

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

Present:

Mr. Justice Md. Nazrul Islam Talukder
And
Mr. Justice S.M. Mozibur Rahman

Writ Petition No. 1087 of 2019

IN THE MATTER OF:

Standard Stitches Limited, represented by
its Chairman Md. Atiqur Rahman and
another

..... Petitioners.

-Versus-

Bangladesh, represented by the Secretary,
Ministry of Law, Justice and
Parliamentary Affairs and others.

..... Respondents.

Mr. Probir Niogi, Senior Advocate with
Mr. Md. Muniruzzaman, Advocate
Ms. Anita Gazi Rahman, Advocate,

..... For the Petitioners.

Mr. A.K. M Amin Uddin, D.A.G with
Mrs. Anna Khanom Koli, A.A.G and
Mr. Md. Shaifour Rahman Siddique, A.A.G

..... For the Respondent.

Mr. Hasan M.S. Azim, Advocate,

.....For the Anti-Corruption Commission.

Heard on 11.07.2019, 31.10.2019,

16.01.2020, 02.9.2021, 16.9.2021,

23.9.2021 and Judgment on 28.9.2021

Md. Nazrul Islam Talukder, J:

On an application under Article 102 of the
Constitution of the People's Republic of Bangladesh,
the Rule Nisi was issued calling upon the respondents

to show cause as to why the impugned notices under Memo Nos. 2297 and 2298 dated 20.01.2019 and the impugned notices under Memo Nos. 3003 and 3005 dated 27.01.2019 issued by the Respondent No.3 under Sections 19 and 20 of the Anti-Corruption Commission Act, 2004 and Rule 20 of the Anti-Corruption Commission Rules, 2007 read with Section 160 of the Code of Criminal Procedure directing the petitioners to appear before the Respondent No.3 along with the documents with respect to the land of Plot No.54, Mohakhali Commercial Area, Dhaka (**Annexures- O, O-1, P and P-1**) following the application dated 11.12.2018 (**Annexure-N**) filed by the Respondent No.5, shall not be declared to have been passed/issued without lawful authority and are of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts leading to issuance of the Rule Nisi are as follows:

a) that Bangladesh Shilpa Rin Sangstha (in short BSRS), now Bangladesh Development Bank Limited (in short BDBL) filed Miscellaneous Case No.15 of 1987 before the Court of learned District Judge, Dhaka under the provision of President Order No. 128 of 1972 against the Respondent No.5's Company namely the United Trading Corporation Limited for realization of its loan. By an order dated 25.08.1989, the learned trial Judge attached the schedule property before the judgment. Thereafter the said Miscellaneous Case No.15 of 1987 was transferred to the Court of learned Subordinate Judge and the Artha Rin Adalat, Dhaka, 2nd Court and the same was renumbered as Title Suit No. 01 of 1999. The suit was decreed on 24.05.1999 in favour of the successor of BSRS i.e. Bangladesh Development Bank Limited (hereinafter referred to as BDBL). The

aforesaid fact is evident from the judgment and decree dated 24.05.1999 passed in Title Suit No.1 of 1999 which are annexed with the writ petition and marked as **Annexure-A and A-1**.

b) that on 31.05.1999, BDBL filed Artha Execution Case No.18 of 1999 for an amount of Tk.3,62,83,864.84/- (three crore sixty two lac eighty three thousand eight hundred sixty four taka eighty four paisa) only and the attached scheduled land was sold at a price of Tk. 25 crore to the petitioners namely Standard Stitches Limited and Standard Group Limited and one Md. Arifur Rahman and the Respondent No.4 under Section 38 of the Artha Rin Adalat Ain, 2003 and accordingly, the execution Court executed a registered sale certificate dated 27.02.2013 in favour of the purchasers and delivered possession of the suit land to the purchasers on 20.05.2014 pursuant to the Sale Certificate No. 5 dated 27.02.2013 through writ for delivery of

possession. The aforesaid fact is evident from the sale certificate being No.05 dated 27.02.2013 which is annexed with the writ petition and marked as **Annexure-B**. At the time of registration of sale certificate, the authority concerned realized Tk. 75,000,000/- as registration fees, stamp fees and other fees from the petitioners.

