

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Special Original Jurisdiction)**

**WRIT PETITION NO. 2931 OF 2009**

In the matter of:

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

And

In the matter of:

Roushanara Akter  
wife of late Akter Ali  
Road No. 95, House No. 154A  
Gulshan, Dhaka-1212 others

... Petitioners

Versus

Dhaka City Corporation (DCC)  
Represented by its Mayor  
Nagar Bhaban, Dhaka and others

... Respondents

Ms. Fatema S. Chowdhury  
... For the petitioners

Ms. Sufia Ahamed  
... For respondent No. 1

Mr. Mahbubey Alam with  
Mr. Md. Shahed Ali Jinnah  
... For respondent No. 2

**Heard on the 22<sup>nd</sup> & 24<sup>th</sup> February**  
**And**  
**Judgment on the 25<sup>th</sup> February, 2015**

**Present:**

**Ms. Justice Zinat Ara**  
**And**  
**Mr. Justice J. N. Deb Choudhury**

**Zinat Ara, J:**

In this writ petition, the petitioners challenged the legality of Memo No. এলসিটি/১০৪(১) ২০০৮-২০০৯ dated 29.07.2008 issued by respondent No. 1-Dhaka City Corporation (hereinafter stated as DCC) under the signature of respondent No. 5 (Annexure-D to the writ petition).

The petitioners' case, in a nut-shell, is as under:-

Petitioners No. 1 to 3 are residents of Gulshan Residential Area and they have been living in the area with their family members. Respondent No. 2-Dhaka Improvement Trust now Rajdhani Unnayan Kartipakhya (shortly, RAJUK) made a master plan/layout plan of the Gulshan Model Town after acquiring some properties from original owners thereof. The master plan/layout plan (the

plan, in brief) provides a Children Park situated at plot No. 130A, in an area known as Gulshan Avenue mutated and bounded by roads No. 108, 109 and 103 (hereinafter referred to as the park). The plan in respect of the park has not been changed. The park is the only playground in Gulshan area used by the residents. It is being used by the children/young persons for various sports like football, cricket, basket ball, etc. It is also being used by the residents of the area for morning and evening walks. On 11.09.1998, a news item appeared in the Daily Jugantor mentioning that DCC has allotted a part of the park measuring 15 Kathas to respondent No. 3, Bangladesh Squash Racquets Federation (shortly stated as BSRF). The petitioners managed to get a copy of the said allotment and found that the allotment letter does not even specify the period for which the allotment was granted. Earlier, Bangladesh National Sports Council had issued a circular dated 21.11.2007 stating that playing field earmarked for children and young persons' must be preserved and remained open to them, as it is vital for their physical and

mental growth and therefore, the park field must remain open to all. RAJUK by Memo No. রাজউক/এস্টেট/১০৫৩৩ স্থাঃ dated 26.10.2008 addressed to Chief Estate Officer of DCC informed that the park land belongs to RAJUK and it was earmarked as a park in the plan; that the allotment in favour of DCC has been cancelled earlier, as DCC had failed to maintain the park and violated the terms and conditions under which the park was given to DCC and that DCC has no authority to allot or lease out the same to BSRF. Neither RAJUK nor DCC has any authority to lease out the park to anyone violating the plan. DCC had only responsibility to maintain the park but had/has no authority to grant any allotment/lease to anyone to use the park land. But DCC has given allotment of part of the park to BSRF illegally beyond its jurisdiction. Hence, this writ petition.

Respondent No. 1-DCC contested the Rule denying the material averments made in the writ petition contending, inter-alia, that the petitioners have no locus-standi to challenge the lease; that the disputed land was allotted to DCC by RAJUK under certain terms and conditions and, as such, it has authority

to allot the land of the park. So, DCC legally allotted part of the same to BSRF. Therefore, the Rule is liable to be discharged.

Respondent No. 2-RAJUK by filing an affidavit-in-opposition supported the case of petitioners stating that DCC has not informed RAJUK about giving lease/allotment of the park land to BSRF (respondent No. 3). RAJUK is the owner of the park. DCC has no right to lease/allot or transfer the park situated on Plot No. 130/A to anyone. Meanwhile, RAJUK has evicted the illegal occupants i.e. BSRF from the park. Since DCC failed to maintain the rules and regulations relating to the park, RAJUK issued letter to DCC on 26.10.2008 informing that allotment of the park in favour of DCC had been cancelled and so, DCC has no authority to lease or allot the park to BSRF. RAJUK had also asked DCC to cancel the allotment in favour of BSRF.

