The *Rule Nisi*, issued in Writ Petition No.15376 of 2023, involves two parts. In the first part, the respondent writ petitioner has challenged, in the nature of *certiorari*, the notice bearing Memo No.110, L.A. Case No.03.15.08/2023-2024 dated 29.10.2023, issued under Section 4(1) of the Act, 2017 on the contention that since she is the owner of the property in question as such, notice under Section 4(1) of the said Act was required to be served upon her. In that view of the matter, without serving notice upon her, but upon a person as being the last recorded tenant, is not tenable in the eye of law. Second part of the Rule involves a direction, in the nature of *mandamus*, upon the appellant writ respondent concerned to relocate or redesign the entry-exit, fire exit, ventilation duct point of Natun Bazar Metro Rail Station, BMTCL, MRT Line-1 in connection with the land in question.

Article 42 of the Constitution of the People’s Republic of Bangladesh, as embodied in Chapter III of the Constitution, guarantees right to property but subject to restrictions imposed by law. However, said right is extinguished by way of compulsory acquisition, nationalization or requisition under the authority of law. Vide Article 42(2) when a law/statute, promulgated by the Legislature in exercise of power as provided under Article 42(1), provides for compensation, it should either fix the amount of compensation or prescribe the principles on which, and the manner in which the compensation is to be assessed and paid. The said law cannot be called in question in any court of law on the ground that its respective provision for compensation is inadequate.

Article 42 of the Constitution is, accordingly, quoted below:

“42. (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law.

(2) A law made under clause (1) of this article shall provide for the acquisition, nationalization or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate.

The Parliament in view of Article 42(1) of the Constitution promulgated “স্বাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭” (Act No. 21 of 2017) relating to acquisition and requisition of immovable property and to provide for matters connected therewith and ancillary thereto.

Under the Act of 2017, the process of acquisition commences with the publication of notice under Section 4(1) by the Deputy Commissioner “জেলা

প্রশাসক”, as defined in Section 2(5), in the prescribed form and manners, in connection with the properties proposed to be acquired. Said provision does not entail any condition to serve the notice upon the owner of the property in question. Rather, it is a general notice containing the proposition of the authority concerned to acquire the respective property in public interest with right to remain present along with the requiring body on the date and time so fixed for the preparation of joint survey report. Said report shall be the basis for fixing/change of classification of the property, proposed to be acquired and that is also, subject to appeal under Section 4(7).

Section 4(1) of the Act, 2017 is quoted below:

“৪। স্থাবর সম্পত্তি অধিগ্রহণের জন্য প্রাথমিক নোটিশ জারিঃ

(১) জেলা প্রশাসকের নিকট কোনো স্থাবর সম্পত্তি জনপ্রয়োজনে বা জনস্বার্থে আবশ্যিক মর্মে প্রতীয়মান হইলে তিনি উক্ত সম্পত্তি অধিগ্রহণের প্রস্তাব করা হইয়াছে উল্লেখ করিয়া উক্ত সম্পত্তির উপর বা সম্পত্তির নিকটবর্তী সুবিধাজনক স্থানে, নির্ধারিত ফরম ও পদ্ধতিতে, নোটিশ জারি করিবেন।”

However, prior to publication of the said notice the Deputy Commissioner is required under Section 4(3)(ka) to prepare an inventory, making video with photograph of the actual position and nature of the property proposed to be acquired along with the buildings situated thereon, and or crops and trees which are standing on the said property.

Vide Section 4(3)(kha), subsequent to issuance of notice under Section 4(1), the Deputy Commissioner concerned shall prepare “a joint inventory” “যৌথ তালিকা” in the prescribed manner with the participation of the requiring body as well as the person interested in the property, who are to remain present on the respective date and at the respective time.

Section 4(4) provides that while preparing the said joint inventory if found any change of classification in the record of the proposed acquired

property, the Deputy Commissioner concerned has to endorse his decision to that effect. At the same time, vide Section 4(5) the Deputy Commissioner shall endorse his findings in the said joint inventory whether any house or structure has been or is being constructed with a view to cause prejudice to the public interest. Section 4(6) stipulates the after preparation of joint inventory under Section 4(3) (kha) it shall be displayed in the notice board of the local head office or at any conspicuous place of the respective project site for public gaze.