c) that Rajhani Unnayon Kartipakkha (hereinafter referred to as RAJUK) filed Writ Petition No.4800 of 2014 before the High Court Division challenging the above mentioned sale and obtained a Rule Nisi and order of stay of all further proceedings of the Artha Execution Case No.18 of 1999; against the said order of stay, the petitioners filed Civil Petition For Leave To Appeal No.1225 of 2014 before the Appellate Division of the Supreme Court of Bangladesh and considering the delivery of possession of the suit land to the petitioners, on 20.07.2014, the Appellate Division passed an order

of status-quo in respect of possession and position of the land in question till disposal of the Rule. The aforesaid fact is evident from the certified copy of the order dated 20.07.2014 which is annexed with the writ petition and marked as **Annexure-C**.

d) that a Division Bench of the High Court Division of the Supreme Court of Bangladesh upon hearing the parties discharged the Rule by the judgment and order dated 04.04.2016 and against the said judgment and order, the RAJUK preferred Civil Petition For Leave To Appeal No.3269 of 2016 and after hearing, the Appellate Division dismissed the same by the judgment and order dated 03.08.2017. The aforesaid fact is evident from the judgment and order dated 04.04.2016 and 03.08.2017 which are annexed with the writ petition and marked as **Annexure-D and D-1**.

e) that one Khandaker Nazrul Islam Khokon being third party filed Writ Petition No.7156 of 2014

before the High Court Division challenging Miscellaneous Case No. 15 of 1987 and the High Court Division issued Rule which reads as under:

“why the entertainment and adjudication of the Miscellaneous Case No.15 of 1987 of the Subordinate Judge and Artha Rin Adalat No.2 at Dhaka by the Respondent No.1 filed by the Respondent No.2 under Article 33 of the Bangladesh Shilpa Rin Sangstha Order 1972 vide Annexure-F, H and I(1) and why consequently negotiate sale of petitioner property being holding No.54 Mohakhali Commercial Area within the City of Dhaka through the process of Artha Jari Case No.18 of 1999 of the 2nd Artha Rin Adalat of Dhaka arising out of Miscellaneous Case No.15 of 1987 of the Court of Subordinate Judge and Artha Rin Adalat No.2 at Dhaka vide **Annexure-I and J** shall not be declared to have been passed without lawful authority and is of no legal effect”; thereafter a Division Bench of the

High Court Division upon hearing the parties discharged the said Rule by the judgment and order dated 16.03.2016. The aforesaid fact is evident from the judgment and order dated 16.03.2016 which is annexed with the writ petition and marked as **Annexure-E**.

f) that another individual named Faisal Morshed Khan as third party also filed Writ Petition No.5196 of 2013 challenging Order No.111 dated 07.04.2013 rejecting the application of the petitioner on 31.03.2013 for stay of further proceeding in relation to sale, transfer or handover of the suit land and Order Nos.102, 103 and 104 passed by the learned Judge of the 2nd Court of Artha Rin Adalat, Dhaka transferring the suit land to the petitioners of this instant case and obtained a Rule Nisi and order of stay of all further proceeding of the Artha Jari Case No.18 of 1999; against the said order of stay, the petitioners filed a Civil Petition For Leave To Appeal

No.1241 of 2013 before the Appellate Division of the Supreme Court of Bangladesh and the Appellate Division passed an order staying the above mentioned order of the High Court Division till disposal of the Rule by the judgment and order dated 13.11.2013; subsequently a Division Bench of the High Court Division upon hearing the parties discharged the Rule by the judgment and order dated 21.07.2016. The aforesaid fact is evident from the judgment and order dated 13.11.2013 and 21.07.2016 which are annexed with the writ petition and marked as **Annexure-F and F-1**.

g) that the petitioners and another purchaser i.e. Respondent No.4 filed an application before the Rajdhani Unnayon Kartipakkho (RAJUK) for mutating their names for the case land pursuant to the above mentioned sale of the Court but without getting any response from RAJUK, the petitioners filed Writ Petition No.6637 of 2016 before the High

