IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Obaidul Hassan, C.J.
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Mr. Justice Md. Ashfaqul Islam
Mr. Justice Md. Abu Zafor Siddique

CIVIL APPEAL NOS. 454-455 OF 2017

(From the judgment and order dated 16.08.2016, passed by a Special Bench of the High Court Division in Review Petition No.19 of 2015)

Government of Bangladesh and others. .... Appellants.
(In C. A. No.454 of 2017)

Bangladesh Environmental Lawyers Association (BELA) and others. .... Appellants.
(In C. A. No.455 of 2017)

-Versus-

The Managing Director, Ashiyan City Development Limited and others. .... Respondents.
(In both the cases)

For the Appellants (In C. A. No. 454 of 2017)	:	Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Mohammad Saiful Alam, Assistant Attorney General and Mr. Sayem Mohammad Murad, Assistant Attorney General instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Appellants (In C. A. No. 455 of 2017)	:	Mr. Fida M. Kamal, Senior Advocate with Mr. Probir Neogi, Senior Advocate and Mr. Minhajul Hoque Chowdhury, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.
For Respondent No.1 (In both the cases)	:	Mr. Ahsanul Karim, Senior Advocate with Mr. M. Qumrul Hoque Siddique, Senior Advocate and Mr. Raghib Rouf Chowdhury, Advocate instructed by Mr. Bivash Chandra Biswas, Advocate-on-Record.
For Respondent No. 11 (In C. A. No. 454 of 2017)	:	Mr. B. M. Elias, Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.
For Respondent No. 10 (In C. A. No. 454 of 2017)	:	Mr. Md. Imam Hasan, Advocate instructed by Mr. Md. Shafiqul Islam Chowdhury, Advocate-on-Record.
Respondent Nos. 2-9 (In C. A. No. 454 of 2017)	:	Not represented.
For Respondent Nos.12-14 (In C. A. No. 455 of 2017)	:	Mr. Nurul Amin, Senior Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.
For Respondent No.15 (In C. A. No. 455 of 2017)	:	Mr. B. M. Elias, Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.
For Respondent No.7 (In C. A. No. 454 of 2017)	:	Mr. Md. Imam Hasan, Advocate instructed by Mr. Md. Shafiqul Islam Chowdhury, Advocate-on-Record.

Respondent Nos. 2-6 and 8-10 (In C. A. No. 455 of 2017)	:	Mr. Sk. Md. Morshed, Additional Attorney General with Mr. Mohammad Saiful Alam, Assistant Attorney General and Mr. Sayem Mohammad Murad, Assistant Attorney General (appeared with the leave of the Court)
Respondent No.11 (In C. A. No. 455 of 2017)	:	Not represented
Date of hearing:		**The 31st day of October and 2nd & 7th day of November, 2023**
Date of judgment	:	**The 22nd day of November, 2023**

JUDGMENT

M. Enayetur Rahim, J: These civil appeals, by leave, are directed against the judgement and order dated 16.08.2016 passed by a Special Bench of the High Court Division in Review Petition No.19 of 2015 allowing the Review Petition and thereby reversing the judgement and order dated 16 January, 2014 passed in Writ Petition No.17182 of 2012 discharging the Rule.

Since both the civil appeals have arisen out of the same judgment, those are heard together and dealt with by this single judgment.

The facts relevant for disposal of the appeals are as follows:

The appellants in Civil appeal No.455 of 2017 and the Institute of Architects Bangladesh (IAB)-respondent No.11 herein, filed Writ Petition No.17182 of 2012 against the present respondents and appellants of C.A. No.454 of 2017 challenging the order/clearances/approvals given vide Memo No. স্মারক নং- পরিবেশ/ঢাবি/১১২৮৪/ঢাকা/ লাল/ ছাড়-৭৩, dated 24.12.2009; memo No. pobomo/pribesh-3/2/DoE Appeal-56/2011/133 dated 14.02.2012; memo No. 30.26.95.4.11284.180906/nabayan dated 21 June 2012

and memo No. Prosha-6/raj-04/2011/581/1(2)dated 2 October 2012.

In the writ petition it is contended that Ashiyan City Development Ltd., the review petitioner-respondent No.1 herein, (herein after referred to as respondent No. 1) is a land development company, responsible for unplanned and unauthorized creation of townships by filling up farmlands and low lying marshy and wetlands in and around Dhaka City, thereby endangering the environment by taking advantage of the reluctance of law enforcement agencies and other public authorities. Respondent No. 1 had grabbed land in the Mouzas of Uttar Khan, Dakkhin Khan, Barua and Bauthar, filled earth in wetlands and was selling plots in its unauthorized Ashiyan City project without requisite approval under Rules for Developing Land in Private Residential Projects, 2004 (herein after referred to as Rules, 2004) from Rajdhani Unnayan Kartripakkha (RAJUK). Though RAJUK and the Director General of the Department of Environment initially moved against such unauthorized land filling and selling plots, but subsequently authorized the said project by the impugned memos dated 21.06.2012 and 02.10.2012 for reasons best known to them.