As per Section 4(7), after initiation of proceeding for acquisition under Section 4(3)(ka) if it is found that any construction of building is or is being made with a view to change the nature/classification of the property, said change of classification shall not be enlisted in the said “যৌথ তালিকা”. For non-inclusion of such change in the inventory list is subject to appeal under Section 4(8) before the Commissioner and his decision is final under Section 4(10).

However, after selection of site for implementation of the nationally important project Section 4(12) authorizes the Deputy Commissioner to impose restriction, by passing necessary order, on sell, purchase or construction of building on those properties in question.

Section 4(3), (4), (6), (7), (8), (9), (10) and (12), being relevant, are quoted as under:

- “৪(৩) জেলা প্রশাসক, উপ-ধার (১) এর অধীন-
- (ক) নোটিশ জারির পূর্বে, নির্ধারিত সময় ও পদ্ধতিতে, অধিগ্রহণের জন্য প্রস্তাবিত স্থাবর সম্পত্তির প্রকৃত অবস্থা ও প্রকৃতি এবং উপরিস্থিত অবকাঠামো, ফসল ও বৃক্ষরাজিসহ সকল কিছুর ভিডিও ও স্থিরচিত্র অথবা অন্য কোনো প্রযুক্তি ব্যবহারের মাধ্যমে ধারণ করত উহাদের বিবরণী প্রস্তুত করিবেন: এবং
- (খ) নোটিশ জারির পর, নির্ধারিত সময় ও পদ্ধতিতে, প্রত্যাশী ব্যক্তি বা সংস্থা এবং স্বার্থসংশ্লিষ্ট ব্যক্তিবর্গের সহিত যৌথভাবে একটি যৌথ তালিকা প্রস্তুত করিবেন।
- (৪) বাস্তবে কোনো জমির রেকর্ডিয় শ্রেণি পরিবর্তিত হইলে জেলা প্রশাসক, যৌথ তালিকা প্রস্তুতকালে, উক্ত শ্রেণি পরিবর্তনের বিষয়ে সিদ্ধান্ত গ্রহণ করিবেন।
- (৫)

(৬) উপ-ধারা (৩) এর দফা (খ) এর অধীন প্রস্তুতকৃত যৌথ তালিকা স্থানীয় ভূমি অফিসের নোটিশ বোর্ডে এবং প্রকল্পের সুবিধাজনক স্থানে প্রদর্শনের ব্যবস্থা করিতে হইবে।

(৭) অধিগ্রহণাধীন বা অধিগ্রহণ হইতে পারে এমন ভূমির উপর, উপ-ধারা (৩) এর দফা (ক) এর অধীন কার্যক্রম গ্রহণের পর, অসদুদ্দেশ্যে নির্মিত বা নির্মাণাধীন ঘরবাড়ি বা অবকাঠামোর দ্বারা সংশ্লিষ্ট ভূমির শ্রেণি পরিবর্তন করা হইলে, উক্তরূপ পরিবর্তন জেলা প্রশাসক যৌথ তালিকায় অন্তর্ভুক্ত করিবেন না।

(৮) কোনো ব্যক্তি উপ-ধার (৭) এর অধীন জেলা প্রশাসক কর্তৃক গৃহীত কোনো সিদ্ধান্তের দ্বারা সংক্ষুব্ধ হইলে, পরবর্তী ৭(সাত) কার্যদিবসের মধ্যে, কমিশনারের নিকট আপিল দায়ের করিতে পারিবেন।

(৯) কমিশনার, নির্ধারিত পদ্ধতিতে, উপ-ধারা (৮) এর অধীন প্রাপ্ত আপিল শুনানি করিবেন এবং পরবর্তী ১৫(পনের) কার্যদিবস অথবা, জাতীয় গুরুত্বপূর্ণ প্রকল্পের ক্ষেত্রে, ১০(দশ) কার্যদিবসের মধ্যে সিদ্ধান্ত প্রদান করিবেন।

