

LEX/BDAD/0098/2000

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

Criminal Petition For Leave To Appeal No. 226 of 2000

Decided On: 23.11.2000

Lt. Gen. (Rtd) Hussain Muhammad Ershad **Vs.** The State

Hon'ble Judges/Coram:

Latifur Rahman, C.J., Mahmudul Amin Chowdhury, Kazi Ebadul Hoque and Mainur Reza Chowdhury, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Rafique-Ul-Huq, Senior Advocate, Khondker Mahbub Hossain, Senior Advocate with him, instructed by Miv. Md. Wahidullah, Advocate-on-Record

For Respondents/Defendant: Sufia Khatun, Advocate-on-Record

JUDGMENT

Latifur Rahman, C.J.

1. Criminal Petition for Leave to Appeal (Nos. 226, 204, 236, 246, 247 of 2000) filed by the accused-petitioners (are disposed of along with Criminal Petition for Leave to Appeal Nos. 229-235 of 2000 filed by the State as those) arise from a common judgment and Order heard analogously by a Division Bench of the High Court Division and disposed of on 24.08.2000 arising from) Criminal Appeal Nos. 1132, 1101, 1033, 1034, 1165, 1131, 1112, 1134 of 1993, which in turn arose from the judgment and Order of the Additional District and Sessions Judge, Court No. 2 and Ex-officio Special Judge Court, Dhaka on 7.6.93 in Special Case No. 11 of 1992 convicting accused Lt. Gen. (Rtd.) Hussain Muhammad Ershad under Section 5(2) of Act No. II of 1947 for committing offence of criminal misconduct under Section 5(1)(d) and 5(1)(e) of the said Act and sentencing him to suffer simple imprisonment for seven years. In Criminal Appeal No. 1132 of 1993 the Division Bench of the High Court Division while upholding the conviction of Lt. Gen. (Rtd.) Hussain Muhammad Ershad reduced his sentence of seven years to five years simple imprisonment and to pay fine of Tk. 5,48,70,800/- in default to suffer simple imprisonment for two years more. The High Court Division in all other Criminal Appeals namely. Criminal Appeal Nos. 1101, 1034, 1033, 1165, 1131, 1112 and 1134 of 1993 modified and altered the substantive sentence of seven years simple imprisonment to a sentence of fine only of Tk. 10,000/- each in default to suffer simple imprisonment for two years each. The Division Bench of the High Court Division also maintained the Order of confiscation of the lands of Plot Nos. 49, 49A, 49B and 49C situated at Kawran Bazar, Commercial, P.S. Tejgaon, Dhaka including the building/structures thereon known as "Janata Tower," to the State. The prosecution case is that accused H.M. Ershad, former President dishonestly and fraudulently and with a mala fide intention passed Order on 28.3.89 on the application of accused Sukur Pradhan and 12 others dated 26.3.89 treating them as affected persons but actually they were not affected persons and his Order caused loss to DIT and resulted to pecuniary

advantage for himself and others including his wife Mrs. Rawshan Ara Begum @ Rawshan Ershad and other co-accused. Mr. M.M. Rahmat Ullah, Chairman, Rajuk in collusion with the former President Mr. H.M. Ershad illegally allotted 2 bigha, 2 Kathas land of plot Nos. 49 and 49A Kawran bazar Commercial Area, shortly, KCA to Abdus Sukur Pradhan and 12 others @ Tk. 1,93,559/- per katha and he illegally accorded permission for transfer of 12 kathas in favor of Janata Publishing Limited, shortly, JPL floated by accused Rawshan Ara Begum @ Rawshan Ershad by amending para 20 of standard lease deed of RAJUK and thus in his capacity as public servant by corrupt or illegal means or by otherwise abusing his position as such obtained for himself or others pecuniary advantages.

2. Plot Nos. 49 and 49A are situated at KCA, each plot measuring 21 kathas were put to auction by the DIT/RAJUK on 5.6.85. Accused Abdus Sukur Proadhan offered the highest bid of Tk. 1,93,555/- per Katha for plot No. 49 and one Golam Kibria offered Tk. 1,92,000/- per Katha for the other plot. The DIT/RAJUK considered the offer as inadequate and decided to construct a building of its own on the said two plots. Subsequently when the DIT/RAJUK took steps to re-auction the two plots three suits were filed by some of the previous bidders challenging the re-auction and obtained an Order of injunction. While the suits were pending accused Abdus Sukur Proadhan and 12 others filed a petition on 26.8.89 directly to the former President H.M. Ershad praying for allotment of the plots on the ground that they were affected persons and they had offered the highest bid in the previous auction, held earlier. The former President within two days passed an Order on 28.8.89 on the body of the petition to the effect.