Earlier, by the impugned memo dated 24.12.2009, the Director General of the Department of Environment granted a conditional site clearance for one year in favour of the respondent No. 1 for 55.6 acres of land although there was no RAJUK approved plan for the project or a "No-objection" certificate from Deputy Commissioner of Dhaka with regard to ownership of the project land, both of which were preconditions for such site clearance. An inquiry by the Director General of the Department of Environment revealed

that the review petitioner was planning to fill up 6000 *bighas* of land.

The writ petitioners also contended that such holding of land by respondent No. 1 violated the ceiling of land holding under the Bangladesh Land Holding Limitation Order, 1972. The Director (Enforcement and Monitoring) of the Department of Environment, fined respondent No.1 an amount of Tk. 50,00,000.00 (Taka fifty lac only) by memo dated 16.11.2011 for violating the provisions of Environment Conservations Act, 1995 and this fine was reduced on appeal by the respondent No.1 to the Ministry of Environments and Forest to Tk. 5,00,000.00 (Taka five lakh only) by an order dated 14.02.2012.

Upon preliminary hearing of the writ petition, a Division Bench of the High Court Division by its order dated 02.01.2013 issued Rule Nisi in the terms prayed. The respondent No.1 contested the Rule by filing affidavit in opposition and two supplementary affidavits denying and controverting all material allegations as contained in the writ petition.

The essential case of the respondent No.1 as averred in its affidavit in opposition and supplementary affidavits is that the lands on which it had undertaken its project did not contain any wetlands within the meaning of Act No. 36 of 2000. The entire land fell within the area earmarked for development of residential/residential-cum-commercial zone in the Master Plan and Detailed Area Plan, as published by the Government/RAJUK vide memos dated 04.08.1997, 12.03.2006 and 22.06.2010.

The respondent No.1 was accorded registration as sponsor of private housing project under Rule 3 of the Rules, 2004 by

RAJUK, by memo dated 2006 and such registration was renewed up to 30.06.2017 by memo dated 09.07.2012.

On 14.11.2010, the respondent No.1 applied for approval of Ashiyan City Project, Phase 1 measuring 43.11 acres. This was forwarded by RAJUK by memo dated 24.07.2011 to the Ministry of Housing and Public Works with recommendation for necessary action under the Rules, 2004 by a memo dated 02.10.2012, incorporating the minutes of a meeting on 25.09.2012 presided over by the Minister, the respondent No.1 was informed of approval of its projects along with housing projects of other companies. Final approval was granted by RAJUK, memo dated 04.10.2012. On the issue of land holding, the respondent No.1 stated that Schedule 3 of the Rules, 2004 grants approval for developing various slabs of land in excess of 100 *bighas* for developing private housing projects. By a letter dated 21.06.2010, the respondent No.1 applied to the Ministry of Land for approval of the project. By memo dated 17.07.2011, Ministry directed the Deputy Commissioner for a report, the Deputy Commissioner by memo dated 19.01.2012 recommend approval. By memo dated 06.02.2012, the Ministry of Land gave clearance to the project. The Department of Environment granted site clearance by memo dated 24.12.2009, which was extended by memo dated 21.06.2012 up to 23.12.2012. By memo dated 30.12.2012, the Department granted approval of the Environment Impact Assessment of the review petitioner.

The respondent No.1 also annexed further documents to bring on record the approval of other authorities, including utilities such as Dhaka Electric Supply Company, Dhaka Water Supply and Sewerage Authority, Bangladesh Telegraph and Telephone Board and Titas Gas as well as the Fire Service and

Civil Defence, Dhaka Transport Coordination Board, Dhaka Metropolitan Police and Water Development Board. The respondent No.1 also brought on record documents to show allotment of land to various utilities and the police authorities. The Dhaka City Corporation also confirmed that since the area of the project fell outside its territory, its approval was not required.

The Rule was finally heard by a Special Bench of the High Court Division, and the Rule was made absolute by a majority judgement delivered on 16.01.2014. The premise on which the Rule was made absolute was that the respondent No.1 had been given approval with respect to 43.11 acres or 130.64 *bighas* of land for its project which exceeded the maximum limit of land property which can be held by a person/ entity under Section 3 of the Bangladesh Land Holding (Limitation) Order 1972, being 100 *bighas*, and the maximum limit of area on which a housing project can be made under Rule 8(1) of the Private Residential Project Land Development Rules, 2004 being 33 acres of land.