Court Division and obtained a Rule Nisi; subsequently on contested hearing, a Division Bench of High Court Division made the Rule absolute by the judgment and order dated 07.09.2016 considering and discussing all the issues and directed the RAJUK to mutate the name of the petitioners in respect of the case land within 60 days. The aforesaid fact is evident from the judgment and order dated 07.09.2016 which is annexed with the writ petition and marked as **Annexure-G**.

h) that for not complying with the judgment and order as to direction of High Court Division, the petitioners filed Contempt Petition No.82 of 2017 before the High Court Division and the High Court Division directed the RAJUK to comply with its earlier judgment and order dated 07.09.2016 passed in Writ Petition No.6637 of 2016 within 2(two) months without fail by the order dated 10.10.2017. The aforesaid fact is evident from the order dated

10.10.2017 which is annexed with the writ petition and marked as **Annexure-H**.

i) that the Rajdhani Unnayan Kartipakkha (RAJUK) preferred a Civil Petition For Leave To Appeal No.4124 of 2017 before the Appellate Division against the judgment and order dated 07.09.2016 passed in Writ Petition No.6637 of 2016 regarding direction for mutating the name of the petitioners and after hearing the parties, the Appellate Division dismissed the same by the judgment and order dated 01.04.2018 holding the view that the respondents i.e. the present petitioners legally purchased the property through the Court and their title has become unassailable. The aforesaid fact is evident from the judgment and order dated 01.04.2018 which is annexed with the writ petition and marked as **Annexure-I**.

j) that in the meantime, the Respondent No.4 entered with an registered agreement for sale being

No.4186 dated 09.05.2016 for 3662.75 ajutangsha of above mentioned land with the petitioners namely Standard Group Limited and Standard Stitches Limited receiving Tk.12,50,00,000/- (twelve crore fifty lac) as earnest money out of total consideration of Tk.13,00,00,000/- (Thirteen crore).

k) that on repeated request of the petitioners, the Respondent No.4 failed to execute and register the sale deed as agreed; thus the petitioners were constrained to institute a suit for specific performance of contract before the Court of learned Joint District Judge, 1st Court, Dhaka being Title Suit No.559 of 2016 against the Respondent No.4 for execution of sale deed. The aforesaid fact is evident from the plaint which is annexed with the writ petition and marked as **Annexure-J**.

l) that during pendency of the said suit, on 21.11.2016, the Respondent No.5 filed an application under Order 1 Rule 10(2) of the Code of Civil

Procedure for addition of party stating, *inter alia*, that there was an earlier unregistered agreement with the Respondent No.5 and on the basis of the said agreement, the Respondent No.4 is bound to register the sale deed of the suit land in favour of him; subsequently the application was withdrawn by filing another application dated 26.01.2017 and in both the applications, it was stated that the Respondent No.4 took Tk.35,00,00,000/- from the Respondent No.5 for his business purpose. The aforesaid fact is evident from the application for addition of party dated 22.11.2016 and order dated 26.01.2017 which are annexed with the writ petition and marked as **Annexure-K and K-1.**

m) that the Respondent No.5 entered with an registered agreement for compromise being No.2720 dated 12.04.2018 with the petitioners receiving Tk.1 crore, gave up his all claims and made an undertaking that he has no grievance against the above mentioned

transfer between the petitioners and Respondent No.4 and he will not make any complaint or allegation against the petitioners in connection with the above mentioned transfer. The aforesaid fact is evident from the photocopy of the registered agreement for compromise which is annexed with the writ petition and marked as **Annexure-L**.

n) that the above mentioned Suit No.559 of 2016 was decreed on compromise on 28.02.2017 and the petitioners filed Title Execution Case No.07 of 2017 and the learned executing Court, Joint District Judge, 1st Court, Dhaka executed and registered the sale deed being No.3578 dated 22.05.2017 and since then the petitioners being the owners have been enjoying the said land within the knowledge of all concerned. The aforesaid fact is evident from the judgment and decree dated 20.02.2017 and 27.02.2017, order dated 16.05.2017 and the registered sale deed being No.3578 dated 22.05.2017

which are annexed with the writ petition and marked as **Annexure-M, M-1, M-2 and M-3**.