“দরখাস্তকারীর বিগত সর্বোচ্চ নিম্ন ক্রমে ও
কৃত্তিহ হিমাবে দরখাস্তকারীদের মধ্যে প্লট বন্ট
করা হোক”।

The Order of the former President H.M. Ershad was forwarded to Chairman, RAJUK who on 12.9.89 allotted the aforesaid lands in groups at the rate of Tk. 11,93,550/- per katha in favor of accused Abdus Sukur Proadhan, Md. Sikander Hussain, Abdul Wadud Khan, Abraham Purification. Md. Shafiqul Islam, Md. Jahangir Alam, Md. Khalilur Rahman, Mrs. Lovely Begum, Md. Nowab Miah, Md. Abu Hanif, Shahinoor Islam, Mosammat Aftara Begum and one Sadek Hossain dividing the plot into four plots i.e. No. 49, 49A, 49B and 49C, Plot No. 49 with an area of 12 Kathas was allotted to accused Shahinoor Islam, Aftara Begum and one Sadeque Hussain at a total price of Tk. 23,22,600/-. The money was deposited on 18.9.89 and possession of the land was delivered on 19.9.89 in favor of the lessees. The lease deed was registered on 21.10.89 and on the very next day i.e. 22.10.89 the lessees sought permission of the RAJUK to transfer plot No. 49 in favor of JPL for a total consideration of Tk. 33,00,000/-. On 25.10.89 RAJUK accorded permission for transfer. The deed was registered on 2.11.89 in favor of the JPL. It is alleged that Md. Sadque Hussain was residing abroad at the relevant time and accused Amjadul Haq forged signature of Sadeque Hossain on the lease deed and did everything in the name of the said absentee Sadeque Hussain by false impersonation including forging signature in the deed of sale in favor of JPL. It is the further case of the prosecution that although in the transfer deed the total price was shown as Tk. 33,00,000/-, but Shahinoor Islam, Aftara Begum and Amjadul Haque did not receive any money from JPL and they only received Tk. 1,63,000/- from Abdus Sukur Proadhan. The Additional Deputy Commissioner (Revenue) Dhaka by his Memo dated 8.10.89 informed the RAJUK that none of the above mentioned allottees were

originally affected persons. In Order to get allotment the allottee must be an original affected person. It is clear from the letter of the ADC (Revenue) Dhaka dated 8.10.89 that none of the applicants was original affected persons. The former President without verifying the truth of the statements and without taking steps for such verification passed Order for giving allotment to those persons directly which was illegal. It was further alleged that no transfer could be made without construction on the land, but in this case the impediment was overcome by RAJUK by amending paragraph 20 of the Standard Lease Deed on 22.10.89. It was alleged that these allotment were made with the ulterior motive to give the land to JPL of which accused Rawshan Ara Begum was the Chairperson and accused Abdus Sattar former Minister and Chief Whip was a Director. It was alleged that the former President H.M. Ershad and M.M. Rahmat Ullah in collusion with each other dishonestly and fraudulently with a mala fide intention helped the 13 accused-applicants to get illegally the lease of the land in their favor and then helped JPL and its Directors to get 12 kathas of land of plot No. 49 at a negligible sum causing loss to RAJUK to the sum of Tk. 5,48,70,900/- to obtain pecuniary advantages for themselves or for other. All other accused abated illegally in collusion with each other to obtain pecuniary advantages.

3. The Senior Special Judge, Dhaka took cognizance of the offence under Sections 409/34/109 of the Penal Code read with Section 5(2) of Act II of 1947. The case was subsequently transferred to the Court of Additional District and Sessions Judge, Dhaka and on 4.5.92 charges were framed under Section 5(1)(d) of the Prevention of Corruption Act 1947 being punishable under Section 5(2) of the said Act against accused H.M. Ershad and M.M. Rahmat Ullah and under Section 109 of the Penal Code read with Section 5(2) of the Prevention of Corruption Act, 1947 against all other accused for the abatement of the offence. Mr. H.M. Ershad was further charged that after getting the land of plot No. 49 of KCA transferred the same in the name of JPL owned by his wife Rawshan Ara Begum and others and at his instance a multi-storied building known as "Janata Tower" was constructed thereon and out of Tk. 10 crores required for the construction of the building Tk. 3,50,00,000/- was taken from Uttara Bank as loan and the balance sum of Tk. 6,50,00,000/- was paid by the former President H.M. Ershad which was therefore found in his possession and his dependent co-accused Mrs. Rawshan Ara Begum @ Rowshan Ershad. On his failure to account for such amount found to be disproportionate to his known sources of income he has committed further offence as defined under Section 5(1)(e) of the Prevention of Corruption Act, 1947 punishable under Section 5(2) of the said Act.