However, after conclusion of the hearing of the above writ petition, but before the delivery of the judgement, the respondent No.1 applied to the Deputy Commissioner, Dhaka by an application submitted on 07.01.2014 seeking permission for development of its project on 1197.00 acres of land, including 43.11 acres of land in the first phase, as it exceeded the 33 acres limit. Such approval was sought under Section 20 read with 90(3) of the State Acquisition and Tenancy Act, 1950, Rule 8(1) of the Rules, 2004 and Section 4(d) of the Bangladesh Land Holding (Limitation) Order, 1972 (P.O.98 of 1972). Upon receipt of the application, the Deputy Commissioner, Dhaka, by memo dated 16.01.2014, accorded such

permission with respect to 1197 acres of land. Other developers, being East West Property (Pvt.) Ltd., Swadesh Properties Ltd. (for two projects) and Neptune Land Development Ltd. have, against applications dated 19.01.2014, 17.02.2014, 30.03.2014 and 26.04.2014, obtained approvals for projects having more than 33 acres of land from the Deputy Commissioner, Dhaka by memos dated 26.02.2014, 27.04.2014, 09.06.2014 and 26.04.2014. The respondent No.1 also submits that the writ petitioners did not file any public interest litigation against any other developers similarly placed as this respondent No.1.

Since the approval dated 16.01.2014 being given to the respondent No.1 on the same date as the judgement and order passed in the above writ petition, the respondent No.1 could not reasonably bring it to the notice of the High Court Division. Further, until the respondent No.1 obtained the certified copy of the judgement and order dated 16.01.2014, the respondent No.1 could not consult with its lawyers and take advice as to whether the said approval dated 16.01.2014 could give reason to file a review petition.

The appellants in Civil Appeal No. 455 of 2017 and the Institute of Architects Bangladesh (IAB) as respondents entered appearance in the review petition by filing affidavit in opposition.

The learned Advocate appearing on behalf of the Secretary, Ministry of Land made oral submissions at the time of hearing of the Rule and the learned Deputy Attorneys General appeared for the Secretary, Ministry of Environment and Forest, the Secretary, Ministry of Information, and the Director General, Department of Environment, respondent Nos.

11, 13 and 15 respectively and made oral submission at the hearing of the Rule.

The case of review respondent Nos.1 to 8 (writ petitioners), in short is that a review petition can only be filed on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the petitioner; the statements made in paragraph 9 of the petition clearly show that there was neither any such discovery nor has any new matter or evidence been collected after the judgement was pronounced on 16.01.2014. Instead the undated application of Ashiyan Land Development Ltd. was received by the office of Deputy Commissioner on 07.01.2014 when the Writ Petition was pending and injunction in force, and land holding being a major contentious issue of the writ petition, the same could and should have been brought to the notice of the High Court Division by the respondent No.1 either through filing of an application or at least orally mentioned before that Court when the matter was taken up for pronouncement of judgement on 16.01.2014. While the undated application of Ashiyan Land Development Ltd. mentions a new quantum of land, i.e. 1197 acres that varies substantially from the earlier contradictory claims of the review petitioner about ownership of land, the same substantiates the assertion of the writ petitioners about grabbing of lands by Ashiyan Land Development Ltd. The quantum of land mentioned in the application being much above the legal ceiling of land holdings and contrary to the land quantum mentioned during the course of hearing, the said application is nothing but a deliberate, clever and *mala fide* attempt to legalize land

grabbing by Ashiyan Land Development Ltd. and frustrate and undermine the judgement.

It is further contended by the review respondents that in the said application the respondent No.1 deliberately did not disclose the pendency of the litigation and the Deputy Commissioner, as a co-respondent, did not apply his mind in according the so-called permission behind the back, as such administrative sanction in a *sub judice* matter while an injunction in force against the project cannot be given except for the evil purpose of affecting the substratum of the litigation. The so-called permission accorded by the Deputy Commissioner on 16.01.2014 with respect to 1197 acres of land is bad in the eye of law as none of the three laws relied on in the application allow any such authorisation by the Deputy Commissioner, nor does the permission refer to any other legal premise on the basis of which such permission has been accorded.

In view of the existing legal context and the judgement of the Appellate Division, the so-called permission of Deputy Commissioner having no legal sanction should be rejected as a ground for the Review Petition. The petitioner of the Review Petition and the Deputy Commissioner, Dhaka both being respondents in the Writ Petition and having contested the Rule should have mentioned the fact of filing of the application in the *sub-judice* matter where an order of injunction was still in force at the relevant time. The fact that both the parties deliberately omitted to mention this aspect of the case and have come forward with the Review Petition with a permission claimed to have been given just on the day of the judgement strongly suggests unholy cohesion

between the two respondents-parties in the writ petition. The so-called permission, being a product of dubious and collusive actions, should be rejected outright and dealt with sternly as the same is sought to be used so as to over-reach the judgement and order dated 16.01.2014 and/or to frustrate the effect of the said judgement and order.