o) that on 11.12.2018, the Respondent No.5 with ulterior motive and in order to make unnecessary harassment filed an application along with two paper cuttings before the Respondent No.2 against the petitioners for penal action alleging evasion of stamp duty and registration fee against the registration of above mentioned deed while executing and registering the same through the Court of law. The aforesaid fact is evident from the application dated 11.12.2018 which is annexed with the writ petition and marked as **Annexure-N**.

p) that on the basis of the above mentioned application, the Respondent No.3 issued the impugned notices dated 20.01.2019 (**Annexure-O and O-1**) under Section 19 and 20 of the Anti-Corruption Commission Act, 2004 and Rule 20 of the Anti-Corruption Commission Rules, 2007 read with

Section 160 of the Code of Criminal Procedure directing the petitioners to appear before the Respondent No. 03 along with documents with respect to the land of Plot No.54, Mohakhali Commercial Area, Dhaka. The aforesaid fact is evident from the notices dated 20.01.2019 under Memo Nos.2297 and 2298 which are annexed with the writ petition and marked as **Annexure-O and O-1**.

q) that on 20.01.2019, the petitioners filed two applications before the Respondent No.3 seeking for one month time to collect the relevant papers and documents and thereafter the Respondent No.3 extended the time till 31.01.2019 and issued two notices dated 27.01.2019 under Memo Nos.3003 and 3005 (Annexure-P and P-1) directing the petitioners to appear before him along with documents with respect to the land of Plot No.54, Mohakhali Commercial Area, Dhaka. The aforesaid fact is

evident from the notices dated 27.01.2019 under Memo Nos.3003 and 3005 which are annexed with the writ petition and marked as **Annexure-P and P-1**.

Being aggrieved by the impugned notices, the petitioners approached this court with an application under Article 102 of the Constitution and obtained this Rule along with an order of stay of operation of the impugned notices.

At the very outset, Mr. Probir Niogi, the learned Senior Advocate along with Mr. Md. Muniruzzaman, Advocate and Ms. Anita Gazi Rahman, Advocate for the petitioners, submits that the petitioners and the Respondent No.4 purchased the case land through the Court of law and the Rajdhani Unnayan Kartipakkha (RAJUK) and 2 others filed 3 Writ Petitions being Nos.4800 of 2014, 7156 of 2014 and 5196 of 2013 challenging the legality of the said sale and all the writ petitions were discharged; thereafter the RAJUK

preferred Civil Petition For Leave To Appeal No.3269 of 2016 against of the judgment and order of Writ Petition No.4800 of 2014 and the same was dismissed on 03.08.2017; thereafter the petitioners and the Respondent No.4 filed Writ Petition No.6637 of 2016 for direction upon the RAJUK to mutate their names; subsequently the said Rule was made absolute by the judgment and order dated 07.09.2016 and for non-compliance of the said order, the petitioners filed Contempt Petition being No.82 of 2017 against the RAJUK and obtained a further order of direction; subsequently against the said judgment and order dated 10.10.2017, the RAJUK preferred Civil Petition For Leave to Appeal being No.4124 of 2017 and the same was dismissed on 01.04.2018 with a finding that the respondents i.e. the present petitioners and Respondent No.4 legally purchased the case property through Court and their title has become unassailable and as such, the impugned

notices directing the petitioners to appear before the Respondent No.03 along with the documents questioning the lawful sale by initiating an inquiry are illegal, without jurisdiction and without lawful authority and are of no legal effect.

He next submits that the Respondent No.4 purchased a portion of the case property through the Court and agreed to sell his portion to the petitioners by executing an agreement for sale and receiving earnest money; subsequently he denied to execute the sale deed by receiving the remaining consideration and thereby the petitioners filed a suit for specific performance of contract and obtained a decree and pursuant to the said decree, Title Execution Case being No.07 of 2017 was filed and then the learned Judge of the executing Court, Joint District Judge, 1st Court, Dhaka executed and registered the sale deed being No.3578 dated 22.05.2017 and thus there is no scope to re-open the same in the name of inquiry

without permission of the Court and therefore the impugned notices are illegal, without jurisdiction and without lawful authority and are of no legal effect.

