

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 1316 of 2010

In the matter of:

An application under article 102 of the
Constitution of the People's Republic of
Bangladesh.

AND

In the matter of:

Salauddin Bhuiyan and others,
represented by their constituted attorney,
Rashiduzzaman,

..... Petitioners.

-Versus-

Government of the People's Republic of
Bangladesh, represented by Deputy
Commissioner, Dhaka and others,

..... Respondents.

Mr. Md. Iqbal Hossain, Advocate with

Mr. Hasan Rajib Prodhan, Advocate,

.....For the petitioners.

Mr. Bepul Bagmar, DAG,

.....For the respondent No. 1.

Mr. M. Waliul Islam, Advocate

.....For the respondent No.2.

Judgment on: 16.11.2023

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice Md. Iqbal Kabir

Md. Khasruzzaman, J.

In an application under article 102 of the Constitution, on
08.03.2010 the *Rule Nisi* under adjudication was issued calling
upon the respondents to show cause as to why the judgment and
order dated 30.09.2003 passed by respondent No.3 in Arbitration
Appeal No.7 of 1997 allowing the appeal and thereby reversing

the judgment and award dated 11.01.1997 passed by the Subordinate Judge and Arbitrator, Dhaka in Arbitration Revision Case No. 39 of 1992 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts, as stated in the writ petition, in short, are that the petitioners belonged to 75 decimals of land which was acquired by the government vide L.A. Case No. 1 of 1985-86. On assessment, the government paid compensation to the petitioners amounting to Taka 39,37,606.04 (Thirty Nine Lac Thirty Seven Thousand Six Hundred Six and Four Paisa) only. Being aggrieved by the award of compensation made by the Deputy Commissioner, Dhaka, the petitioners filed Arbitration Revision Case No. 39 of 1992 in the Court of Subordinate Judge and Arbitrator, Dhaka for redress on the ground that the amount of compensation is inadequate and not in accordance with law.

The present respondent-government as opposite party contested the said arbitration revision case claiming that the compensation assessed and paid to the petitioner-land owners was quite legal and proper and they have accepted the award of compensation without raising any objection. Hence, the arbitration revision case is liable to be rejected.

Upon hearing the learned Advocates and on perusal of the materials on record, the learned Subordinate Judge and

Arbitrator, Dhaka vide his judgment and order dated 11.01.1997 allowed the arbitration revision case in part granting award of Taka 1,08,47,797.96 in favour of the petitioner-land owners.

Being aggrieved by and dissatisfied with the award of compensation dated 11.01.1997 passed in Arbitration Revision Case No. 39 of 1992, the government preferred Arbitration Appeal No. 07 of 1997 Arbitration Appellate Tribunal, Dhaka for redress. After hearing the parties and on perusal of the materials on record, on 30.09.2003 the arbitration appeal was allowed on setting aside the impugned judgment and order of award of compensation dated 11.01.1997.

Being aggrieved by and dissatisfied with the judgment and order dated 30.09.2003 passed by the Arbitration Appellate Tribunal, Dhaka in Arbitration Appeal No. 07 of 1997, the petitioners filed Civil Revision No. 4626 of 2003 under section 115(1) of the Code of Civil Procedure and obtained the Rule. Subsequently, the petitioners got the Rule issued in Civil Revision No.4626 of 2003 discharged for non-prosecution on the impression that filing of revision against the judgment and order dated 30.09.2003 passed by the Arbitration Appellate Tribunal, Dhaka is not maintainable in law. Thereafter, the petitioners applied for certified copy of the judgment and order dated 30.09.2003 passed in Arbitration Appeal No.07 of 1997 and after obtaining the same, they filed instant Writ Petition No.1316 of

2010 and obtained the *Rule Nisi* in the manner as stated hereinabove.

By filing a supplementary affidavit the petitioner brought some facts stating inter alia that one Abdul Quddus being owner of 28 decimals of land was paid compensation at the rate of Taka 42,34,800.00 per acre in the same L.A. Case No. 1 of 1985-86. Being dissatisfied he filed Arbitration Revision Case No. 35 of 1992 before the Arbitrator, Dhaka for redress. The Arbitrator vide his judgment and order dated 30.06.1993 passed an award of compensation to the tune of Taka 36,56,756.20 in favour of said Abdul Quddus. Challenging the said award of compensation dated 30.06.1993 the Deputy Commissioner, Dhaka preferred Arbitration Appeal No.6 of 1993 before the Arbitration Appellate Tribunal, Dhaka, and after hearing the appeal was dismissed vide judgment and order dated 11.07.1995. Against the said judgment and order, the requiring body i.e. RAJUK filed Civil Revision No.3334 of 1996 before the High Court Division and obtained Rule. But the said Rule was discharged by judgment and order dated 04.02.1997. Challenging the said judgment and order dated 04.02.1997 passed in Civil Revision No.3334 of 1996, the RAJUK also preferred Civil Petition for Leave to Appeal No.867 of 1998 before the Appellate Division. After hearing, the said civil petition was dismissed vide order dated 24.11.1998. Consequently, said Abdul Quddus i.e. the petitioner of Arbitration Revision Case No. 35 of 1992 filed Money Execution Case No.113 of 1995 for realizing the compensated amount