It was also stated that the permissions in favour of other developers as mentioned in paragraph 11 of the Review Petition were all accorded subsequent to the permission letter issued in favour of Ashiyan Land Development Ltd.

A Special Bench of the High Court Division after hearing the review application by its judgment and order allowed the same and set aside the judgment and order dated 16.01.2014 passed in Writ Petition No. 17182 of 2012.

Being aggrieved and dissatisfied with the said judgment and order the appellants (C.A. No. 455 of 2017) filed Civil Petition for Leave to Appeal No. 2789 of 2017. The Government also filed Civil Petition for Leave to Appeal No. 2669 of 2017 and accordingly leave was granted on 07.08.2017. Hence, the present appeals.

Mr. Sk. Md. Morshed, learned Additional Attorney General with Mr. Mohammad Saiful Alam, and Mr. Sayem Mohammad Murad, Assistant Attorney General(s) have appeared on behalf of the appellants in Civil Appeal No.454 of 2017, and Mr. Fida M. Kamal, learned Senior Advocate with Mr. Probir Neogi, learned Senior Advocate and Mr. Minhajul Hoque Chowdhury, learned Advocate have appeared for the appellants in Civil Appeal No.455 of 2017.

The main contentions of the learned Advocates for the appellants in both the appeals are as follows:

i) the High Court Division in granting review and by setting aside the earlier judgement and order dated 16 January, 2014, has committed serious error of law by failing to appreciate that the grounds taken in the Review Petition did not attract section 114 and Order XLVII rule 1 of the Code of Civil Procedure; the materials produced were duly considered and recorded during the hearing of the writ petition, and hence could not be revisited by way of re-hearing; there was no error on the face of the record; if the conclusions reached by the judgement dated 16 January, 2014 were considered erroneous, then the same should have been challenged by filing an appeal (as a follow up of C.M.P 09 of 2014) and not by way of review;

ii) the review was erroneously granted by the High Court Division although there was no discovery of new and important matters of evidence, which after the exercise of due diligence, was not within the knowledge or could not be produced by the review petitioner, inasmuch as the so-called permission of the office of the Deputy Commissioner dated 16.01.2014 was given on an application of the review petitioner made prior to the pronouncement of the judgment in the writ petition but deliberately not disclosed before the Court;

iii) the High Court Division failed to appreciate that without filing appeal against the judgment, review petition was filed with the mischievous intention to take undue advantage of the split judgment and that

granting of review on legally untenable grounds is clearly erroneous. The High Court Division failed to appreciate that the review petition was *mala fide* inasmuch as the same has been filed relying on the so-called "No-objection" letter of the Deputy Commissioner which clearly is a result of dubious and collusive action between him and the Review Petitioner and was obtained just on the day of the judgement simply to over-reach the judgement and order dated 16 January, 2014 and/or to frustrate the effect of the said judgement and order;

iv) the High Court Division, by allowing condonation of delay, has fallen into error as the same is contrary to the provisions of the Limitation Act, 1908;

v) in setting aside of the impugned Memos Annexures 'C', 'H', 'K' and 'M' by the judgement dated 16.01.2014 on findings of cogent grounds in the facts and circumstances of the case, appear to have been negated in review by the impugned judgement dated 16.08.2016 without any discussion and/or reference to the said Memos;

vi) the High Court Division failed to appreciate that the project of respondent No. 10 was being implemented in violation of the mandatory legal provisions of the Town Improvement Act, 1953 (E.B. Act No. XIII of 1953); the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) and the Environment Conservation Rules, 1997 made thereunder; "মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ (Act No. XXXVI of 2000); বেসরকারি আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪; The

State Acquisition and Tenancy Act, 1950, the Bangladesh Land Holding Limitation Order, 1972, and the judgment of the Supreme Court as reported in 65 DLR (AD)181;

vii) the impugned judgment shall legalize the irregular and unlawful approvals/ permissions given by respondents No.6 and 7, encourage indiscriminate and unauthorized filling up of wetlands, defend landlordism and land grabbing, jeopardize the land rights of the genuine land owners and make a real mockery of laws relating environment, town planning and land administration.

