

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

Ms. Justice Krishna Debnath

CIVIL REVIEW PETITION NO.371 OF 2019

(From the judgment and order dated the 30th day of July, 2017 passed by the Appellate Division in Civil Petition for Leave to Appeal No.800 of 2016)

Rajdhani Unnayan Karitipakkha : . . . Petitioners
(RAJUK) and another

-Versus-

Dr. Tofail Hoque and another : . . . Respondents

For the Petitioners : Mr. A.M. Amin Uddin, Senior Advocate instructed by Mrs. Shahanara Begum, Advocate-on-Record

For Respondent No.1 : Mr. Abdul Wadud Bhuiyan, Senior Advocate instructed by Syed Mahbubur Rahman, Advocate-on-Record

For Respondent No.2 : None represented

Date of Hearing : **The 13th day of January, 2022**

JUDGEMENT

M. Enayetur Rahim, J: Delay of 765 days in filing the petition is condoned.

This civil review petition is directed against the judgment and order dated 30th day of July, 2017 passed by the Appellate Division in Civil Petition for Leave to Appeal No.800 of 2016 dismissing the same as barred by limitation.

The relevant facts for disposal of this petition are that;

The Respondent No.1 as writ petitioner (herein after referred to as writ petitioner) filed writ petition No.4097 of 2009 in the High Court Division challenging action of the present petitioners (hereinafter referred to as RAJUK) cancelling the plot allotted to the writ petitioner in “Uttara extended 3rd phase residential project” as per public notification published in the Daily Newspaper “Jay Jay Din” on 06.10.2006 and also for a direction upon the RAJUK to allot a plot of 5 kathas in the “Uttara extended 3rd phase residential project” in favour of the writ petitioner as his name was published as a successful allottee whose application contained in “SL No.26873/27273 dated 28.02.2004 and restraining to allot the plot to any one as per the advertisement published in National Daily “The Daily Samakal” dated 20.02.2007.

In the writ petition it is contended that Chairman, RAJUK published public notification in the Daily Newspaper and in the website of its inviting applications for allotment of plots in “Uttara extended 3rd phase residential project under RAJUK.

In response of the said notification the writ petitioner applied for a plot of 5 kathas in the “Uttara Extended 3rd phase residential project” and deposited Taka 500/- (five hundred) to Janata Bank, RAJUK Bhaban as cost of application form and Taka 1,00,000/- (one lac) only on 15.03.2004. The writ petitioner collected the application form from the office of Janata Bank, RAJUK Bhaban, Corporate Branch, Dhaka and thereafter submitted the application form on 15.03.2004 and the serial number of his application was “SL No.26873/27273.

Eventually, a list of fortunate and successful allottees were published in almost all the news papers on 6th October, 2006 including some dailies and the petitioners name appeared in the list as allottee of a plot of 5 kathas in the “Uttara Extended 3rd phase residential project” which was published in daily the ‘Jay Jay Din’.

While the petitioner was expecting a formal allotment letter from the concerned authority of RAJUK, political scenario in the country was changed on 01.11.2007. Immediately after changeover of the political scenario, it was reported in the newspapers that the allotments of plots in “Uttara Extended 3rd phase residential project” have been cancelled by the Caretaker Government as the allotments were allegedly made taking into consideration the political affiliations of the allottee who were active supporters of the then party in power. It was also reported after few months that a total of three hundred allottees, whose allotments were cancelled have been given the formal letters of allotments and they have deposited money against the allotted plots. The writ petitioner tried his best to gather information from the concerned officials of the RAJUK as to the progress of his allotment and is verifying the reports published in the daily news paper. Since no rejoinder has ever been issued from the RAJUK refuting the press reports, it is believed that the reports are correct and therefore, the petitioner has reasonable grounds of being aggrieved by the inaction of the RAJUK.

On 26.11.2008 it has appeared in almost all National Dailies including “The Daily Samakal” that RAJUK had invited applications for the said residential project and it has been mentioned that the applicants, who applied before by depositing money as the writ petitioner will have to

apply again. It is therefore, understood that the writ petitioner would not be allotted the plot which he was allotted in 2006 and it has also been reported in the daily Ittefaque on 12.12.2008 under the heading “Uttara Extended 3rd phase residential project” that this would be the last allotment of plots of the project and it is learnt by the writ petitioner that no plots would be reserved for the allottees whose names were published on 06.10.2006.

The writ petitioner was lawfully selected as an allottee of a 5 khatas plot and there has not been any reason which compelled the RAJUK to cancel the said allotment and therefore the cancellation of the list of allotment published of the allottee writ petitioner was done arbitrarily and without any lawful authority.