He then submits that the Stamp Act, 1899 and the Registration Act, 1908 have provided certain provisions for realizing unpaid duties or revenues if any, but provided no provision for filing any criminal proceeding under the provision of the Penal Code or under the provision of the Prevention of Corruption Act, 1947 for realizing unpaid duties or revenues and therefore, the impugned notices are liable to be declared illegal and without lawful authority and are of no legal effect.

He further submits that under Section 63A of the Registration Act, 1908, the unpaid amount of duties for the deed not properly valued shall be realized from the concerned registering officer and under the provision of the Stamp Act, 1899, there are provision for realizing the revenues but without

complying with those provisions of law, the Respondent No.3 most illegally with mala fide intention started the process of inquiry against the petitioners pursuant to the application filed by the Respondent No.5 and therefore, the impugned notices are liable to be declared without lawful authority and are of no legal effect.

He additionally submits that the sale deed was executed and registered by a competent court of law pursuant to a decree of specific performance of contract and as such, without any order of the concerned court, there is no scope to proceed with the realization of shortage of payment of stamp duty or tax if any and therefore, the impugned notices of the Respondent No.3 to proceed with the inquiry pursuant to the application (**Annexure-N**) filed by the Respondent No.5 are liable to be declared without lawful authority and are of no legal effect.

He candidly submits that the Registration Act, 1908 and the Stamp Act, 1899 are not included in the schedule of the Durniti Damon Commission Act, 2004 and therefore the impugned notices of the Respondent No.3 to proceed with the inquiry pursuant to the application (**Annexure-N**) filed by the Respondent No.5 are liable to be declared without lawful authority and are of no legal effect.

Mr. Niogi, with reference to Clause 5.73 of the Constitutional law of Bangladesh (3rd edition) by Mahamudul Islam, submits that “*a mala fide exercise of discretionary power is bad as it amounts to abuse of discretion*”; in support of his submission, Mr. Niogi has referred to a legal decision taken in the case of Nur Mohammad Vs. Mainuddin Ahmed, reported in 39 DLR(AD), wherein it was held that “*power conferred by or under any law must not be exercised mala fide or for collateral purpose. The mala fide act is an act without jurisdiction;*” and then

Mr. Niogi has also referred to a legal decision taken in the case of Mohammad Ali Vs. Burma Eastern reported in 38 DLR(AD) 41 wherein it was decided that *a mala fide act is by its nature an act without jurisdiction. No legislature when it grants power to take action or pass an order contemplates a mala fide exercise of power*".

Mr. Niogi vigorously submits that as per Rule 3(5) of the Anti-Corruption Commission Rules, 2007, the ACC shall not directly go for conducting inquiry in respect of complaints which have not been found to be prima facie correct and true by the Scrutiny Committee, but in the present case, the impugned notices have been issued upon the petitioners on the basis of a complaint filed by the Respondent No.5 without satisfying itself as to the prime-facie correctness of the allegation.

Mr. Niogi further points out that the allegations made in the petition of complaint do not come within

the purview of the scheduled offence of the ACC Act, 2004 and further, the provision of the Registration Act, 1908 and the Stamp Act, 1899 are available for realizing the shortage of payment of duties and taxes if any as alleged in the petition of complaint of the Respondent No.5.

Mr. Niogi lastly submits that it appears from the petition of complaint of the Respondent No.5 that the Respondent No.2 has prior knowledge about the sale of the case land through the Court, thus the notices have been issued by exercising the discretion arbitrarily taking mala fide intention.