4. The defense case of H.M. Ershad as it transpires from the trend of cross-examination of P.Ws. and his statement under Section 342 of Cr.P.C. is that he went to visit "Amborshah Mosque" at Kawran Bazar Commercial Area where accused Abdus Sukur Prodhan and others complained that he and one Golam Kibria offered highest bids for Plot Nos. 49 and 49A at the auction held on 5.9.1985 but DIT/RAJUK did not accept their bids. They claimed themselves as highest bidders and affected persons for getting lease of the land. So, he asked them to file an application to him. Accordingly Sukur Prodhan and 12 others on 26.8.1989 filed an application to him for lease of the land at the rate of highest bid of Tk. 1,93,550/- per katha and he made a recommendation to the Chairman, RAJUK for leasing out the land in favor of them as affected person on the compassionate ground. He had no mala fide or dishonest intention. He has no connection with JPL and he did not pay Tk. six and a half crore as alleged by the prosecution to Nirman International for the construction of Janata Tower Building on Plot No. 49 of KCA. His further plea is that the present criminal proceeding is with a political motive to harass him and to lower him in the estimation of the people.

5. The defense of accused M.M. Rahmatullah, former Chairman, RAJUK is that the land in question were given to the concerned persons in compliance with the written Order of the then President and with the knowledge of the RAJUK, He had no collusion with the former Lt. Gen. (Rtd.) H.M. Ershad or with anybody in any manner, nor he abused his official power, nor he obtained any pecuniary advantage for himself or for anybody else. In disposing of the same matter he did not interfere with or dictate any note to the concerned officer and staff of RAJUK in any manner at any stage; nor did he keep the files in his custody.

4. The defense of accused Rawshan Ara Begum @ Rawshan Ershad is that her certificate name is Rawshan Ara which she gave in all papers in connection with JPL and he did not use the name Rawshan Ershad as some one might be influence. She had not mentioned her husband's name on good faith and she did not instigate or abet any body for getting plot No. 49 of KCA transferred in favor of JPL which is a company and she is the Chairperson of that company and she received no personal benefit. She did all for the interest of the company and she has no personal liability. The defense of other directors of the JPL is that they did every for the interest of the company.

5. The defense of other accused persons is that they are affected persons and as such they applied to get the land requisitioned by DIT in L.A. Case No. 13 of 1962-63. On various dates in 1985 the petitioners along with others purchased some lands by registered sale deeds from the original owners with all their right, title and interest in the said land on 4.12.85 the said land was mutated in the name of the petitioners along with others and the Additional Deputy Commissioner (Land Administration) recorded the names of the petitioners as awardees in L.A. Case No. 13 of 1962-63 in place of the original owners. By virtue of the purchase and mutation the petitioners entered into the position of the original owners as far as to the right, title and interest of the land in question are concerned. Finally one day, when the former President went to offer Jumma Prayer at Ambar Shah Mosque the local people including the petitioners urged the then President to return the land to the petitioners as affected persons and on hearing them the former President asked them to file a formal representation. Accordingly on 26.8.89 the petitioners along with others submitted an application addressing to the then present and as such the President asked the RAJUK on 28.8.89 to allot the land to the petitioners as affected persons and its highest bidders in auction at the auction price.

8. In this case, prosecution has examined 35 witnesses and defense did not examine any witness. Both the prosecution and the defense have filed a large number of documents in support of their respective cases.

9. In disposing the leave petition we will only refer to the material and vital witnesses and documents herein below.

10. The primary allegations is that Mr. H.M. Ershad who was President of the Republic at die relevant time in collusion with Mr. M.M. Rahmatullah ex-Chairman, RAJUK by abusing their official positions as public servant obtained pecuniary advantage for themselves or for other co-accused including Rowshan Ershad wife of H.M. Ershad by passing Order to lease out plot No. 49 and 49A Situated at KCA on an application of accused Sukur Pradhan and 12 others who falsely showed them as affected persons and abated accused H.M. Ershad and M.M. Rahmatullah in committing offence of misconduct as defined under Section 5(I)(d) of the Prevention of Corruption Act, 1947. Further accused H.M. Ershad spent for his wife Mrs. Rawshan Ershad a sum of Tk. 6,50,00,00/- for construction of Janata Tower beyond his known source of income. Apart from the

oral evidence, the case rests on documentary evidence and the circumstances which we will discuss presently to see whether the prosecution has been able to prove the case beyond the shadow of reasonable doubt against the principal accused and the others.