Ms. Fatema S. Chowdhury, the learned Advocate for the petitioners, takes us through the writ petition and the annexures thereto and submits that RAJUK is the owner of the park and DCC was given only the responsibility for maintaining the park, roads, etc. She next submits that without any authority to lease/allot the park to anyone, DCC unlawfully allotted part of

the park land to BSRF and in the allotment granting letter there is also no mention of the period for which the allotment was granted. She further submits that under section 65(2)(c) of the Dhaka City Corporation Ordinance, 1983 as well as section 80(ga) of the স্থানীয় সরকার (সিটি কর্পোরেশন) আইন (briefly, the Act, 2009). DCC is not empowered to grant allotment or lease to anyone without the sanction of the Government and such sanction has not been obtained by DCC. She also submits that the petitioners are the residents of Gulshan Residential Area and they along with other residents have been using the park as playground for the children and youth and also for morning and evening walks and so, they are persons aggrieved by the allotment of the park land to BSRF. She lastly submits that in the plan of RAJUK plot No. 130/A was shown as the park and without changing the plan, neither RAJUK nor DCC has any authority to allot the park land to anyone and so, the impugned Memo is unlawful and liable to be declared as such.

In support of her submissions, she has relied on the judgments dated 25.10.2001 passed by the High Court Division in Writ Petition No. 580 of 2000, dated 03.09.2009 passed by the

Appellate Division in Civil Petition for Leave to Appeals No. 180 and 181 of 2008 and dated 18<sup>th</sup> March, 2012 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 306 of 2010 and 406 of 2012.

Ms. Sufia Ahmed, the learned Advocate for respondent No. 1-DCC, takes us through the affidavit-in-opposition and connected materials on record and submits that DCC is the owner of the park in question and DCC lawfully allotted the disputed land in favour of respondent No. 3-BSRF. She next submits that the petitioners have no legal right to challenge the said allotment. She also submits that if the petitioners were aggrieved by the order of DCC, they ought to have filed an appeal before DCC. She lastly submits that the petitioners have not availed the forum of appeal and so, the writ petition is not maintainable and the Rule is liable to be discharged.

Mr. Mahabubey Alam, the learned Advocate appearing with Mr. Md. Shahed Ali Jinnah, for respondent No. 2-RAJUK, takes us through the affidavit-in-opposition and the annexures thereto and contends that RAJUK is the owner of the park and that DCC is not the owner of the park. He also contends that

DCC has not informed RAJUK about allotment of part of the plot in question to BSRF prior to doing so. He next contends that RAJUK has taken necessary steps against DCC by cancelling DCC's allotment of the park for failure to maintain the park and also took all necessary actions through its letter dated 26.10.2008. He further contends that meanwhile, RAJUK evicted the illegal allottee, respondent No. 3-BSRF from the plot/the park in question. He finally submits that the impugned order dated 29.07.2008 allotting/allowing use of 15 Kathas of land from the park by DCC is unlawful and so, the Rule may be made absolute.

In view of the arguments forwarded before us by the learned Advocates for the contending parties, the only question to be decided in this Rule is the legality of the impugned Memo No. এলস্টেট/১০৪(১) ২০০৮-২০০৯ dated 29.07.2008 issued by respondent No. 1-DCC in favour of respondent No. 3-BSRF.

We have examined the writ petition, the affidavits-in-opposition filed by respondents No 1 and 2 separately and the connected materials on record.

From the impugned order vide Annexure-D to the writ petition, it transpires that by this letter, DCC allotted/permitted



BSRF to use 15 Kathas of the land which is, admittedly, within plot No. 130A i.e. the area of the park as shown in the plan of RAJUK. Some portion of the recital of the letter is as under:-

“----- কম/বেশী ১৫ কাঠা জমি দেশের সম্মান রক্ষার্থে জাতীয় স্বার্থে নিম্নবর্ণিত শর্তে বাংলাদেশ স্কোয়াস রয়্যাকটস ফেডারেশনের অনুকূলে বরাদ্দ/ব্যবহারের অনুমতি প্রদান করা হলোঃ