On the other hand, Mr. Hassan M.S. Azim, the learned Advocate appearing on behalf of the Anti-Corruption Commission (ACC) has contested the Rule and submitted affidavit-in-opposition and supplementary affidavit-in-opposition denying the statements and grounds taken in the writ petition and categorically submits that the impugned notices dated

20.01.2019 (Annexures O & O-1 to the writ petition) and the impugned notices dated 27.01.2019 (Annexures P & P-1 to the writ petition) issued by Respondent No.3 under Sections 19 and 20 of the Anti-Corruption Commission Act, 2004 directing the petitioner to appear before the Respondent No.03 along with the documents with respect to the land of plot No. 54, Mohakhali Commercial Area, Dhaka, pursuant to the application dated 11.12.2018 (Annexure-N to the writ petition filed by the Respondent No.05, were issued for fact finding inquiry for discovering the truth which will go to assist the Commission either to proceed further by lodging an F.I.R or to keep the complaint with the record if found to be without any basis and as such, since the impugned notices are the parts of fact finding process under the relevant law, the writ petition is not at all maintainable.

He next submits that it is by now a settled law that sub-section (1) and (2) of Section 19 of the ACC Act, 2004 have given wide jurisdiction to the Anti-Corruption Commission to inquire into and investigate any allegations whatsoever as covered in its schedule and in doing so, the Commission may direct any authority, public or private, to produce relevant documents and the person concerned shall be bound to comply with the direction.

He then submits that the impugned notices dated 20.01.2019 (Annexures O & O-1 to the writ petition) and the impugned notices dated 27.01.2019 (Annexures P & P-1 to the writ petition) under Sections 19 and 20 of the Anti-Corruption Commission Act, 2004 have been issued in respect of an allegation of creating forged documents and hence, such allegations clearly fall within the schedule offence of the Anti-Corruption Commission Act, 2004.

He candidly submits that the allegation of ‘*mala fide* exercise of power by the Anti-Corruption Commission’ as raised by the petitioners is baseless inasmuch as no facts showing the allegation of malice to have a basis have been narrated by the writ petitioners anywhere in the writ petition or in the supplementary affidavits and hence, the allegation of lack of jurisdiction because of malice in fact is not tenable in the facts and circumstances of the case.

He additionally submits that the impugned notices were issued *bona fide* as a fact finding process and to hear the story of the writ petitioners and the writ petitioners had ample opportunity to appear before the Commission and present their cases with documents and the writ petitioners by submitting applications for extension of time had in fact accepted the position that they would appear before the Commission and submit their cases and relevant documents.

He vigorously submits that the allegations against the writ petitioners being “জাল ডকুমেন্ট স্জনপূর্বক রাজউকের লে-আউটভুক্ত প্লট দখলের অভিযোগ” are very serious in nature and the same requires a thorough inquiry in order to decipher the veracity of those allegations and as such, the Rule Nisi issued in the instant writ petition is liable to be discharged for ends of justice so as to allow the Commission to discharge its functions as per law.

He then points out that the Anti-Corruption Commission has the authority to questioning any person about the correctness of its documents as a fact finding process and unless and until any legal action is initiated on the basis of the said findings, there is no scope to review the matter in writ jurisdiction and thus the writ petition is a pre-matured one; in support his submission, the learned Advocate has referred to a legal decision taken in the case of Sonali Jute Mills Ltd Vs. ACC reported in 22

BLC(AD) 147 wherein it was held that “sub-section(1) and (2) of the Section 19 have given wide jurisdiction to the Commission to enquire into and investigate any allegations whatsoever as covered in its schedule and in doing so, the ACC may direct any authority, public or private to produce relevant documents”.

He lastly submits that the submission of the learned Advocate for the writ petitioners is that the Commission has already come to know about the relevant facts through the instant writ petition is a dangerous proposition inasmuch as if such proposition is accepted, then every time if there is a notice issued by the Anti-Corruption Commission under Sections 19 and 20 of the Anti-Corruption Commission Act, 2004, the same will trigger filing of a writ petition which will open a floodgate and in the facts and circumstances of the instant case, there is no justification for allowing anyone to trigger that

floodgate to open and considering all the aspects of this matter, the Rule may be discharged.