11. In this case prosecution has not only examined a large number of witness but has also produced a large number of documents to show how in quick succession all official acts were completed and the entire transaction from allotment of plots and construction of Janata Tower was completed.

12. Presently, we will discuss the evidence in details as because the Division Bench of the High Court Division which was deciding a criminal appeal ought to have been more elaborate in discussing and considering the material evidence on record in its appellate jurisdiction.

13. In this case, the FIR was lodged by, P.W. 35 Mujibur Rahman an officer of Anti-corruption Bureau who also investigated into the case and submitted charge sheet He stated in the FIR that Plot No. 49 and 49A with an area of 2 bighas 2 kathas land were put on auction on 5.9.85. Co-accused Abdus Sukur Prodhan was highest bidder for Plot No. 49 and one Golam Kibria was highest bidder for Plot No. 49A @ Tk. 1,93,550/= and 1,92,000/= per katha respectively. The offer being inadequate RAJUK, cancelled the auction on 17.11.85. Co-accused Abdus Sukur Prodhan and 12 others claiming themselves as affected persons filed an application on 26.8.89 directly to the former President to allot the plots to them as they were previous highest bidder and affected persons. On 28.8.89 the former President ordered for allotting the plots to the applicants. Chairman, RAJUK allotted the plots demarcating into 4 plots. Plot No. 49 with an area of 12 kathas was allotted to Shahinoor Islam, Md. Sadek and Aftara Begum. They deposited the entire lease money on 18.9.89 and on 19.9.89 possession was delivered to them and lease deed was executed in their favor on 21.9.89. On 22.10.89 the lessees filed application praying for permission to transfer the land in favor of JPL for a consideration of Tk. 33 lacs on 2.9.89 RAJUK accorded permission. On 2.11.89 transfer deed was executed in favor of JPL. As Sadek Hossain one of the lessee was not in Bangladesh in his absence Amjadul Hoque put signature on false personation. In the FIR it has been stated that the former President H.M. Ershad illegally ordered for allotting the land abusing his official position and in collusion with others obtained pecuniary benefit to the sum of Tk. 4 crores for himself or for other accused including his wife Rawshan Ershad. It appears that the file of RAJUK relating to Plot No. 49, 49A, 49B and 49C was seized. Police also seized the records of L.A. Case No. 13 of 1962-63. He also seized books of account, 12 receipts of Nirman International Ltd. and the loan application filed by Rowshan Ara Begum Chairperson of JPL.

14. The entire case started on the basis of an application filed by co-accused Abdus Sukur Pradhan and other accused wherein they stated that they are the highest bidder on auction on 5.9.85 and they are also affected persons due to requisition of their land in L.A. Case No. 13/62-63. On this application, the Order, Ext. 18 was passed on 28.8.89 by former President H.M. Ershad directing for allotting land to the applicants. We shall have to see first as to whether the applicant co-accused Abdus Sukur Prodhan and others are really affected persons due to the requisition of the land in L.A. Case No. 13/62-63. P.W. 7 Mosleuddin Mia, Bench Assistant of Land Acquisition Officer (RAJUK Branch) of Dhaka Collectorate deposed that the part file, of LA. Case No. 13/62-63 was seized by the Police which has been marked as Ext. 22. P.W. 8 Md. Shamsul Haque Mia Kanungo of L.A. Branch deposed that in the file of L.A. Case No. 13/62-63 the name of co-accused Abdus Sukur Prodhan and 14 others are entered in the list of awardees. According to this witness Abdus Sukur Prodhan filed the first petition on 28.11.85 for