-ঃশর্তাবলীঃ-

- ১) বর্ণিত জমি ঢাকা সিটি করপোরেশনের মালিকানাধীন থাকবে।
- ২) বর্ণিত জায়গার মালিকানা দাবী করা যাবে না এবং এ বিষয়ে আদালতে কোন মামলা দায়ের করা যাবে না।
- ৩) বর্ণিত জমির অতিরিক্ত কোন জমি দখল করা যাবে না।
- ৪) বর্ণিত জমির সম্পূর্ণ বা অংশ বিশেষ ব্যবহারের জন্য অন্য কাউকে হস্তান্তর বা সাবলেট দেয়া যাবে না।
- ৫) কোন অবস্থাতেই স্কোয়াস কোর্ট ছাড়া অন্য কোন স্থাপনা নির্মাণ করা যাবে না।
- ৬) বাণিজ্যিক উদ্দেশ্যে বর্ণিত জায়গা ব্যবহার করা যাবে না।
- ৭) বৃহত্তর জাতীয় স্বার্থে করপোরেশন প্রয়োজন মনে করলে যে কোন সময় করপোরেশন উক্ত জমি গ্রহণ করতে পারবে এবং জমির দখল ছেড়ে দিতে হবে। এ জন্য কোন ক্ষতিপূরণ দাবি করা যাবে না।

২। বর্ণিত ১৫ কাঠা জমি স্কেচম্যাপ অনুযায়ী আঞ্চলিক নির্বাহী কর্মকর্তা, অঞ্চল-৯, সংশ্লিষ্ট প্রকৌশল বিভাগ ও সম্পত্তি বিভাগের সংশ্লিষ্ট কানুনগো ও সার্ভেয়ার সরজমিনে চিহ্নিত করে দিবেন।”

From this impugned Memo, it transpires that DCC has not mentioned the period for which BSRF was allowed to use this land. This letter does not also reflect that BSRF paid any amount for using this land to DCC. Further, from the letter dated 21.11.2007 (Annexure-E to the writ petition), it transpires that Bangladesh National Sports Council in a letter addressed to Chief Executive Officer of DCC had asked to stop allowing marriage ceremony, Mina Bazar, Mela, Hat and other ceremonies in playground of central park, as it is the only playground for the children and youth in the locality.

From letter dated 23.10.2011(Annexure-F to the writ petition), it transpires that RAJUK issued this Memo to the Chief Estate Officer of DCC stating as under:-

“বিষয়ঃ সাবেক ডিআইটি বর্তমান রাজউক এর গুলশান আবাসিক এলাকায় অবস্থিত শিশু পার্ক (গুলশান আবাসিক এলাকার এভিনিউ রাস্তার ১৩০/এ নং প্লট) বরাদ্দ বাতিল করণ প্রসঙ্গে)।

সূত্রঃ ১। স্মারকনং- রাজউক/এস্টেট/মহাখালী ৩০১৬ স্থাঃ

তাং- ০৮.০৮.২০০৭ইং

২। এস্টেট/১০৪(১)২০০৮-২০০৯ তাং- ২৯.০৭.২০০৮ইং।

উপর্যুক্ত বিষয় ও সূত্রস্থ পত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, বর্ণিত পার্ক/প্লটটি রাজউকের লে-আউট নক্সায়

পার্ক হিসেবে চিহ্নিত এবং প্লটটির মালিক রাজউক । যে সকল শর্ত ও উদ্দেশ্যে ডিসিসি এর নিকট পার্কটি হস্তান্তর করা হয়, তা প্রতি পালনে ব্যর্থ হওয়ার কারণে ০১নং স্মারকের মাধ্যমে বর্ণিত পার্কটি বরাদ্দ আদেশ বাতিল করা হয় এবং প্লটটি রাজউকের নিকট বুঝিয়ে দেয়ার অনুরোধ করা হয়। কিন্তু ডিসিসি উক্ত পার্কটি দখল রাজউক বরাবর বুঝিয়ে না দিয়ে ০২নং স্মারকের বর্ণিত পত্র বলে উক্ত পার্কের ১৫(পনের)কাঠা জমি বাংলাদেশ স্কোয়াস রয়াকেটস ফেডারেশনের অনুকূলে বরাদ্দ প্রদান করেছেন। রাজউকের মালিকানাধীন সম্পত্তি বরাদ্দ প্রদানের ক্ষমতা ডিসিসি এর নেই। এ অবস্থায় ০২নং সূত্র স্মারকের মাধ্যমে ডিসিসি কর্তৃক বাংলাদেশ স্কোয়াস রয়াকেটস ফেডারেশনের বরাদ্দপত্র বাতিল করে প্লটের দখল রাজউককে বুঝিয়ে দেয়ার জন্য অনুরোধ করা হলো।”

(Underlined, emphasis given)