(১০) উপ-ধারা (৯) এর অধীন কমিশনার কর্তৃক প্রদত্ত সিদ্ধান্ত চূড়ান্ত বলিয়া গণ্য হইবে।

(১১)

(১২) জেলা প্রশাসক, জাতীয় গুরুত্বপূর্ণ প্রকল্প বাস্তবায়নের জন্য স্থান নির্বাচনের পর, আদেশ দ্বারা, সংশ্লিষ্ট এলাকার জমি ক্রয় বিক্রয় ও জমিতে অবকাঠামো তৈরির বিষয়ে নিয়ন্ত্রণ আরোপ করিতে পারিবেন।

(১৩)"

Section 5(1), however, provides forum for raising objection before the Deputy Commissioner against the proposed acquisition, but within a prescribed period. Section 5(2) empowers the Deputy Commissioner to further enquire, if deems necessary, after hearing on the objection and shall prepare and submit a report within a prescribed period with findings. After consideration of the said report, final decision shall be taken by the Government, the Commissioner or the Deputy Commissioner, as the case may be, as provided under Section 6.

Sections 5 and 6 are quoted below for cursory glance:

“৫। (১) ধারা ৪ এর অধীন নোটিশ জারির ১৫ (পনের) কার্যদিবসের মধ্যে স্বার্থসংশ্লিষ্ট কোনো ব্যক্তি অধিগ্রহণের বিরুদ্ধে জেলা প্রশাসকের নিকট আপত্তি দাখিল করিতে পারিবেন।

(২) জেলা প্রশাসক, উপ-ধারা (১) এর অধীন প্রাপ্ত আপত্তি, আপত্তিকারী বা তদকর্তৃক মনোনীত প্রতিনিধির উপস্থিতিতে, দ্রুত শুনানি করিবেন, এবং উক্ত শুনানি বা প্রয়োজনে পুনরায় অনুসন্ধানের পর, উক্ত আপত্তি সম্বন্ধে তাহার মতামতসহ একটি প্রতিবেদন, সাধারণ ক্ষেত্রে উপ-ধারা (১) এ উল্লিখিত সময়সীমা অতিক্রান্ত হইবার পর ৩০(ত্রিশ) কার্যদিবসের মধ্যে এবং জাতীয় গুরুত্বপূর্ণ প্রকল্পের ক্ষেত্রে ১৫(পনের) কার্যদিবসের মধ্যে, প্রস্তুত করিবেন।

(৩) জেলা প্রশাসক,-

(ক) স্থাবর সম্পত্তির পরিমাণ ৫০(পঞ্চাশ) বিঘার (১৬.৫০ একর) উর্ধ্বে হইলে তাহার মতামত সংবলিত প্রতিবেদনসহ নথি ভূমি মন্ত্রণালয়ের সিদ্ধান্তের জন্য প্রেরণ করিবেন; এবং

(খ) স্থাবর সম্পত্তির পরিমাণ ৫০(পঞ্চাশ) বিঘার (১৬.৫০ একর) নিম্নে হইলে তাহার মতামত সংবলিত প্রতিবেদনসহ নথি কমিশনারের নিকট সিদ্ধান্তের জন্য প্রেরণ করিবেন:

তবে শর্ত থাকে যে, উপ-ধারা (১) এর অধীন কোনো আপত্তি দাখিল করা না হইলে, জেলা প্রশাসক, সাধারণ ক্ষেত্রে, উক্ত উপ-ধারায় উল্লিখিত সময়ের পরবর্তী ১০(দশ) কার্যদিবসের মধ্যে অথবা কমিশনারের লিখিত অনুমতি সাপেক্ষে ৩০(ত্রিশ) কার্যদিবসের মধ্যে এবং জাতীয় গুরুত্বপূর্ণ প্রকল্পের ক্ষেত্রে ১৫(পনের) কার্যদিবসের মধ্যে, সিদ্ধান্ত গ্রহণ করিবেন, এবং এতদ্বিষয়ে জেলা প্রশাসকের সিদ্ধান্ত চূড়ান্ত বলিয়া গণ্য হইবে।