getting his name enlisted as an awardee in the said L.A. Case No. 13/62-63. According to this witness Abdus Sukur Prodhan purchased 115 Ajutangsha land of Plot No. 41 and 14/133 of Khatian 48, Mauja Kawran from Nitai Das Rishi who was original owner and whose land was acquired in L.A. Case No. 13/62-63. According to P.W. 8 on 4.12.85 the Amendment of the award was made wherein the names of the original affected persons were mentioned. It is also noted in the L.A. Case file that the amount of compensation was paid to the original owners and Nitai Das Rishi received the compensation of Tk. 2050/- on 17.6.65 in the first installment. It is also in evidence of P.W. 8 that on 13.11.85 Abdus Sukur Prodhan filed a photo copy of Kabala alleged to have been executed by Nitai Das Rishi for 3 shatangsha land of Plot No. 42 of Kawran Bazar and his name was also substituted on 21.11.85. According to this witness on 29.5.64 Nitai Das Rishi and others (original owners) received provisional compensation of Tk. 4,140/-. This witness has further testified that all other accused also filed applications in 1985 and 1986 claiming that they also purchased some portion of requisition land from original owners in L.A. Case No. 13/62-63 and on that basis got their name entered as awardees. This witness also stated that ADC Sirajul Islam gave note in Ext. 41 to Chairman RAJUK stating that the 13 persons whose names were mentioned as awardees were not original affected persons whose names were mentioned as awardees were not original affected person in L.A. Case No. 13/62-63. This witness also stated that these lands were acquired under Town Improvement Act, 1953. He also admitted in cross-examination that some undisbursed fund was lying in connection with the said L.A. Case No. 13/62-63. Thus from the evidence of P.W. 8 and from Ext 22 and Ext. 42, the file relating to Plot No. 49 KCA it is palpably clear that the plot in question was requisitioned under the Town Improvement Act, 1953 in LA. Case No. 13/62-63 and the original owners received compensation soon thereafter. Accused Abdus Sukur Prodhan and others obtained kahalas in the year 1955/86 showing purchase of a very small fraction of land from the original owners whose land was acquired in L.A. Case and laid their claim for the remaining part compensation money and enlisted their names as awardees. Thus it is very clear from the evidence of P.W. 8 that they know that the land has been acquired as far back as in 1962 and knowing that the original owners received compensation the names were enlisted. They procured the sale deeds in the year 1985 and in 1986 and thereafter entered their names in place of original owners as awardees and subsequently filed the application before the former President of the Republic. In reality from the oral and documentary evidence it is found that they were not affected persons in the LA. Case in between 1985-86, that is, 22/23 years after requisition of the land under Town Improvement Act, 1953 these accused persons took steps for substituting their names as awardees in place of the original awardees.

15. We will now discuss the relevant and material witnesses of RAJUK.

16. P.W. 10 Abdur Rahman Bhuiya, Director of Estates, RAJUK stated that KCA was acquired in L.A Case No. 13/62-63 through Deputy Commissioner, Dhaka. He further deposed from the file, Ext. 42 that Plot Nos. 49 and 49A were put on auction on 5.9.85 wherein Abdus Sukur Prodhan and three others participated in auction of Plot No. 49. One Golam Kibria and three others participated in auction of Plot No. 49A. The bid being inadequate the auction was cancelled. According to this witness the minimum price per Bigha was mentioned at Tk. 3 crores in the note sheet and the note was written by Mr. Humayon Khadem the then Director land and Estate. This witness also testified that Abdus Sukur Prodhan and others filed Title Suit No. 4 of 1989. He also proved the recommendation of the President in the application of 13 accused persons as Ext. 18. According to this witness the application was filed by Abdus Sukur Prodhan on 26.8.89 before the President who gave allotment Order on 28.8.89. This witness received that application on 29.8.89 from Rahmatullah, Chairman, RAJUK. This witness

further stated that, the file was always kept with the Chairman himself. According to this witness as per note allotment letters were prepared and those were distributed to the accused persons. He also testified that Plot Nos. 49 and 49A were allotted to four groups dividing the same into 4 plots that is Plot Nos. 49, 49A, 49B and 49C. Plot No. 49 with an area of 12 katha was allotted to Shahinoor Islam, Sadek Hossain and Aftara Begum. Plot No. 49A with an area of 10 katha was allotted to Jahangir Alam, Shafiqul Islam and Abrahayam Purification. Plot No. 49B with an area of 10 katha was allotted to Abu Hanif, Nawab Miah, Lovely Begum and Khalilur Rahman. Plot No. 49C with an area of 10 katha was allotted to Abdul Wadud, Khan, Abdus Sukur Prodhan, Sekander Hossain Khan. This witness further stated that in auction notice dated 19.1.89 the minimum price of land per bigha was fixed Tk. 3 crores. At the rate of 3 crores per bigha the value of 2 bighas 1 katha land was Tk. 6,50,00,000/-. But tile lease money of the said land was realized only Tk. 79,35,550/- and as such RAJUK sustained loss of Tk. 5,70,00,000/-. In cross-examination this witness stated that accused Abdus Sukur Prodhan and others were not original affected persons in the said L.A. Case, but during the period from 1985/87 Sukur Prodhan and others got their names enlisted in the award on the plea of purchase from the original owner whose land was acquired. P.W. 16 Syed Mokbul Ahmed, authorized officer of RAJUK proved the plan of multistoried building of 49 KCA. According to this witness on 17.12.89 Rawshan Ara Begum (wife of H.M. Ershad) filed an application in a printed form for approval of plan for construction of a 15 storied building at Plot No. 49 KCA. Clearance certificate was given on 19.12.89. He further testified that Rowshan Ara Begum mentioned her address at 24, Amin Bagh, Shantinagar, Dhaka. P.W. 20 Md. Shahidur Rahman, Dealing Assistant of Estate Section, RAJUK testified that he saw the file, Ext. 42 at the meeting room. According to this witness the file was kept in personal custody of co-accused Chairman Mr. Rahmatullah. P.W. 21 Abu Baker Sk., Assistant Director, RAJUK deposed that the co-accused kept the file, Ext. 42 in his custody. P.W. 22 Syed Abbasuddin, Law Superintendent of RAJUK deposed that Ext. 42 was with the Chairman although. This witness also corroborated witness P.W. 20 on material particulars. P.W. 32 Lt. Col. (Rtd.) Nurul Hoque, Member, Land and Estate, RAJUK deposed that Ext 42, 47, 48, 49 and 50 are the files of land and estate Department of RAJUK which were handed over to him by Rahmatullah at the time of his departure from the post of Chairman. P.W. 34 Md. Humaun Khadem, Member, Planning and Development deposed that, Ext. 42 is the file relating to Plot No. 49 of KCA. He admitted that there was no approval of allotment of Plot Nos. 49 and 49A of the RAJUK. He further stated that Plot No. 49, 49A, 49B and 49C were allotted in the year 1989 and those were not allotted by RAJUK. He further stated that the permission for transferring the land in favor of JPL was given by the Chairman RAJUK, RAJUK did not accord permission for transfer in favor of JPL.

