In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

**Present**

**Madam Justice Kashefa Hussain**

**And**

**Madam Justice Kazi Zinat Hoque**

**Writ Petition No. 8703 of 2021**

**In the matter of:**

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

-And-

**In the matter of:**

Tania Rahman, wife of Md. Mujibur Rahman of House No. 5, Road No. 3, Block-B, Dumni, Pink City, Khilkhet, Dhaka.

……. Petitioner.

Vs.

Bangladesh, represented by the Secretary, Ministry of Housing and Public Works and others.

……Respondents.

Mr. Md. Toufiq Inam, Advocate with

Mr. Md. Anik Hossain, Advocate

…..for the petitioner

Mr. Noor Us Sadik Chowdhury, D.A.G

with Ms. Sayeda Sabina Ahmed Moli A.A.G

with Ms. Farida Parvin Flora, A.A.G

... for the respondent No. 1

Mr. T.M. Shakil Hasan, Advocate

... for the respondent No. 2.

Mr. Momtaz Uddin Fakir, Senior Advocate

with Mr. Niaz Murshed, Advocate

.... for the respondent No. 10.

**Heard on: 26.10.2022, 27.10.2022, 14.11.2022, 20.11.2022, 21.11.2022, 23.11.2022 and judgment on: 27.11.2022.**

**Kashefa Hussain, J:**

Supplementary affidavit filed by the petitioner do form part of the main petition.

Rule nisi was issued calling upon the respondents to show cause as to why cancellation of allotment of the land measuring 3(three) Katha situated at Plot No. 5, Road No. 4, Sector-15/C-1, Uttara (3rd Phase) Extension Project Residential Area, Uttara, Dhaka which has been transferred to the petitioner by the lessee by way of a registered deed with due approval from the respondent No. 2 and confiscating the money deposited against the said land vide Memo No. RJUK/ESTATE and Land-2/UTTARA/562 Stha; dated 09.03.2020 issued by the respondent No. 6 (Annexure-'P' to the writ petition) and all subsequent steps/actions taken by the respondent No. 2 pursuant thereto and the threat of the respondent No. 6 made on 29.09.2021 to evict the petitioner from aforementioned Plot No. 5 should not be declared to have been done without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner Tania Rahman, wife of Md. Mujibur Rahman of House No. 5, Road No. 3, Block-B, Dumni, Pink City, Khilkhet, Dhaka is a citizen of Bangladesh.

The respondent No. 1 is the Secretary, Ministry of Housing and Public Works, Building No. 5, Bangaldesh Secretariat, Dhaka-1000, the respondent No. 2 Rajdhani Unnayan Kartripakkha (RAJUK), represented by its Chairman, the respondent No. 3 is the Liason

Officer, Rajdhani Unnayan Kartripakkha (RAJUK), the respondent No. 4 is the Senior SystemAnalyst, MIS Branch, Rajdhani Unnayan Kartripakkha (RAJUK), the respondent No. 5 is the Member (Estate and Land), Rajdhani Unnayan Kartripakkha (RAJUK), All 2-5 above are of RAJUK Bhabon, RAJUK Avenue, MOtijheel, Dhaka-1000, the respondent No. 6 is the Deputy Director (Estate and Land-2), Zonal Office, RAJUK, Uttara, Dhaka, the respondent No. 7 is the Officer in Charge, Uttara (West) Model Police Station, Dhaka, the respondent No. 8 is the Captain (Rtd) Md. Abdul Hai BirProtik, son of late Alhaj Mahamudur Rahman of House No. 17, Road No. 2, Block-A, Pink City Domne, Khilkhet, Dhaka-1229, res pondent No. 9 is the Assistant Director (Estate-2), RAJUK Zonal Office, Uttara, Dhaka and the added respondent No. 10 is Aahirul Hasan, son of Badar Uddin Badal of House No. 1, Road No. 22, Sector No. 10, Uttara, Dhaka and also of Krishnapur, Gonpoddi, Police Station- Nokla, District-Sherpur.