৬। (১) ধারা ৫ এর উপ-ধারা (৩) এর অধীন জেলা প্রশাসক কর্তৃক প্রেরণকৃত প্রতিবেদন বিবেচনার পর ক্ষেত্রমত,-

(ক) সরকার উক্ত প্রতিবেদন দাখিলে অনূর্ধ্ব ৬০(ষাট) কার্যদিবসের মধ্যে, এবং
(খ) কমিশনার উক্ত প্রতিবেদন দাখিলের ১৫(পনের) কার্যদিবসের মধ্যে অথবা এতদুদ্দেশ্যে লিখিতভাবে কারণ উল্লেখ করিয়া অনূর্ধ্ব ৩০(ত্রিশ) কার্যদিবসের মধ্যে- চূড়ান্ত সিদ্ধান্ত গ্রহণ করিবে।

(২) সরকার, কমিশনার বা, ক্ষেত্রমত, জেলা প্রশাসক কর্তৃক, উপ-ধারা (১) অথবা ধারা ৫ এর উপ-ধারা(৩) এর অধীন, স্থাবর সম্পত্তি অধিগ্রহণে গৃহীত সিদ্ধান্ত জনপ্রয়োজন বা জনস্বার্থে গৃহীত হইয়াছে বলিয়া গণ্য হইবে।”

After taking final decision for acquisition of the respective properties the Deputy Commissioner shall issue a general notice under Section 7(1) and (3), in the prescribed form, for taking over possession of the properties in question.

Section 7(1) and (3) are quoted below:

“৭। স্বার্থ সংশ্লিষ্ট ব্যক্তিকে নোটিশ প্রদানঃ

(১) সরকার, কমিশনার বা, ক্ষেত্রমত, জেলা প্রশাসক কর্তৃক, ধারা ৫ বা ধারা ৬ এর অধীন কোনো স্থাবর সম্পত্তি অধিগ্রহণের সিদ্ধান্ত গ্রহণ করা হইলে, জেলা প্রশাসক তদমোতাবেক দখল গ্রহণের অভিপ্রায় ব্যক্ত করিয়া নির্ধারিত পদ্ধতিতে সংশ্লিষ্ট স্থাবর সম্পত্তির উপর বা উহার নিকটবর্তী সুবিধাজনক ও দৃষ্টিগ্রাহ্য স্থানে একটি সাধারণ নোটিশ জারি করিবেন।

(২).....

(৩) অধিগ্রহণের জন্য প্রস্তাবকৃত স্থাবর সম্পত্তির দকলকার, যদি থাকে, এবং জ্ঞাত বা বিশ্বাসযোগ্য সকল স্বার্থসংশ্লিষ্ট ব্যক্তির উপর নির্ধারিত ফরমে একই পদ্ধতিতে নোটিশ জারি করিতে হইবে।”

Section 7(2) and (4), however, have provided an opportunity to the person interested to appear in person on the date, time and place and to place his respective statements of demand of compensation.

Section 7(2) and (4) are quoted below:

“৭(২) উপ-ধারা (১) এর অধীন প্রদত্ত নোটিশে অধিগ্রহণের জন্য প্রস্তাবকৃত স্থাবর সম্পত্তির বিবরণ এবং উক্ত সম্পত্তির স্বার্থসংশ্লিষ্ট ব্যক্তিকে অথবা তাহার মনোনীত

প্রতিনিধিকে নোটিশ জারির ১৫(পনের) কার্যদিবস অথবা জাতীয় গুরুত্বপূর্ণ প্রকল্পের ক্ষেত্রে ৭(সাত) কার্যদিবস পর জেলা প্রশাসকের নিকট নোটিশে বর্ণিত সময় এবং স্থানে হাজির হইতে হইবে এবং উক্ত সম্পত্তিতে তাহাদের প্রত্যেকের দাবির পরিমাণ এবং ক্ষতিপূরণে তাহাদের স্বত্বের অংশ উল্লেখ করিতে হইবে মর্মে বর্ণনা থাকিতে হইবে।

(৩).....