17. From an analysis of the above evidence of the officers of RAJUK it is found that Plot Nos. 49 and 49A were acquired in land acquisition case as far back as in 1962. The bid that was submitted by Abdus Sukur Prodhan and others in respect of those plots as affected persons though highest bidder was not accepted being lows. From the evidence it is also found that Abdus Sukur Prodhan and others filed Title Suit No. 76 of 1987 and also got status quo in that suit. From the evidence of officials of RAJUK as discussed above it is also found that H.M. Ershad passed Order for allotment of land in favor of accused Abdus Sukur Prodhan and others as per the endorsement Ext. 18. From the evidence it further appears that the co-accused enlisted their names as awardees only in 1985-87. These witnesses also denied the suggestion that RAJUK did not sustain any loss for allotment of Plot No. 49 and 49A of KCA. It also appears from the evidence of those witnesses as discussed above that the file was mostly kept in custody of Chairman. RAJUK. From the evidence of P.W. 34 it also appears that no approval was given for allotment of Plot Nos. 49 and 49A by RAJUK. It also appears from the

discussion of the evidence that in the previous auction notice of Plot No. 49 and 49A minimum price was not mentioned whereas auction for Plot No. 49 and 49A was published in the year of 1987 in which minimum price of auction was quoted Tk. 3 crores per bigha. From the evidence of P.W. 34 it also appears that the permission for transferring the land in favor of JPL was given by Chairman, RAJUK. It also further appears that the RAJUK did not accord permission for transferring the land in favor of JPL.

18. Presently we will discuss the evidence that has come from officials of Joint Stock Company to see as to when and who constituted JPL and who are the actual beneficiaries of the transaction with regard to the plots in question.

19. P.W. 12 Syed Md. Mohsin Inspector of Joint Stock Company deposed that on 20.10.89 a no objection certificate was issued to float a company in the name of JPL. According to this witness Mrs. Roushan Ara Begum filed form No. 6 on 19.10.89 in which the address of JPL was shown at 49 KCA. He proved form No. 6 wherein the name and address of sponsor directors of JPL were shown as No. 1 Mrs. Rawshan Ara Begum, 82, Gonga Das Guha Road. Mymensingh, No. 2 Md. Abdus Sattar, Rangpur House, Myjdiak, Narayangonj, No. 3 Sarwar Habib Sinha, 114, Shiraj Daula Road. Narayangonj, No. 4 Mojaher Hossain Chowdhury, c/o. Rangpur Industry Ltd, Narayangongi, No. 5 Munshi Kafiluddin Ahmed, village Myjdiak, Fatullah, Narayangonj. Form No. 12 was filed under the signature of Rawshan Ara Begum. He also referred to the Memorandum of Association and Articles of Association Ext. 64(1) from where he deposed that Rawshan Ara Begum was the Chairperson of the Company who would conduct all functions of the company. Thus it appears from the evidence of P.W. 12 Inspector of Joint Stock Company that the form was filed on 19.10.89 and on the next day the company was floated in the name of JPL.