The petitioner's case inter alia is that the Hon'ble Prime Minister instructed the RAJUK to allot plot to the titled freedom fighters and accordingly the RAJUK invited applications in the national newspapers on 26.11.2008, for allotting land / plot in Uttara 3rd Phase Extension Project Residential Model Town. The respondent No. 8, being a veteran freedom fighter, made an application 13.01.2009 to the respondent No. 2 for getting an allotment of land in said residential Model Town of RAJUK. That the respondent No. 2 approved the application of the respondent No. 8 and issued a provisional allotment letter in favour of respondent No. 8 in the

category of “Freedom Fighter” vide Memo No. RAJUK/ESTATE-2/621 Stha; dated25.01.2011. That following receipt of the provisional allotment letter, the respondent No. 8 appointed Md. Mojibur Rahman as his attorney for management of, and transfer of, the scheduled land by way of registered power of attorney deed No. 6169 dated 16.05.2011. That subsequently after receipt of payment of the 1st installment for the plot on 31.07.2011, the respondent No. 2 issued a final allotment letter of the scheduled land (plot ID No. 15C1-4-5) vide Memo No. RAJUK/Estate-2/515 Stha; dated 03.11.2011 in faovur of the respondent No. 8 subject to the payment of 2nd and 3rd installments amounting to Taka 8,10,000/- in total. That the respondent No. 8 paid the 2nd and 3rd installments for the scheduled land within 29.12.2011 as required under the final allotment letter. That following receipt of the requisite payment, the respondent No. 2 and respondent No. 8 executed a lease agreement on 12.11.2012 and lease the scheduled land in favour of respondent No. 8 for a period of 99 (ninety nine) years with effect from 03.11.2011 with the terms and conditions contained in the said lease agreement which was finally executed by way of Registered Deed No. 1156 dated 30.01.2013. Later, the physical possession of the plot was handed over to the respondent No. 8 by the RAJUK and the scheduled land was also mutated in the name of Respondent No. 8. That by way of application dated 07.05.2013, the respondent No. 8 through his constituted attorney, Md. Mojibur Rahman, approached the respondent No. 6 for transfer of the allotted land in favour of the petitioner. That the

respondent No. 2 through its Assistant Director (Estate-2) Zonal Office, Uttara, Dhaka asked to deposit the requisite transfer fees of Taka 2,16,000/- (Two lac and sixteen thousand only) in total within a period of 1(one) month for the transfer of the scheduled plot in favor of the petitioner vide Memo No. RAJUK/ESTATE-2/UTTARA (3rd Parbo)/1398 Stha: dated 17.06.2013. That according to instructions of above memo issued by the respondent No. 2, the respondent No. 8 through his constituted attorney deposited the said amount in the account of RAJUK. Subsequently, the Respondent No. 2 vide a letter of permission dated 17.06.2013 permitted the respondent No. 8 to transfer the scheduled land/plot by way of registration in favor of the petitioner. That following permission from RAJUK, the respondent No. 8 through its constituted attorney executed a registered sale deed in favour of the petitioner vide registered sale deed No. 7210 dated 26.06.2013 and delivered the possession of the scheduled land to the petitioner thereof. That thereafter, the petitioner made an application to the respondent No. 6 for mutation of the scheduled land in her name and attached the certified copy of the registered sale of deed. That later, as per instructions of the respondent No. 2 contained in Memo No. RAJUK/ESTATE-2/UTTARA (3rd Parbo)/1808 Stha: dated 31.07.2013, the petitioner deposited the required amount for mutation charge and the respondent No. 2 recorded and mutated the scheduled land in the name of the petitioner vide memo No. RAJUK/ESTATE/UTTARA (3rd Parbo)/1932 Stha: dated 22.08.2013 issued under the signature of respondent No. 9. Further, by the said

memo, the respondent NO. 2 deems the petitioner as the lessee of the scheduled land/plot since then. That since the execution of sale deed and mutation of the land in favour of the petitioner in 2013, the petitioner have been enjoying the leasehold title and possession of the scheduled land by paying Land Development Taxs (paid up to Bangla year 1429). That suddenly on 16.02.2016 the office of the respondent No. 6 asked the original allotee, the respondent No. 8 and the existing lessee, the petitioner to appear before the Director (Estate and Lease-1), RAJUK on 25.02.2016 with all the necessary documents with regard to two plots (plot No. 5 plot No. 22) of Uttara (3rd Phase) Extended Project. That the petitioner being unaware of the reasons for calling her before the RAJUK, went to the office of the Respondent No. 6 on the date fixed and came to learn that the respondent No. 8 earlier applied for getting allotment of a plot in the Uttara (3rd Phase) Extended project of RAJUK Model Town and was allotted one being Plot No. 22 of Road No. 1/A. In the year 2011 he made another application for allotment of land by concealing the earlier allotment and got the plot in question Plot No. 5 at Road No. 4 (scheduled land). Hence the respondent No. 6 asked all concerned with regard to those two plots to attend before this office. That during hearing at the office of the respondent No. 6 on 25.02.2016, the petitioner made statements in support of her right, title and possession of the schedule land by dint of registered sale deed Registered Sale Deed No. 7210 dated 26.06.2013 and mutation documents. She also confirms that she had no knowledge or issue with the earlier allotment