Per contra, Mr. Ahsanul Karim, learned Senior Advocate with Mr. M. Qumrul Hoque Siddique, learned Senior Advocate appearing for respondent No. 1 in both the appeals made submissions in support of the impugned judgement and order of the High Court Division. The main contentions are as follows:

i) the review is maintainable because the approval of Deputy Commissioner was not on the record which was the only decisive issue context and determining factor by the majority judges for making the Rule absolute and which the respondent No. 1 could not produce at the time when the judgment was pronounced, although the said approval was in fact in existence as on the day when the judgment was pronounced;

ii) a review is competent when an important document/matter could not be produced at the time when the judgment has been pronounced or there is some other sufficient reason for review; when the judgment was pronounced the approval was available but the respondent No. 1 could not produce it despite exercising due diligence. This is what is termed as a sufficient reason

to invoke review jurisdiction within the ambit of Order XLVII of Code of Civil Procedure;

iii) since the main determining factor striking out of the impugned Memos were on the rationale that Deputy Commissioner approval was not on the record, on which basis the Rule was made absolute which had the respondent would be able to obtain the approval of Deputy Commissioner when the judgment was pronounced, the results would have been different; the respondent No.1 had the access of the approval of Deputy Commissioner, as on the date of judgment but was precluded from producing it for sufficient reason, the absence of such material document the Rule was made absolute and the said single document was the decisive document determining the fate of the respondent No. 1 and, therefore, the said document was the only decisive factor to maintain the review petition;

iv) the High Court Division upon discovery of new document allowed the Review and this is precisely what a Court of law would consider under Order XLVII of Code of Civil Procedure. In the original judgment, there was no contrary finding which required to be adverted to. A review by no means a rehearing of appeal. The finding of the Court upon discovery of new document is sufficient to allow the review. The Review judgment required no further elaboration;

v) the Metro Maker case reported in 65 DLR AD 181 is distinguishable in the present case; paragraph 146 of the said judgment enumerates what is ‘প্রাকৃতিক জলাধার’ and the *ratio decidendi* in the said case disqualifying a residential

area; in Metro Maker case, the relevant documents were not available but in the given case those documents are available; in Metro Maker case, the land in question was within flood zone and semi flood zone; however in the instant case the entire land in question does not contain any wet land not to speak of flood zone;

vi) the project lands have been mostly classified as 'Vita', 'boro', 'chala', 'bari' and 'Chala'& 'nal' as printed in City Jarip Khatiyan in between 1997-2004 under section 144 of SAT Act 1950 and accordingly, there was no cannel or river or jalashay/Jaladhar in the project land as per City Jarip Mouza map printed by the competent authority in between 1997-2004;

vii) a Civil Miscellaneous Petition is not the continuation of leave petition nor a proceeding of Appeal under the Constitution and thus mere filing of CMP does not take away the right of Review;

viii) There was no such injunction restraining the Deputy Commissioner in granting 'No-objection' in respect of the project and further the order of approval by Deputy Commissioner is too remote to cover the order of injunction passed by the High Court Division;

ix) the Government cannot resile from its own order, sanction or approval. [Ref: 1 BLD (AD) 91; 10 MLR (AD) 23].

x) a Public Interest Litigation is mean to spouse a cause to benefit the public at large; it cannot be calculated to vindicate the interest of any particular sector of any society; it creates a serious doubt and suspicion in rightful thinking members of society and to

the esteem of the rightful thinking members of society at large; the petitioners are pursuing against certain cause of a particular developer leaving other developers irrespective of public and private including Basundhara Housing (East West Properties Limited), Purbachal Housing Project, Jalshiri Housing Project, BCS Admin Housing Society, Police Officers Housing Society, Judicial Officers Housing Project, Civil Aviation Residential Zone, Neptune Properties Ltd., Swadesh Residential Project, Jamuna Builders, Lake City Concord Banorupa Residential Project, Nasa Group, Pink City, Sector 4 & 6 of Rajuk Uttara Model Town Project, Haji Camp; it is really mischievous and suspicious why the petitioners are after one particular petty developer which creates serious doubt the action and persuasion of the petitioner at the behest of other big developers only to preclude the respondent No. 1 so as to give better benefit to those big developers so that they can exercise exclusive monopoly in the respective market and thus, the writ petitioners are nothing but busy body exercising unholy game in the name of so called public Interest Litigation.

We have considered the rival submissions of the learned Advocates for the parties concerned, perused the impugned judgments and order of the High Court Division and other connected papers as placed before us.