20. We will now refer to the evidence of Nirman International Ltd. which is a construction firm and to whom the construction work was given by accused Rawshan Ara Begum for construction of 15 storied budding. P.W. 1 Mr. K.Z. Islam, the Managing Director of Nirman International Ltd. testified that the JPL gave the contract for construction of a multistoried building at Plot No. 49 at KCA. He proved the signature of Rawshan Ara Begum in the contract According to this witness he received Tk. 10 crores for the construction of the building. The amount was received by him and two Directors. He deposed that Tk. 3 and half crore was received by cheque and Tk. 6 and half crore was received in cash. According so this witness the amount of Tk. 10 crores which was received from JPL has been mentioned in audit report and the same was submitted in the Income Tax Department along with income tax return. P.W. 5 Major (Rtd.) Saleh Rahim was the Director of Niman International Ltd. from 1.6.88 to 30.11.91. He proved the progress report Ext. 17 series in which 15 storied building were mentioned. In all the progress reports the super structure of the building upto 13 storied was completed. P. W. 27 Shawkat Hossain Chowdhury, Executive Director of Nirman International Ltd. also spoke about the agreement with JPL for construction of a 15 storied building at KCA. He received Tk. 1 Crore from P.W. 2 Lt. Colonel Saiful Hoque, P.S. to former President H.M. Ershad for the construction of the said 15 storied building. He deposed that they received Tk. 10 crores for the construction of the said 15 storied building. He proved the money receipt Ext. 6 series. P.W. 29 Mofizuddin, Finance Manager of Nirman International also spoke about the agreement with JPL for construction of the multistoried building and receipt of Tk. 10 crores of which Tk. 6 and half crore in cash and Tk. 3 and half crore by cheque. According to this witness the entire audit report will reflect this amount.

21. Now we will refer to the witnesses who spoke about the payment of money to Nirman. International Ltd. by the former President and his wife accused Raushan Ershad.

22. P.W. 2 Lt. Colonel Saiful Haque (Rtd.) who was the Private Secretary of the former President from 23.1.90 to 14.1.1991 deposed about the floating of JPL and the construction of 15 storied building at KCA by Nirman International Ltd. According to this witness Tk. 9 crores and 25 lacs was paid during his tenure as private Secretary and his predecessor-in-office P.W. 29 Colonel Sharif Aziz gave Tk. 75 lacs to Nirman International which he heard from the former President and K.Z. Islam. According to this witness out of 9 crores 25 lacs Taka 31/2 crores was paid by cheque given by Rowshan Ershad. He also proved cheque Ext. 3 which contained the signature of Rowshan Ershad. He further deposed that H.M. Ershad used to give him money in packet. In several occasions he gave 5 crores and 75 lacs Taka. He used to bring the money from the President. He further deposed that he gave money to the Managing Director, K.Z. Islam, Mrs. K.Z. Islam and Shawkat Hossain Chowdhury of Nirman International on several dates. He also spoke of 13 credit vouchers. P.W. 29 Bridg. (Rtd.) Sherif Aziz was the Private Secretary of the former President H.M. Ershad who also spoke of the transaction in connection with the construction of Janata Tower Building with Nirman International Ltd. He paid Tk. 75 lacs in 3 installment to K.Z. Islam. In cross-examination he denied the suggestion of the defense that he did not receive Tk. 75 lacs from H.M. Ershad. This is the evidence on record as to the payment of money by cheque and cash through P.Ws. 2 and 29 to Nirman International Ltd. from the principal accused H.M. Ershad and his wife.

23. In this connection we will also refer to the evidence of the Bank officials with regard to obtaining loan by JPL. The prosecution has brought P.W. 3 A.K. Ejharul Foiz, Senior Vice-President of Uttara Bank who deposed that on 8.1.90 JPL applied for loan of Tk. 6 crore for construction of building at plot No. 49 KCA. He proved the application and the signature of Rowshan Ershad. He deposed that as Rowshan Ershad was client in his Bank he knew her signature. He proved the sanction Order of the loan, marked Ext. 15. He further testified that after sanction of loan of Tk. 3 and half crore the same was disbursed through cheques under the signature of Rowshan Ara Begum. He proved the four cheques marked Ext. 3 series. Thus it also appears from the evidence of this witness that money was sanctioned from Uttara Bank for the construction of the multistoried building on Plot No. 49 on behalf of JPL.