as a bonafide purchaser on permission. That the respondent No. 8 appeared and made a written statement contending, inter alia, that he is not at all aware of the fate of the earlier application and the allotment. He deposited no premium against the alleged allotment; it must have been resorting to frauds and may be with the assistance of the RAJUK officials. He further requested to cancel the previous allotment and maintain the latter one. That subsequently on a number of occasions, the petitioner visited the office of the respondent No. 6 and she was assured that her plot would not be affected since title and possession had already passed to her validly from the respondent No. 8. That all on a sudden on 09.03.2020 by way of Memo No. RAJUK/ESTATE & land -2/UTTARA/562 Stha:, the respondent No. 6 cancelled allotment of the scheduled land, originally issued in faovur of the respondent No. 8 and confiscated all the money received by RAJUK in relation to the said land. By the same memo, the respondent No. 6 maintained allotment of the Plot No. 22 of Road No. 1/A in favour of the respondent No. 8 and notified him about the decision of 1st /2020 meeting of the authority. However, the petitioner being the lessee did not receive any letter of cancellation of their lease/mutation. Nor did she receive any letter from RAJUK notifying her of the cancellation of the said allotment. Hence the petitioner being aggrieved filed the instant writ petition.

Learned Advocate Mr. Md. Toufiq Inam along with Mr. Md. Anik Hossain, Advocate appeared for the petitioner while learned D.A.G Mr. Noor Us Sadik Chowdhury along with Ms. Syeda Sabina

Ahmed Moli, A.A.G along with Ms. Farida Parvin Flora, A.A.G appeared for the respondent No. 1, Learned Advocate Mr. T. M. Shakil Hasan, learned Advocate appeared for the respondent No. 2, Learned Senior Advocate Mr. Momtaz Uddin Fakir along with Mr. Niaz Murshed, Advocate appeared for the added respondent No. 10.

Learned Advocate for the petitioner submits that the impugned cancellation of allotment of the plot by the respondents is absolutely without lawful authority and is of no legal effect. He submits that the petitioner Tania Rahman by way of purchase from the original lessee Captain (Rtd) Md. Abdul Hai, Bir Protik who is the respondent No. 8 in the writ petition has been accorded all the rights of a lessee. He continues that therefore cancellation of the plot without affording due process to the petitioner herself is not sustainable and is a violation of the fundamental rights of the petitioner guaranteed under the Constitution. He contends that it is admitted by the respondents that the respondent No. 8, Captain (Rtd) Md. Abdul Hai, Bir Protik the original lessee transferred the plot with the permission of the respondent No. 2 and which is evident from the materials placed before the Bench. He contends that therefore totally ignoring the petitioner in not acknowledging her as the present lawful lessee is not acceptable and is violative of the laws and rules including the provisions of the Constitution.

In support of his submissions he draws our attention to Annexure- L, L1 and L2 and subsequently Annexure-M of the writ petition. He particularly draws our attention to Annexure-L1 of the

writ petition dated 22.08.2013 issued by the office of the respondent No.2. He points out that in clear language used in Annexure- L1 it is manifest that the plot was transferred with the permission of the Respondents including doing recording, mutation in the petitioner's name. He continues that the clear language of Annexure L1 shows that the respondents acknowledge the petitioner as an independent lessee pursuant to transfer of the property from the respondent No. 8 Captain (Rtd) Md. Abdul Hai, Bir Protik who is the original lessee. He particularly draws attention to the sentence "এখন হইতে আপনাকে উক্ত প্লটের হস্তান্তর সূত্রে লীজ গ্রহতিা/গ্রহিত্রী হিসাবে গণ্য করা হইবে।" On this issue he continues that therefore the respondent No. 2 clearly acknowledged the petitioner as a lessee in her own right by way of transfer and the respondents cannot now derogate from their own words and actions. He contends that therefore issuing the impugned order in the name of the original lessee and not in the name of the petitioner is totally upon misapplication of mind of the respondents given that the original lessee meanwhile extinguished all his right back in 2013 and admittedly with the permission of the respondents. He submits that therefore not affording due process to the petitioner is an aberration from the principle of due process which the respondents cannot lawfully sustain.