The Respondent No.5 Md. Sekender Ali Moni has also submitted affidavit-in-opposition stating, *inter-alia*, that the present deponent filed the application dated 11.12.2018 to the Anti-Corruption Commission neither with ulterior motive nor in order to harass the petitioner but out of grudge and resentment derived from non-cooperation of Mr. Atiqur Rahman, the Chairman of Standard Group Limited and Standard Stitches Limited, in recovery of outstanding debts from the sale proceeds of land received by the friend of the present respondent, Mr. Md. Arifur Rahman, the vendor of land who is impleaded in the instant writ petition as Respondent No.4; that the Respondent No.5 was unable to conceive that the consequence of the application dated 11.12.2018 would be so harassing to Mr. Md. Atiqur Rahman, who is the Chairman of Standard

Group and Standard Stitches and Chairman (former Director) of Jamuna Bank Limited with whom the present deponent has no enmity and for this consequence of the application, the present deponent feels discomfort and feeling so the present deponent on 08.07.2019 filed an application to the Anti-Corruption Commission seeking for withdrawal of the application of the present deponent dated 11.12.2018 and the present deponent also sworn an affidavit to that effect on the same day. The aforesaid fact is evident from the application and affidavit dated 08.07.2019 which are annexed with the affidavit-in-opposition filed by the Respondent No.5 and marked as **Annexure 1 and 1-A**.

Mr. A.K.M Amin Uddin, DAG along with Mrs. Anna Khanom Koli, AAG and Mr. Md. Shaifour Rahman Siddique, AAG appearing on behalf of the Respondent No.1, has adopted the submissions made

by the learned Advocate for the Anti-Corruption Commission.

We have gone through the writ petition and the affidavit-in-oppositions submitted by the Respondent Nos.2 and 5 and perused all the materials annexed therewith. We have also heard the learned Advocates for the writ petitioners, the Anti-Corruption Commission, the Respondent No.5 and the learned Deputy Attorney-General for the respective parties and considered their submissions to the best of our wit and wisdom.

On perusal of the record, it appears that admittedly the writ petitioners purchased the case land through the court by way of sale certificate and the learned judge of the Execution Court handed over possession of the land to the petitioners by way of writ for delivery of possession. Challenging the said sale, several writ petitions and leave petitions were filed and ultimately all of them were discharged and

dismissed. The writ petitioners as auction purchasers having failed to mutate their names against their purchased property filed Writ Petition No. 6637 of 2016 against RAJUK and the said Rule was made absolute by a Division Bench of this Division. Then RAJUK filed Civil Petition For Leave To Appeal No. 4124 of 2017 before the Appellate Division against the said judgment of the High Court Division and the same was dismissed on 01.04.2018 with a findings that the writ petitioners have legally purchased the case property through Court and their title has become unassailable. Thus the matter at hand is a judicially decided one and subsequent questioning about the said documents of purchase without reviewing the same is violative of the right of property of a citizen as guaranteed under Article 42 of the Constitution. Though during pendency of the instant Rule Nisi, review petition was filed by

RAJUK being No. 247 of 2019, but the same was dismissed on 16.01.2020.

It may be mentioned that when any legal issue is finally decided by the apex Court of the country, any initiative to re-open the same issue by any authority of the government or statutory authority like ACC in the name of exercise of discretionary power without prior approval of the Court, is absolutely mala fide and abuse of discretionary power. The aforesaid view finds support in Clause 5.73 of the Constitutional law of Bangladesh (3rd edition) by Mahamudul Islam, wherein it is stated that “*a mala fide exercise of discretionary power is bad as it amounts to abuse of discretion*”; The aforesaid view is also supported by a legal decision taken in the case of Nur Mohammad vs. Mainuddin Ahmed case reported in 39 DLR(AD), wherein it was held that “*power conferred by or under any law must not be exercised mala fide or for collateral purpose.*”

The mala fide act is an act without jurisdiction;” and similar view has been expressed in the legal decision taken in the case of Mohammad Ali Vs. Burma Eastern reported in 38 DLR(AD) 41 wherein it was decided that “a mala fide act is by its nature an act without jurisdiction. No legislature when it grants power to take action or pass an order contemplates a mala fide exercise of power”.

It is true that the ACC is empowered by law to inquire into any allegation whatsoever as covered in its schedule and in doing so may direct any authority, public or private to produce relevant documents but the same must be bona fide and lawful in nature. In affidavit-in-opposition and supplementary affidavit-in-opposition, the ACC has stated that the impugned notices were issued on the basis of the complaint made by the Respondent No.5.