In the instant case, the Special Bench of the High Court Division in deciding the merit of the Rule in writ petition No.17182 of 2012 making the Rule absolute (by majority view) observed that the project area is 43.11 acres or 130.64 bighas but the writ respondent No. 10 (present respondent

No.1) had got no permission of the Deputy Commissioner as required for the excess land for the project in question beyond the limit of 33 acres as provided in Rule ৮ (ক) of the বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪।

বিধি ৮ (ক) of the বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪ runs as follows:

> *"(৮) বিধি এর ---*
>
> *(ক) উপ-বিধি (১) এর পরিবর্তে নিম্নরূপ উপ-বিধি (১) প্রতিস্থাপিত হইবে, যথাঃ-*
>
> *"(১) বেসরকারি আবাসিক প্রকল্প গ্রহনের ক্ষেত্রে ঢাকা উত্তর সিটি করপোরেশন, ঢাকা দক্ষিণ সিটি করপোরেশন বা পৌর এলাকার অভ্যন্তরে ন্যূনতম ৫ (পাঁচ) একর এবং ঢাকা উত্তর সিটি করপোরেশন, ঢাকা দক্ষিণ সিটি করপোরেশন বা পৌর এলাকার বাহিরে ন্যূনতম ১০ (দশ) একর ভূমির প্রয়োজন হইবে, ন্যূনতম আয়তনের প্রকল্পের ক্ষেত্রে উদ্যোক্তাকে শতভাগ ভূমির মালিক হইতে হইরে, সম্প্রসারিত এলাকার ক্ষেত্রে নতুন এলাকা এবং পূর্বের (অনুমোদিত) এলাকা সমন্বয় করিয়া লে-আউট প্রণয়ন করিতে হইবে; State Acquisition and Tenancy Act, 1950 (Act No. XXVIII of 1951)এর section 20 এবং section 90 অনুযায়ী যে কোন উদ্যোক্তার প্রকল্পের আয়তন সর্বোচ্চ ৩৩ (তেত্রিশ) একর হইবে, তবে প্রকল্পের আয়তন এর বেশী হইলে সংশ্লিষ্ট জেলা প্রশাসকের দপ্তরের অনুমতি গ্রহন করিতে হইবে।"* (Underlines supplied)

The Special Bench of the High Court Division mainly on the ground of excess land of the project in question, i.e. total area of project in question is 43.11 acres or 130.64 *bighas* than the land ceiling of 33 acres, made the Rule absolute. From the said judgment, it also appears that the High Court Division declared Annexures-M, C, H, and K to have been issued without lawful authority and is of no legal effect.

Annexure-C is the conditional site clearance in favour of the respondent for 55.6 acres of land issued by the পরিবেশ অধিদপ্তর for 1 (one) year; annexure-H is the decision of the পরিবেশ অধিদপ্তর deciding to pay Tk. 5 (five) lakh for causing damage, and direction to the writ respondent No. 7 to dispose of the application of the present respondent dated 24.11.2020 for renewal of site clearance; annexure-K is the extension of

site clearance and annexure-M is the approval of the RAJUK for establishing the Ashiyan City Prokalpo first phase.

Though in the writ petition it was contended by the writ petitioners that if the project is implemented, the environment will seriously threatened, and that said project is going on in violation of the law as mentioned earlier. The High Court Division without giving any findings whether the project in question is violative of the Town Improvement Act, 1953,(E.B. Act No. XIII of 1953); the Environment Conservation Act, 1995(Act No. 1 of 1995); the Environment Conservation Rules 1997; মহানগরী, বিভাগীয় শহরের ও পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০(Act No. XXXVI of 2000); বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪; the State Acquisition and Tenancy Act, 1950 made the Rule absolute (majority view). The Special Bench of the High Court Division mainly on the ground of excess land which is violative of the Bangladesh Land Holding Limitation Order 1972 and Rule 8 (Ka) of the বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪ made the Rule absolute.

In review, the Special Bench of the High Court Division taking into consideration of the new circumstances that on the day of delivery of judgment the respondent No.1 has got an approval, i.e. 'No-objection' from the office of the Deputy Commissioner, Dhaka, for development of its project on 1197 acres of land including 43.11 acres of land in the first phase and, thereby, allowed the review application setting aside its earlier judgment and order making the Rule absolute.

It is now the moot question before us whether in the facts and circumstances of the present case the Special Bench of the High Court Division committed error in reviewing its earlier judgment on the basis of alleged 'No-objection'

accorded by the office of the Deputy Commissioner Dhaka issued on 16.01.2014, i.e. on the day of delivery of judgment in favour of the respondent No.1, which was neither produced nor intimated to the Court, when judgment was pronounced.

It is now well settled that judgment passed in a writ petition can be reviewed although the High Court Rules does not specifically provide such review and in that event, Code of Civil Procedure is applicable.