Upon a query from this bench on the respondent's contention that show cause notice was duly served upon the petitioner, the learned Advocate for the petitioner deny being given a proper show

cause notice. He draws attention of this bench upon Annexure- Z series of the supplementary affidavit in opposition filed by the respondents. He particularly draws upon annexure-Z2 of the supplementary affidavit in opposition wherefrom it appears that the petitioners gave হাজিরা inter alia other documents pursuant to notice by RAJUK respondent No. 2 on 22.06.2015 and other documents which are all part of Annexure-Z series. Upon a query from this bench as to the হাজিরা and also the notices issued to the petitioner, the learned Advocate for the petitioner attempts to controvert by assertion that these documents do not constitute the ingredients of a proper show cause notice. He elaborates his submissions upon assailing that these documents which the respondents claim to be a show cause notice, however none of these documents indicate as to the why the petitioner was asked to appear before the respondents. He contends that in the absence of the proper ingredients of a show cause notice and in the absence of exact reason being cited in the notice, such notice is only a piece of paper and cannot be regarded as a proper show cause notice in the eye of law. He submits that therefore only asking the petitioner to appear on a particular date and giving হাজিরা is not adequate to substantiate that the petitioner was given a proper show cause notice. He submits that therefore it is clear that the petitioner inspite of being the admitted lessee of the RAJUK was not afforded due process of law.

Next he makes submissions on the primary allegation of the respondents the original lessee having deceived the respondents subsequently was allotted two plots. He denies these allegations and submits that the original lessee respondent No. 8 was not at all aware that he was also originally allotted an earlier plot being plot No. 22 in sector 4 of Uttara. Upon another query from this bench he asserts that the petitioner is a bonafide purchaser and was not at all aware of the circumstances of any plot being allotted in the original lessees's name. He submits that it is evident from the materials that the RAJUK in 2013 having full knowledge of all the circumstances including that the petitioner have been transferred the property by the original lessee consciously granted the permission to transfer.

This bench draws attention of the learned Advocate for the petitioner to the relevant rules and laws pertaining to allotment of plot by RAJUK. We particularly drew attention to Clause 9 and 10 of the DIT (Dhaka Improvement Trust) Allotment of land Rules of 1969 which Annexure is 4 of the affidavit in opposition filed by the learned Advocate for the respondent No. 2 which is reproduced below:

> *"9. No persons, who has already been allotted a plot for residential purpose, in his/her name or in the name of his/her, wife/husband or in the name of dependent children or any other dependent, by the Trust or the Government in any Housing Estate or by the Board of Revenue of any khas land or any person who has already a house within the jurisdiction of Dhaka and*

*Narayanganj Municipal Committee or suburb of these Municipal areas within the jurisdiction of the Trust, shall be allotted a plot. All applicants shall have to file an affidavit to be signed by a 1st class Magistrate to the effect that neither he nor any one of his dependents as specified above possesses any residential plots within the aforesaid jurisdiction.*

*10. Any application received with false shall be summarily rejected. In case, an allotment is made to any one on the basis of false information in the application and the information is subsequently found incorrect, the allotment shall stand cancelled."*

We drew the petitioner to the clear mandate of the Rules of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969. The learned Advocate for the petitioner argued that it is clear from the documents that the respondent No. 8 transferred the property to the present lessee with the permission of the Respondents in the year 2013 with full knowledge of RAJUK. He submits that it is clear from the documents that the petitioner has been transferred the property by the Respondent No.8 Bir Protik through out the procedure with knowledge and permission of the respondent No. 2, RAJUK with all proper documents. He submits that it is also manifest from the documents that the cancelled plot was allotted in the name of the original lessee in the year 2011 and purchased the plot in 25.01.2011. Subsequently lease deed registration was done in 2012 pursuant to

which in 2013 the land was transferred to the present lessee. He submits that it is absurd to hold that in the span of 2 years the respondents could not discover that the lessor was allotted a plot if at all he was ever lawfully allotted a plot previously. He submits that it was the respondents duty to exercise their due diligence before granting permission to transfer the land in the name of the present lessee petitioner. In support of his submissions he draws attention to clause No. 6 of Annexure-Y-21 of the supplementary affidavit in opposition filed by the respondent No. 2. From Annexure-Y-21 he particularly draws attention to clause 6 of the supplementary affidavit in opposition. Clause 6 of the Annexure-Y-21 is reproduced below:

> "৬. প্রথম কিস্তির টাকা প্রাপ্তি এবং প্রাপ্ত তথ্যাদি যাচাইয়ে সঠিক প্রমাণিত হইলে দ্বিতীয় কিস্তির টাকা চাওয়া হইবে এবং একই সাথে প্লট নম্বার উল্লেখপূর্বক চূড়ান্ত বরাদ্দপত্র জারী করা হইবে।"