It is further contended by the writ petitioner that no communication was made to the writ petitioner before cancellation of the list of successful allottees and as such he has been deprived from getting natural justice and ends of justice would be met if the RAJUK is directed to allot a plot of 5 khatas in “Uttara extended 3rd phase residential project” in favour of the petitioner as per his application dated 15.03.2004 bearing “SL No.26873/27273.

A Division Bench of the High Court Division after hearing the said Rule Nisi by its judgment and order date 22.10.2014 made the Rule Nisi absolute and declared the cancellation of the plot as published in the news paper, so far it relates to the writ petitioner without lawful authority and is of no legal effect and also directed the RAJUK to allot 5 khatas plot to the writ petitioner within a period of 3(three) months from the date of receipt of the judgment.

Being aggrieved by the said judgment and order the RAJUK filed Civil Petition for Leave to Appeal No.800 of 2016 before this Division.

However, this Division by an order dated 30.07.2017 dismissed the said petition for Leave to Appeal being time barred.

Thus, the RAJUK has filed this civil review application.

Mr. A.M. Amin Uddin, learned Senior Advocate, appearing on behalf of the present petitioners submits that the some irregularities and illegalities had occurred in allotting the plots and RAJUK found such irregularities and illegalities and thereby, before accepting all money except Tk.1,00,000/- (one lac) cancelled the allotment of plot and before issuance of allotment letter RAJUK cancelled the allotment of plot of the writ petitioner, thereby no legal right has been created in his favour and in this regard settled principle of law is that performance of public bodies by mandamus, the writ petitioner must have a specific legal right to insist upon such performance and before creating any legal right writ petition is not maintainable and this legal aspect of the matter was not considered by the High Court Division which is apparent on the face of the record and as such, the order of this Division dismissing the leave petition being time barred and thereby upholding the decisions of the High Court Division is required to be reviewed.

Mr. Amin Uddin, further submits that the RAJUK did not issue any formal allotment letter in favour of the writ petition and has not received any installment money and enter into any contact with the writ petitioner and the settled principle of law in this regard is that no show cause notice is required before such cancellation and this aspect of the matter was not considered by the High Court Division, as such, the said decisions is required to be reviewed.

Mr. Abdul Wadud Bhuiyan, learned Senior Advocate, appearing on behalf of the writ petitioner-respondent submits that the writ petitioner was

lawfully selected as an allottee of the plot and there has not been any cogent ground which compelled the RAJUK to cancel the said allotment and, therefore, the cancellation of the list of allotments published in The National Daily which contains the petitioner's name was done arbitrarily and with mala fide intention.

He further submitted that no communication was made to the writ petitioner before cancellation of the list of successful allottees and as such writ petitioner has been deprived of the principles of natural justice and thus the High Court Division rightly and lawfully passed the judgment making the Rule Nisi absolute and this Division also rightly dismissed the Civil Petition for Leave to Appeal being time barred.

We have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgment and other materials as placed before us.

In the instant case though the name of the writ petitioner was published in the daily newspaper as a selected allottee but having regard to the fact that no formal allotment letter was issued in favour of him by the RAJUK and before issuance of the allotment letter, RAJUK cancelled the plot of the writ petitioner on the ground of irregularities and illegalities as found in the allotment process. The RAJUK did not enter into any agreement with him as well as did not receive any installment money in connection with the alleged allotted plot and as such no legal and vested right has been created in favour of the writ petitioner, despite the High Court Division has made the Rule absolute directing the RAJUK to give allotment of a plot to the writ petitioner.

It is now well settled that when the legal and vested right has not been created in favour of a person, the question of legitimate expectation of such person cannot be raised and no mandamus can be issued.

This Division in the case of **Hazerullah Vs. Assistant Commissioner, Board of Management of Abandoned Property** [55 DLR (AD) 15], relying on the case of *Queen Vs. Guardian of the Lewisham Union*, reported in 1897 IQB 498 has held that a person can avail writ jurisdiction by way of mandamus only for enforcement of his legal right or for redress violation of such right.

Further, mandamus may not be issued where there is no violation of a legal right or violation of a legal or statutory duty by the authority concerned.

In the attending facts and circumstances of the present case, in particular, in absence of any formal allotment letter no legal or statutory duty has been cast upon the RAJUK to allot a plot to the writ petitioner and thus, question of violation of legal or statutory duty by the RAJUK does not arise at all.

In view of the above, the High Court Division fell into an error in making the Rule Nisi absolute directing the RAJUK to allot a 05 kathas plot to the petitioner.

The High Court Division passed the judgment beyond the scope of law which required to be interfered.

Accordingly, this civil review petition is disposed of.

The judgment and order dated 22.10.2014 passed in Writ Petition No.4097 of 2009 by the High Court Division is set aside.

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