Now let us see the said complaint (Annexure-N) annexed to the writ petition. On the 1st page of

the complaint, it is stated that “আরিফুর রহমানের নামে ১ বিঘার কিছু বেশি অংশ ও আতিকুর রহমান ও মোশারফ হোসেনের ফার্মের নামে ১ বিঘার কিছু বেশি অংশ আদালতে সেটেলমেন্ট সেলের মাধ্যমে ক্রয় করেন”. It is further stated on the said page that “আদালত কর্তৃক জমি রেজিস্ট্রেশন ও দখল বুঝাইয়া দেওয়ার পর আমি চেকগুলি নিয়ে ব্যাংকে গেলে সবগুলি চেকই বাউন্স হয়।” So, from the statements of the complaint, it is evident that the ACC was clearly informed about the purchase and handing over possession of the case land through court and thus the notices upon the purchasers of the said sale bringing an allegation as “জাল ডকুমেন্ট সৃজনপূর্বক রাজউকের লে-আউটভুক্ত প্লট দখলের অভিযোগ” is not bona fide rather mala fide and also infringement of the fundamental right of property of the petitioners as guaranteed by the Constitution.

Further, as per Rule 3(5) of the Anti-Corruption Commission Rules, 2007, the ACC shall not directly go for conducting inquiry in respect of complaints which have not been found to be prima-facie correct

and true by the Scrutiny Committee, but in the present case the impugned notices have been issued upon the petitioners neither without holding any initial scrutiny, nor examining the context of the complaint thoroughly which causes the un-necessary consumption of the valuable time of the court as well as harassing the citizens without any reason.

With reference to the legal decision taken in the case of Sonali Jute Mills Ltd Vs. ACC reported in 22 BLC(AD)147, the submission of the learned Advocate for the ACC is that sub-section(1) and (2) of section-19 have given wide jurisdiction to the Commission to inquire into and investigate any allegations whatsoever as covered in its schedule and in doing so, the ACC may direct any authority, public or private to produce relevant documents. But the allegation under the instant inquiry which is admittedly initiated on the allegation as stated in the application dated 11.12.2018 (**Annexure-N**) filed by

the Respondent No.05 with regard to taking possession of RAJUK plot unlawfully by creating forged documents and evasion of registration fees and other duties for registering a deed of sale does not come within the schedule offences of the Anti-Corruption Commission Act, 2004 rather it may come under the purview of Section 63A of the Registration Act, 1908 and under the provision of Stamp Act, 1899 and thus the said case law is not applicable to the case of the petitioners. It appears from the annexures of the writ petition that the subsequent sale between the petitioners and the Respondent No.4 was also held by a Court of law pursuant to a decree of specific performance of contract and thus there is no scope of taking possession of RAJUK plot unlawfully by creating forged documents and evasion of registration fees and stamp fees at all. Apart from these, during pendency of the Rule, the Respondent No.5 has

withdrawn his complaint from the ACC and filed affidavit before this Court in support of the petitioners and thus the complaint itself has become susceptible.

Having considered all the facts and circumstances of the case, the submissions advanced by the learned Advocates for the respective parties and the propositions of law cited and discussed above, we find merit in this instant Rule.

Accordingly, the Rule is made absolute.

In consequence thereof, the impugned notices under memo Nos.2297 and 2298 dated 20.01.2019 and notices under memo Nos.3003 and 3005 dated 27.1.2019 issued by the Respondent No.3 under Sections 19 and 20 of the Anti-Corruption Commission Act, 2004 and Rule 20 of the Anti-Corruption Commission Rules, 2007 read with Section 160 of the Code of Criminal Procedure directing the petitioners to appear before the

Respondent No.3 along with the documents with respect to the land of Plot No.54, Mohakhali Commercial Area, Dhaka (**Annexures- O, O-1, P and P-1**) following the application dated 11.12.2018 (**Annexure-N**) filed by the Respondent No.5, are declared to have been made/issued without lawful authority and are of no legal effect.

Communicate the judgment and order to the Chairman, Anti-Corruption Commission and other respondents at once.

S.M. Mozibur Rahman, J:

I agree