In the case of **Moni Begum and others vs. Rajdhani Unnayan Kartripakha and others**, reported in **(1994) 46 DLR (AD)154** this Division found the proceedings in writ jurisdiction to be civil proceedings, but having regard to the summary nature of the proceedings held that section 141 of the Code would not in terms apply. This Division has observed that:

> *"In our view, the High Court Division while exercising the writ jurisdiction relating to a civil matter is no doubt in seisin of a civil proceeding,........"*
>
> And
>
> *"........the Court in its discretion can apply the principles as distinguished from the technical provision of the Code of Civil Procedure to meet the exigencies of the situation in appropriate case on the ground of justice, equity and good conscience. In what situation the principles of the Code of Civil Procedure will be applied and to what extent may perhaps be left to the wise discretion of the Court itself. In other words, barring what is specifically provided for in the Rules themselves, the Court is the master of its own procedure and it will exercise both its procedural and substantive discretions only on the ground of justice, equity and good conscience."*
>
> And
>
> *"Section 141 CPC does not in terms apply to proceedings in writ. But the Court in its discretion can apply the principles as distinguished from the technical provisions of the CPC to meet the exigencies of the situation on the ground of justice, equity and good conscience."*

Let us now look into the provision of Order XLVII rule 1 of the Civil Procedure, which is as follows:

> ***"Application for review of judgment.***
>
> *1.(1) Any person considering himself aggrieved-*
>
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed, or*
>
> *(c) by a decision on a reference from a Court of small causes,*
>
> *and who, from a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."*

From the above provision of law, it is abundantly clear that Court has got the authority to review its judgment or order, as the case may be under specified conditions; i.e.

i) on discovery of new and important matter or evidence, which was not known to or could not be produced by the review petitioner before;

ii) on account of some mistake or error apparent on the face of the record; or

iii) any other specified reason.

It is now well settled that unless a prayer for review is based on the grounds mentioned above, the Court will not sit on the matter again for re-hearing or further hearing, which is already concluded by the decision. In this connection we may rely on the cases of **Basharatullah, being dead his heirs: Fazle Karim and others Vs. Government of Bangladesh and others,** reported in **16 BLD (AD)9=48 DLR (AD)178,** in the case of **Rahima Akhter and others Vs. Asim Kumar Bose and others,** reported in **40 DLR (AD) 23,** in the

case of **Pradhip Das alias Shambhu and others Vs. Kazal Das Sarma and others,** reported in **44 DLR (AD)1.**

In the case of **Suja Ud-doula and others vs. Arshad Hossain Haider and others,** reported in **22 BLC (AD) 49** this Division has observed that *review is not re-hearing of an appeal or to give a defeating party chance to start second innings and the reasons given by a Court is not relying upon an exhibit in a case do not definitely come within the phraseology, "or on account of some mistake or error apparent on the face of the record."*

In the case of **Nurul Hussain vs. Government of the People's Republic of Bangladesh,** reported in **49 DLR (AD) 108** this Division has observed that *a review was never meant and allowed to be utilized an another opportunity for re-hearing the matter which is already closed by a final judgment.*

In the case of **GM, Postal Insurance and another vs. ABM Abu Taher,** reported in **61 DLR (AD) 97** this Division also held that *a party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose for re-hearing in a fresh decision of the case, and departure from that principle is justified only when circumstances of the substantial and compelling character made it necessary to do so.*

In the case of **Syed Md. Ismail Vs. Dhaka University and another,** reported in **1 MLR (AD) 425,** this Division has observed that *review of judgment can only be made on discovery of important evidence, which could not be produced before he Court in spite of due diligence and had the same been produced, the decision of the Court would have been otherwise.* In the case of **Islamic Foundation Bangladesh vs. Firoz Alam and others,** reported in **53 DLR (AD) 48** this Division held that *in these circumstances the High Court Division does not appear to have committed any error of law by not giving a chance to the petitioner to try its luck once again on the plea of discovery of additional evidence.* In the above case, this Division relied on the

case of **Kessewji Issur vs GIP Ry. Company, 34 IA 115 (PC)** where the Privy Council observed that:

> "*Now the civil Procedure Code permits such applications for review on the ground of such discovery, but it exacts very strict conditions so as to prevent litigants lying on their oars when they ought to be looking for evidence-it enjoins the Judge to require the facts as to the absence of negligence to be strictly proved, and it makes the Judge who tried the case final on such application.*"

In the above case, this Division further held that-

> "*In the instant case, the petitioner alleges that certain letters have passed between the Foreign Office and the High Commission for Bangladesh in Karachi after the disposal of the appeal, which disclose that Md. Ismail is still alive in Karachi. If this be a fact the petitioner could have discovered the same through correspondences much before the suit came up for hearing in the trial Court. The non-discovery of the alleged fact that Md. Ismail is still alive must, therefore, be due to the negligence of the petitioner*".