(৪) জেলা প্রশাসক নোটিশের মাধ্যমে, নোটিশ জারির ১৫(পনের) কার্যদিবস অথবা জাতীয় গুরুত্বপূর্ণ প্রকল্পের ক্ষেত্রে ৭(সাত) কার্যদিবস পর, নোটিশে উল্লিখিত স্থানে সংশ্লিষ্ট স্থাবর সম্পত্তিতে অথবা উহার কোনো অংশে অংশীদার হিসাবে, বা বন্ধকগ্রহীতা হিসাবে অথবা অন্য কোনো উপায়ে কোনো দাবি থাকিলে উক্ত দাবির প্রকার, দাবিদারগণের নাম এবং দাবির ফলে প্রাপ্ত বা প্রাপ্য লভ্যাংশ বর্ণনাসহ যথাসম্ভব বাস্তবভিত্তিক একটি বিবরণী যে কোনো স্বার্থ সংশ্লিষ্ট ব্যক্তিকে দাখিল বা হস্তান্তর করিবার জন্য নির্দেশ প্রদান করিতে পারিবেন।”

Vide Section 8(1), after hearing the parties concerned pursuant to the notice of Section 7, the Deputy Commissioner shall enquire on the valuation of the properties in question so made at the time of issuance of notice under Section 4 and also, on the demand of compensation so made by the parties concerned under Section 7(2) and (4). Accordingly, he shall prepare an award of compensation as he deems sufficient (তাহার বিবেচনায়) and also, basing on the last land record and surveys of the respective mouja. Vide sub-section (2) of Section 8 said award shall be treated as final.

Section 9 prescribes the respective contexts which shall be taken into consideration while fixing the amount of compensation for acquisition of the properties in question. In particular, Section 9(1)(ka) provides for taking into consideration the market value (বাজারমূল্য) of the respective property in question on the date of publication of notice under Section 4. However, while determining the market value, the Deputy Commissioner shall take into account the average value, to be calculated in the prescribed manner, of the properties of similar description and with similar advantages in the vicinity

during the 12 months preceding the date of publication of the notice under Section 4.

From a combined reading of the above provisions of law, it is apparent that the Legislature has intended to create respective platforms for the affected person to make his stand at the initial stage of the proceeding of acquisition by remaining present in person with supporting documents while a joint inventory list is being prepared [Section 4(3)(kha)], which is the foundation for preparation of award. Even, prior to finalization of the acquisition process and taking over possession under Section 7, the Legislature has provided scope to the affected person to raise objection on the acquisition process and that said objection shall be mitigated after further enquiry. Even, during pendency of the process of taking over possession the person interested is provided with opportunity to appear in person again, in order to make demand of compensation in support of documents [Section 7(2) and (4)] and upon making due enquiry thereof [Section 8(1)] the Deputy Commissioner is to prepare the award of compensation. In other words, the Legislature vide the above quoted method of assessment has ensured to provide proper and adequate compensation to the affected person for acquisition of the respective properties for greater public interest.

In the instant case, after obtaining administrative approval of the Ministry concerned vide Memo No.৩৫.০০.০০০০.০৬৫.১৪.০১৪.২১-৪৪৯ dated 17.10.2022 for acquisition of 2.307 acres of land for construction of “নন্দা, নতুন বাজার এবং উত্তর বাড্ডা স্টেশনের Exit-Entry, Fire-Exit, Ventilation Duct” under Dhaka Mass Rapid Transit Development Project (Line-1) and also, on obtaining “No objection” from RAJUK over those properties in question vide Memo

No.২৫.৩৯.০০০০.০৩০.৩৬.২২-১৭৫ dated 09.02.2023 a general notice under Section 4(1) of the Act, 2017 was issued on 29.10.2023 by the authority concerned in connection with L.A. Case No.03.15.08/2023-2024 about the proposed acquisition of the property in question, fixing 06.11.2023 for joint survey. In the said notice, direction was given upon the owner/or person having interest to remain present on the respective date with option to raise objection within 15(fifteen) days of issuance of the said notice.