So, RAJUK, by the above quoted Memo, clearly informed DCC that the allotment of the park in favour of DCC by RAJUK was cancelled by previous Memo dated 08.08.2007 and DCC was directed to hand over possession of the park to RAJUK and that DCC has no authority to allot this plot in favour of anyone. DCC has not denied the letter issued by RAJUK (Annexure-F to the writ petition) cancelling its allotment for violation of the terms and conditions. DCC also failed to produce any document

showing that the park was allotted to it with authority to grant lease/allotment to anyone. Therefore, DCC had/has no authority to allot this plot/the park or any part thereof in favour of anyone. In the affidavit-in-opposition, respondent No. 2-RAJUK also stated that meanwhile, illegal occupant BSRF has been evicted from the park being plot No. 130A. Moreover, under section 80(ga) of the Act, 2009, which has been given retrospective effect from 14<sup>th</sup> May, 2008, under section 1(2) of the Act, 2009, DCC has only the authority to “দান, বিক্রয় বন্ধক, ইজারা বা বিনিময়ের মাধ্যমে বা অন্য কোন পন্থায় যে কোন সম্পত্তি অর্জন বা হস্তান্তর” to anyone with the prior approval of the Government. It is not the case of DCC that previous sanction/approval was obtained from the Government for allotting some portion of the park land in favour of BSRF. Ms. Sufia Ahamed, the learned Advocate for DCC admits that prior approval was not obtained from the Government by DCC before issuing the impugned order. Therefore, on this count also the impugned order is unlawful and without jurisdiction. Further, we are of the view that the park shown in the layout plan of RAJUK ought not be converted for the use of

any other purpose and it must be maintained as a park for the use of public.

Moreover, by judgments dated 09.03.2009 passed by the Appellate Division in Civil Petition for Leave to Appeals No. 180 and 181 of 2008 it was decided as under:-

“Rajdhani Unnayan Katripakhaya, the writ respondent No. 2 the sole authority having statutory ownership of acquisition of land of Gulshan Model Town, most illegally handed over the part to the Dhaka City Corporation, the writ respondent No. 3. The Central Park of Gulshan Model Town has a total area of 25 bighas of land out of which 17 bighas were handed over to the writ respondent No. 4 by the writ respondent No. 3 for period of 3 years.

**The Dhaka City Corporation, writ respondent No. 3 has no authority to lease out the land of the Central Park of Gulshan Model Town. The said park is situated at almost opposite to the Central Mosque Gulshan and as such the recreational activities will eventually cause hazard to the devotees of the mosque for which the secretary of the mosque made representation to the respondent No. 3 but without any satisfactory result.**

The writ respondent No. 4 contested the Rule filing affidavit-in-opposition contending, inter-alia,

that Rajdhani Unnayan Katripakhaya had handed over the Central Park at Gulshan to Dhaka City Corporation, writ respondent No. 3 for installation of different modern facilities and games for the children.

Heard the learned Counsel and perused the petition and the impugned judgment and order of the High Court Division and others papers on record.

**It appears that the High Court Division held that the respondent No. 3, the Dhaka City Corporation is not the owner either of Gulshan Model Town or of the case Park and therefore rightly held that without taking any approval of RAJUK, the real owner, the granting of lease in favour of respondent No. 4, the present petitioner, was without any lawful authority.**

It further appears that the lease died a natural death after three years as it was never renewed. **The High Court Division further considered that park cannot be converted into amusement center.**

However if the present petitioner has invested on the basis of a wrong order that matter can be looked into by appropriate authority but for that matter they cannot be allowed to run the amusement center in the name of “wonderland.”

We find no substance in these petitions which are accordingly dismissed.”

(Bold, emphasis given)

Similar view was taken by the Appellate Division by judgment dated 18.03.2012 passed in Civil Petition for Leave to Appeals No. 306 of 2010 and 406 of 2012.

Since DCC had/has no authority/jurisdiction to allot the park land or part of it to anyone, the instant writ petition is maintainable without availing the alternative forum of appeal.

The petitioners are residents of the park locality and are using the park. So, they, being aggrieved by the impugned order, have locus-standi to file the instant writ petition as persons aggrieved.

In view of the above, we find merit and force in the submissions of Ms. Fatema S. Chowdhury and Mr. Mahabubey Alam and we find no merit in the submissions of Ms. Sufia Ahamed.

Considering the facts and circumstances as discussed, we find that the impugned Memo is unlawful and liable to be struck down.

Accordingly, the Rule is made absolute.

The impugned Memo No. ৭৮৫৫/১০৪(১) ২০০৮-২০০৯ dated 29.07.2008 issued by respondent No. 1-DCC under the signature

of respondent No. 5 in favour of respondent No. 3-BSRF (Annexure-D to the writ petition) is, hereby, declared to have been issued without lawful authority and is of no legal effect.

DCC is directed to remain cautious in future and not to allot or lease any park or playground to anyone.

No costs.

Communicate the judgment to the respondents No. 1 and 3 at once.

**J. N. Deb Choudhury, J:**

I agree.

**Hasib/**  
**B.O.**