In the Case of Abu Said Md. **Idris Ali Sikder vs Monoranjan Bagchi**, reported in **22 DLR, 214** it has been held that *right of review can be exercised only in case of excusable failure on the part of the applicant to bring to the notice of the Court new and important matters of error.*

Absence of negligence on the part of the applicant is to be strictly proved. ***[22 DLR, 216 Gulnahar vs. Ramjan Ali].*** In the case of **Arun Bhowmick vs. Slim Rezd**, reported in **1988 BLD 180** the High Court Division held that *the Court must come to a clear finding that there was discovery of new and important matter which after exercise of due diligence was not within the knowledge of the petitioner.*

Let us now consider the case in hand in view of above settled propositions of law.

The learned Advocates for the respondents extraneously argued that the alleged 'No-objection' given to the respondent on the day of delivery of judgment, i.e. on 16

January 2004, was not placed or communicated at the time of pronunciation of the judgment and the Special Bench of the High Court Division having considered the said fact allowed the review petition and, thereby, committed no error of law which can be interfered by this Division and the judgment passed by the High Court Division is within the very ambit of Order XLVII rule 1.

A pertinent question is required to be addressed here, whether the alleged 'No-objection' obtained by the respondent No.1 on the date of delivery of judgment (16.01.2014) which was neither presented before the Court nor intimated the same to the Court will come within the meaning of 'discovery of new fact or important matter'.

The dictionary (Black's law, 8th edition; Cambridge and Oxford Dictionary) meaning of 'discovery' is 'the act of finding something that had not been known before or something that one did not know about before.'

Discovery of new and important matter or evidence which could affect the decision is a ground for review only if it is shown that even after the exercise of due diligence, it was not within the knowledge of, or could not be produced by, the party at the time of passing of the judgment and order. The alleged 'No-objection' in favour of the respondent Ashiyan City cannot be said as discovery of new fact or evidence which after due exercise of diligence was not in the knowledge of the writ petitioner or could not produce by him when the judgment was delivered; rather considering the attending facts and circumstances of the present case, in particular the fact of getting alleged 'No-objection' was not produced/communicated or intimated to the Court during pronunciation of judgment of the writ petition, and that the

review application was filed after a long lapse of time beyond the limit of prescribed time in law, thus, it is our considered view that this document (No-objection) is not a discovery of new fact or evidence rather it is a new document which the review petitioner-respondent had been able to manage the same cleverly, despite of the order of injunction of the High Court Division.

It is pertinent to mention here that hearing of the Rule was concluded on 03.10.2013, and judgment was awaiting for pronouncement and eventually, judgment was delivered on 16.01.2014, i.e. after 2 months 16 days and between this period nothing was intimated to the Court even filing of application on 07.01.2014 to the Deputy Commissioner for permission of the project in question.

From the above facts and circumstances, we may reasonably infer that the alleged 'No-objection' is a result of dubious and collusive action between the office of Deputy Commissioner, Dhaka and the review petitioner-respondent No.1 and, thus, we are unable to accept the submissions of the learned Advocates for the review petitioner-respondent No.1 that the review petition was maintainable within the ambit of Order XLVII rule 1. In view of the above, we have no hesitation to hold that the Special Bench of the High Court had committed serious error in entertaining the review petition and allowing the same.

However, it transpires that from the record that the Deputy Commission earlier gave 'No-objection' in respect of 55.6 acres of land in favour of the review petitioner-respondent No.1 for its project but it was entitled to retain only 33 acres of land as per Bangladesh Land Holding (Limitation) Order 1972 (P.O. 98 of 1972) and বেসরকারি আবাসিক ভূমি

উন্নয়ন বিধিমালা, ২০০৪ at the relevant time. It is evidenced from the record that respondent No.1 got approval of other authorities, including utilities such as Dhaka Electric Supply Company, Dhaka Water Supply and Sewerage Authority, Bangladesh Telegraph and Telephone Board and Titas Gas as well as the Fire Service and Civil Defence, Dhaka Transport Coordination Board, Dhaka Metropolitan Police and Water Development Board.

Thus, we are of the view that review petitioner-respondent No.1 is entitled to proceed his project in respect of 33 acres of land pursuant to the permission dated 25.09.2012 and annexures 'C', 'K' and 'M' will be applicable only in respect of the said quantum of land and permission of respective organizations.

With the above observations, the appeals are disposed of. The judgment passed by the High Court Division in Review Petition No. 19 of 2015 is set aside.

However, there is no bar to carry of the project on 33 acres of land by the respondent No.1 Ashiyan City.

No order as to costs.

C. J.

J.

J.

J.

J.

B.S./B.R./*Words-7,045*