Pertinent to note that in one breath the respondent writ petitioner filed the respective writ petition before the High Court Division challenging the said notice on the plea that it was not served upon her as being the owner of the property; on the other hand, in response to the said notice she filed objection on 12.11.2023, i.e. within 15 (fifteen) days of issuance of the said notice. In response to her objection, the concerned officer of the office of the Deputy Commissioner, Dhaka vide Process No.219 dated 26.11.2023 requested the respondent writ petitioner to remain present in the office concerned on 04.12.2023 with all relevant documents. On 04.12.2023, her representative duly appeared and was heard along with the representative of the requiring body. On the same date, i.e. on 04.12.2023 the writ petitioner obtained the *Rule Nisi*, along with interim direction.

The above context negates the stand of the respondent writ petitioner to challenge the notice issued under Section 4(1) of the Act, 2017 on the plea of the same not being served upon her. However, the High Court Division clearly fell into an error in not considering the said factual position of the case, while declaring the impugned notice under Section 4(1) of the Act, 2017 unlawful.

So far seeking direction upon the appellant writ respondents concerned to relocate or redesign the Entry-Exit, Fire Exit, Ventilation Duct Point at the property in question, it appears from record that prior to issuance of the notice under Section 4(1) of Act, 2017 dated 29.10.2023 the respondent writ petitioner filed representation to the appellant writ respondent no.5 on seeing the banner being erected notifying that the property in question was proposed to be acquired for construction of MRT Line-1. In the said representation she made a prayer to reconsider the location of S08 Natun Bazar Station, DMTCL, MRT Line-1 or in the alternative to redesign in such a manner that would minimize the total acquisition from the property in question. Subsequently, she filed another representation to the appellant writ respondent no.5 on 09.10.2023 with similar prayer.

Thus, it goes to show that prior to issuance of the impugned notice under Section 4(1) of the Act, 2017 dated 29.10.2023 the respondent writ petitioner had clear knowledge about the proposed acquisition of the property in question. Ultimately, her objection, filed under Section 5(1) of the Act, 2017 on 12.11.2023, had been disposed of by the writ-respondent no.3 on 10.01.2024 negating the prayer on the ground, as quoted above. Said factual position was duly notified to the High Court Division by the contesting writ respondent no.5 by filing affidavit-in-opposition upon annexing the respective order (Annexure-9).

At this juncture, giving direction by the High Court Division upon the appellant writ respondent concerned to *“consider slight adjustment to the Entry-Exit, Fire Exit, ventilation duct point of Natun Bazar Metro Rail Station DMTCL, MRT Line-1 so that petitioner’s property is not affected”*, prior to giving final decision by the writ respondent no.1 on the findings of the Deputy

Commissioner, Dhaka under Section 5(3) of the Act, 2017, clearly falls through as being premature.

Apart from the above, we find it pertinent to note from record that subsequent to order dated 10.01.2024 passed by the Deputy Commissioner, Dhaka, pursuant to the objection being raised by the writ petitioner, she made an application to the Deputy Commissioner, Dhaka on 28.02.2024 stating, *inter alia*:

“বরাবর,

জেলা প্রশাসক,

ঢাকা।

বিষয়ঃ- এলএ কেস নং-০৮/২০২৩-২০২৪ মূলে অধিগৃহীত নিম্ন তফসিলভুক্ত জমির শ্রেণী বাড়ী/ভিটির স্থলে বাণিজ্যিক/দোকান হিসেবে পরিবর্তনের জন্য আবেদন।

সূত্রঃ- ভূমি অধিগ্রহণ শাখা-৩, জেলা প্রশাসকের কার্যালয়, ঢাকা এর স্মারক নং- ০৫.৪১.২৬০০.০৩৫.১৮.২৩-৮৭ তারিখ-১৫.০২.২০২৪ খ্রিস্টাব্দ।