awarded by the Arbitrator. In this money execution case, the RAJUK filed an application for exempting them from paying the awarded amount being excess amount. But the learned Joint Judge and Arbitrator, Dhaka vide his order dated 09.07.2005 rejected the application. Then the RAJUK filed Civil Revision No.434 of 2005 before the learned Additional District Judge, 1st Court, Dhaka who vide his judgment and order dated 10.04.2006 rejected the revisional application. Being aggrieved, the RAJUK preferred Civil Revision No.4175 of 2006 before the High Court Division and obtained Rule which was subsequently discharged by judgment and order dated 25.06.2009. After that no step was taken, the authority paid the compensation money to Abdul Quddus i.e. the petitioner of Arbitration Revision Case No.35 of 1992. Accordingly, it is stated that since the land of the present petitioners i.e. the petitioners of Arbitration Revision Case No. 39 of 1992 and that of Abdul Quddus the petitioner of Arbitration Revision Case No.35 of 1992 were acquired under the same L.A. Case No.1 of 1985-86, the petitioners are entitled to get similar treatment, otherwise they will be discriminated which will lead to suffer irreparable loss and injury.

Respondent No.2, RAJUK filed an affidavit-in-opposition contending *inter alia* that the petitioners already accepted the awarded amount on 05.01.1992 without raising any objection. It is stated that section 28 of the Acquisition and Requisition of Immovable Property Ordinance, 1982 provides that person who has not accepted the award made by the government, he may file

an application to the Arbitrator for revision of the award. Since the award was accepted without any objection, the petitioners have no *locus standi* to file the arbitration revision case and as such the award of compensation passed by the Arbitrator, Dhaka in Arbitration Revision Case No. 39 of 1992 is illegal and liable to be set aside. Hence, the Rule Nisi is liable to be discharged.

Mr. Md. Iqbal Hossain with Mr. Hasan Rajib Prodhan, the learned Advocates appearing on behalf of the petitioners submits that while allowing the appeal filed by the Government, the Arbitration Appellate Tribunal, Dhaka held that since the petitioners did not raise any objection at the time of accepting the awarded money, filing of the arbitration revision case before the Arbitrator, Dhaka is not maintainable as per section 28 of the Acquisition and Requisition of Immovable Property Ordinance, 1982. The above finding is against the law settled by the Appellate Division in the case of **Government and another Vs. Abdur Rahman and others, III ADC 232** wherein it has been held that when a person whose land was acquired and the Deputy Commissioner awards compensation for said acquired land files a revision award case that itself can sufficiently be considered that the affected person did not accept the award made by the Deputy Commissioner as correct and as such it cannot be said that money awarded by the Deputy Commissioner for the acquired land was received by the affected persons without protest. Moreover, another affected person namely Abdul Quddus of the same L.A. Case filed Arbitration Revision Case

before the Arbitrator, Dhaka and got the award and after exhausting all legal steps in law, said affected person Abdul Quddus was paid compensation as per the award passed by the Arbitrator, Dhaka. Therefore, the land of the petitioners and those of the said affected person Abdul Quddus were acquired under the same L.A. case and hence the petitioners are entitled to get the awarded money as per the award passed by the Arbitrator, Dhaka in Arbitration Revision Case No. 39 of 1992. The learned Advocate further submits that earlier the petitioners filed Civil Revision No.4626 of 2003 before this Court against the impugned judgment and obtained Rule which was subsequently discharged for non-prosecution on the impression that revisional application is not maintainable in view of section 34(4) of the Ordinance, 1982. Moreover, the impugned judgment and order was passed by the learned District Judge being an Arbitrator of the Arbitration Appellate Tribunal is not a Court within the meaning of the Code of Civil Procedure and since Arbitration Appellate Tribunal is not a Court subordinate to the High Court Division, his earlier revisional application was not maintainable and as such the instant writ petition is very much maintainable in law and hence the Rule Nisi may kindly be made absolute.

Referring to a decision in the case of **Khaled Akbar Vs. The Government of Bangladesh and others, 42 DLR (AD) 66**, Mr. Md. Waliul-ul Islam, the learned Advocate appearing on behalf of the respondent No.2 submits that the writ petition is not maintainable against the judgment and order dated 30.09.2003

passed by the Arbitration Appellate Tribunal, Dhaka in Arbitration Appeal No.7 of 1997 and hence, the Rule Nisi may kindly be discharged.

We have considered the submissions advanced by the learned Counsels for the respective parties and perused the writ petition, supplementary affidavit, affidavit-in-opposition and papers appended thereto as well as the decisions relied upon by the parties as cited above.