24. We have considered the material oral evidence and material Exts. filed in this case and the circumstances under which the application was filed by Abdus Sukur Prodhan and others. Long after 22 years of acquisition of the land under Town Improvement Act, 1953 the application was filed before the former President and how quickly the former President ordered on the said application within two days to allot the plots to the co-accused. Further the learned Judges of the High Court Division has also noticed how in quick succession the allotment letters were issued and possession of the land was given. Soon thereafter the mutation was done in favor of JPL of which Rowshan Ara Begum (wife of former President) is the Chairperson. Apart from this, the plan was passed by RAJUK quickly and everything happened within a short span of time and the learned Judges of the High Court Division also considered the chain of events that happened within a short period of time which clearly indicate the dishonest intention of the accused persons to commit the offence in which the principal offender by abusing his official position as President of Bangladesh obtained pecuniary advantage for his wife accused Rowshan Ershad and for other accused persons who fully knew well that they were not affected persons. Thus those accused persons in collusion with each other

abetted the principal offender accused H.M. Ershad and accused Rahmatullah, Chairman of RAJUK and thereby the two principal accused committed the offence of criminal misconduct and the other accused abetted them.

25. From the evidence on record it has transpired that Abdus Sukur Prodhan and other accused filed an application as affected persons and as highest bidders to the former President and it is very surprising that the former President without asking for any enquiry whatsoever directly passed the Order for allotment of land to those accused persons and it is also in evidence soon after the allotment one group of the lessees transferred 12 kathas of land to JPL of which Rowshan Ara Begum is the Chairperson and who happens to be the wife of the former President. Further it is also in evidence that accused Rowshan Ershad entered into an agreement with Nirman International Ltd. for construction of a multistoried building on the land and part of the money was obtained from Uttara Bank by Rowshan Ershad and Tk. 6 and half crore was given by the former President in cash through his private Secretaries. It has also come in evidence from the witnesses of RAJUK that M.M. Rahmatullah, Chairman used to keep the file in his own custody and he did not allow the file to move from one table to another as is the practice. From the evidence it has also transpired that the Chairman RAJUK took special interest in allotting the land to the accused. This also smokes of mala fide intention of the Chairman who was in collusion with the former President in obliging him with dishonest intention to obtain pecuniary benefit by abusing their position as public servants. Thus the principal accused persons by corrupt or illegal means obtained pecuniary benefits for themselves and for others.

26. We also find from the evidence on record that accused Rowshan Ershad wife of the former President is the beneficiary and the former President also supplied the major portion of the money for the construction of "Janata Tower building". The manner in which the whole transaction was completed starting from the filing of the application to the President and allotment of land and subsequent transfer in the name of JPL of Plot No. 49 and the construction of Janata Tower conclusively prove that the former President abused his position as the President and obtained pecuniary advantage for himself and others and thereby committed offence of criminal misconduct under Section 5(1)(d) and further payment of Tk. 6 and half crore for construction of building being disproportionate to his known sources of income also committed an offence under Section 5(1)(e) of the Prevention of Corruption Act The prosecution has been able to prove the case against principle offender former President beyond the shadow of reasonable doubt The oral evidence coupled, with the documentary and circumstantial evidences are strong and convincing to prove conclusively the guilt of former President.

27. Khondakar Mahbub Hossain, the learned Advocate appearing for the accused petitioner submits that the impugned judgment of the High Court Division is a non-speaking judgment being devoid of any consideration of 35 witnesses in the judgment and consequently there has been prejudice to the petitioner.

28. Repelling this argument the learned Attorney General submits that the learned Judges of the High Court Division have considered material oral, documentary and circumstantial evidences in this being overwhelming evidence on record, there is no useful purpose will be served in granting leave in this case. He further submits that this Division in exercise of its power normally does not interfere on technical ground unless the interest of justice has suffered and prejudice has been caused to the accused.

29. On a careful consideration of entire evidence on record both oral and documentary we are satisfied that apart from raising a technical point no prejudice has been done to

the accused as we find that there are sufficient materials to uphold the conviction of the accused petitioner. That apart this being a judgment of concurrent findings of fact by the High Court Division we do not like to interfere with the same when we find sufficient materials on record to sustain the Order of conviction. As a matter of fact Khondakar Mahbub Hossain appearing for the petitioner could not point out any substantial question of error of Law and fact warranting our interference with the impugned judgment.

30. For, the above reasons the conviction is upheld.

31. Considering the fact that petitioner has already suffered 3 years and 6 months imprisonment, and is an old man we reduce the substantive sentence of 5 years to the period already undergone by maintaining fine of Tk. 5,48,70,800/-, in default to suffer simple imprisonment for 6 months only. With the above modification of sentence only the conviction is maintained. Accordingly, the leave petition is dismissed.

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