জনাব,

যথাবিহিত সম্মান পূর্বক নিবেদন এই যে, সুত্রোক্ত স্মারকে নিম্ন তফসিলভুক্ত জমির গণবিজ্ঞপ্তি প্রকাশিত হয়। প্রকাশিত গণবিজ্ঞপ্তিতে নিম্ন তফসিলভুক্ত জমির শ্রেণী বাড়ী/ভিটি শ্রেণী হিসেবে উল্লেখ করা হয়েছে। তফসিলভুক্ত জমিতে পাকা অবকাঠামোসহ ব্যবসায় প্রতিষ্ঠান রয়েছে। যা গণবিজ্ঞপ্তি আকারে প্রকাশিত যৌথ তদন্তের ফিল্ড বহিতে উল্লেখ রয়েছে। বর্ণিত অবস্থায় নিম্ন তফসিলভুক্ত জমির শ্রেণী বাড়ী/ভিটির স্থলে বাণিজ্যিক/দোকান হিসেবে নির্ধারণের জন্য বিনীত আবেদন।

অতএব, তফসিলভুক্ত জমির শ্রেণী বাড়ী/ভিটির স্থলে বাণিজ্যিক/দোকান হিসেবে নির্ধারণের জন্য জনাবের সদয় মর্জি হয়।

জেলা	থানা	মৌজার নাম	সিটি খতিয়ান	সিটি দাগ	জমির পরিমাণ
ঢাকা	গুলশান	ভাটারা		৮৯০৬ ৮৯০৮	০.০৫২২ ০.০৫০৬

তারিখ: -২৮.০২.২০২৪

নিবেদক

নাম: মিসেস ফিনা নিলুফার শওকত

পিতার নাম: কে এইচ মোহাম্মদ হোসেন

ঠিকানা: বাড়ী-১৪, রোড-১৮, সেক্টর-০৭, ঢাকা-১২৩০

মোবাইল নং-০১৭১২-৮৩১০২৯”

In response thereof, said authority vide order No.10, dated 13.03.2024 fixed 21.03.2024 for hearing subject to giving notice upon the persons concerned. On the said date the concerned authorities duly heard the respective matters. Subsequently, a 7(seven) members committee was formed on

17.04.2024 to conduct joint survey pursuant to the objection(s) being raised on the proposed acquisition of properties, including the property of the respondent writ petitioner. Said committee, upon inspection of the properties on 22.04.2024 gave respective recommendations under Section 5(2) of the Act, 2017 for change of classification of the properties of the respondent writ petitioner including others. Said recommendations were duly approved by the Deputy Commissioner, Dhaka on 27.06.2024. Pursuant to the said approval of the Deputy Commissioner, Dhaka dated 27.06.2024 the book of joint survey was duly corrected on 30.06.2024 upon changing the classification of the property in question from “বাড়ী” to “দোকান”. Accordingly, the Deputy Commissioner, Dhaka vide order dated 30.06.2024, signed on 14.07.2024, sent all the required documents along with his recommendations under Section 5(3) of the Act, 2017 to the Ministry concerned for its final approval under Section 6(1)(ka) of the said Act, for, the property involved more than 50 (fifty) bigha.

Ultimately, the Ministry of Land gave final approval under Section 6(1) of the Act, 2017 vide order dated 17.09.2024 for acquisition of 2.307 acres of land including the land of the respondent writ petitioner. Meanwhile, notice under Section 7(1) of the Act, 2017 had been issued on 23.09.2024 for taking over possession of the property in question. In addition, the concerned authority also, issued notice upon the respondent writ petitioner on 28.11.2024 under Section 8(3)(ka) of the said Act to receive compensation/award.

Considering the above undisputed contexts, this Division categorically finds that with the filing of the application dated 28.02.2024 to the Deputy Commissioner, Dhaka for change of classification of the properties in question the

respondent writ petitioner has lost/waived her right to oppose the instant Civil Appeal.

Accordingly, this Civil Appeal is allowed, however, without any order as to costs.

The judgment and order dated 22.02.2024 passed by the High Court Division in Writ Petition No.15376 of 2023 is, hereby, set aside .

C.J.

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01.07.2025.

Jamal/B.R./Words-*6700*