Admittedly, the land of the petitioners was acquired by the government vide L.A. Case No. 1 of 1985-86 and Taka 39,37,606.04 was paid to them as compensation for the acquired land. Thereafter, the petitioners being dissatisfied with the award made by the Deputy Commissioner, Dhaka filed Arbitration Revision Case No.39 of 1992 before the Arbitrator, Dhaka who vide judgment and order dated 11.1.1997 passed the award to the tune of Taka 1,08,47,797.96 to the petitioners. RAJUK being a requiring body filed Arbitration Appeal No.7 of 1997 before the Arbitration Appellate Tribunal, Dhaka who vide his judgment and order dated 30.09.2003 allowed the appeal and set aside the award passed by the Arbitrator, Dhaka. In the impugned judgment it is found that arbitration revision case was not maintainable as per sections 21(2) and 28 of the Ordinance, 1982 as the petitioners did not raise any objection at the time of accepting the award money. This very point has been settled by the Appellate Division in the case of **Government and another**

Vs. Abdur Rahman and others, III ADC 232 holding that filing of an award revision case itself can sufficiently be considered that money awarded by the Deputy Commissioner for the acquired land was received by the affected persons with protest.

However, the petitioners may have a good ground in this writ petition. But a question of maintainability of the writ petition has been raised by the respondent-RAJUK that challenging the impugned judgment their remedy lies not under article 102 of the Constitution but under section 115(1) of the Code. So, let us examine as to whether the writ petition is maintainable under article 102 of the Constitution against the judgment passed by the Arbitration Appellate Tribunal.

Further question may arise that the impugned judgment was passed by the learned District Judge not the Arbitration Appellate Tribunal. So, whether he should be called as a persona designate or Court. In this respect, our Appellate Division has settled in clear terms.

In the cases of **A K M Ruhul Amin Vs. District Judge and Appellate Election Tribunal, Bholu and others, 38 DLR(AD) 172, and Chera Dangi Mela Committee vs. Mohammad Yusuf Ali, 1977-78 BSCR (AD) 254**, the Appellate Division held that there is no conflict between the two expressions 'persona designata' and 'Court'. *If the function of the designated person is judicial in character, he is not a 'persona designate' but a Court, even though he is not described as a Court, but by official*

designation. The real test is the power and function which the person discharges. Thus if the function is a judicial one then the authority discharging the function is a Court although he is not described as Court by official designation.

Now let us answer on the question of maintainability of the writ petition. In the case of **Khaled Akbar Vs. The Government of Bangladesh and others, 42 DLR (AD) 66**, the Appellate Division held as follows:

“At the outset we will consider as to whether a revision under section 115 of the Code of Civil Procedure is maintainable or not. A reference to section 34(3)(4) of the Ordinance shows that an Arbitration Appellate Tribunal shall consist of a Member who shall be appointed by the Government from amongst persons who are or have been District Judges and the decision of the Arbitration Appellate Tribunal shall be final. Sub-section (2) of section 34 speaks that the Government shall, by notification in the official gazette, constitute one or more Arbitration Appellate Tribunals for such areas as may be specified therein. From the Gazette Notification No. S.R.O. 184-L/83/VII-21/83, it appears that in pursuance of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982), the Government is pleased to constitute an Arbitration Appellate Tribunal for district and has appointed the District Judge of that District to be the member of the said Tribunal. Thus, it

appears that the District Judge of a District is a Member, Appellate Tribunal for hearing of the appeal from the decision passed by the Arbitrator appointed under section 27 of the Ordinance. Thus, we are called upon to see whether the function which the Member, Appellate Tribunal discharges in deciding an appeal from the decision of an Arbitrator is a judicial one or a function in his private capacity. If the function is a judicial one, then it is amenable to the jurisdiction of this Court under section 115 of the Code of Civil Procedure, otherwise not.”

In view of the above decision, we are of the view that since the function of the Arbitration Appellate Tribunal in deciding the appeal by the impugned judgment is a judicial in character, his judgment and order which has been impugned in this writ petition is amenable to the jurisdiction of this Court under section 115 of the Code of Civil Procedure.

In the facts and circumstances stated above, the writ petition against the judgment and order passed by the Arbitration Appellate Tribunal is not maintainable under article 102 of the Constitution.

At this stage, the learned Advocate for the petitioners humbly prays that he may be given an opportunity to file a revision under section 115 of the Code of Civil Procedure against the judgment and order passed by the Arbitration Appellate Tribunal, Dhaka in Arbitration Appeal No. 7 of 1997. Since it is

settled that against an order of the Arbitration Appellate Tribunal revision is maintainable under section 115 of the Code and since other affected persons has already received awarded money by the Arbitrator, we are inclined to allow them to take steps in law to file revision under section 115 of the Code.

In the result, the *Rule Nisi* is disposed of with the above observation without any order as to costs.

The petitioners are at liberty to take steps for restoration of Revision Case No. 4626 of 2003 or to file a fresh revisional application under section 115 of the Code of Civil Procedure.

The petitioners are permitted to take back the certified copies of the annexures by replacing the same with photo copies thereof duly attested by the concerned learned Advocate.

Communicate the order.

Md. Iqbal Kabir, J.

I agree.