He asserts that therefore it is clearly stated by the respondents themselves that only after being satisfied as to the regularity of allotment of plots can the respondents accepted the second installment. He submits that it is evident that in this case the respondents accepted and received all the installments and the plot was transferred duly after exhausting all the procedures including permission from the Respondents. He assails that therefore the respondents cannot now go back on their conduct and claim that the allotment of plot was not regular on the plea that the original lessee was already allotted one plot earlier. He further submits that there are

no laches on the part of the petitioner and moreover the petitioner is an independent lessee by virtue of the lease deed and the respondents are bound by the terms of such lease deed. He reasserts that by way of Annexure-L1 the respondents have accepted the petitioner as an independent and new lessee and the respondents have themselves acknowledged all the terms of the original lease deed between the original lessee and lessor which shall be applicable to the present lessee and which shall be considered as a fresh lease deed. On the issue of the lease deed which is annexure-F to be considered as a fresh lease deed, he submits that on the one hand the lessee is a fresh lessee and the lease deed is a fresh lease deed while on the other hand it is clear that the present petitioner was never allotted any plot in her name by the RAJUK. He contends that the present petitioner duly abided by clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 given that the present petitioner never made any misstatement regarding her position since it is clear that she never applied for any other plot besides the present plot. He argues that therefore it would be reasonable to hold that the petitioner been acknowledged by the Respondents as a fresh lessee particularly by way of Annexure-L1 inter alia other documents and also the fact that the lease deed shall be considered as a fresh lease deed which is stated by the respondents themselves and further given the fact that the petitioner never applied for any land therefore she ought to be afforded the process she is entitled to under the law as a lawful lessee. He further asserts that the respondents committed a fundamental

mistake in still holding the original lessee as the allotte of the cancelled plot. He continues that whereas it is clear that the respondents by their own document and their own action transferred the whole interest of the plot in the name of the petitioner with all the rights and liabilities arising out of the lease deed.

There was a query from this bench upon the petitioner as to when the right and liability of the original lessee was transferred to the present petitioner present lessee, should such transfer of duties and liabilities also involve the liabilities of the original lessee as far as the liability of misrepresentation of facts regarding the dispute over the number of allotment of the plots is concerned. In reply he contends that in accordance with annexure- L1 of the writ petition which is issued by the respondent No. 2 read along with some other documents the petitioner and the respondents are only bound to each other within the terms of the lease deed which is annexure-F of the writ petition. He draws our attention to the lease deed which is annexure-F of the writ petition. He particularly takes us to clause 26 and 29 of the writ petition Clause 26 and 29 is reproduced below:

> *"26. It is expressly understood and hereby mutually agreed and settled between the LESSOR and the LESSEE that the lease has been granted on the basis of the information furnished and declaration and statements made in the application and affidavit submitted by the LESSEE for allotment of the demised property; and if at any time any or more of such information or declaration*

*or statements is/are found to have been made falsely or by way of suppression or distortion of material, facts than notwithstanding the fact that the Lease Deed has already been registered or that the possession of the demised property has been delivered to the LESSE of that the construction has been registered or that the possession of the demised property has been delivered to the LESSEE of that the construction has been registered or that the possession of the demised property has been delivered to the LESSEE or that the construction has been made, the LESSOR shall be entitled to cancel the allotment, determine the lease in accordance with the provision of Clause 29(1) hereinafter and forfeit the premium paid by the LESSEE and on such determination, the demised property and any construction thereon shall vest in the LESSOR and be the absolute property f the LESSOR free from all encumbrances.*

*29. Now it is mutually agreed by and between the parties hereto that:*

*(i) In the event of the LESSEE committing breach of any of the covenants of this Indenture other than payment of rent and taxes and there being no specific provisions in respect of such breach in this covenant the LESSOR shall be at liberty without prejudice to any other rights that it any possess, after giving one calendar*

*month's notice in writing, to determine the lease under these presents, re-enter into or upon the whole of the demised property or any part thereof and take possession thereof including all buildings, structures etc. thereon and thereupon the lease shall forthwith cease and the demised property including all buildings, structures etc. thereon shall wholly vest in and be the absolute property of the LESSOR but the LESSEE shall be entitled only to such a compensation for the buildings, structures etc. as many be determined by the Chairman of the Kartripakkha, the Rajdhani Unnayan Dartripakka. The SESSEE, however may remove any goods or things not being part of any building or structure on the demised property within a fortnight of such determination, failing which they shall all be forfeited to the LESSOR and the LESSEE shall not be entitled to any price, compensation or damage whatsoever therefore.*

*(ii) That the LESSEE paying the rent and service charges hereby reserves and faithfully observing and performing the several covenants and stipulations herein contained shall peaceably held and enjoy the demised property during the currency of this Indenture without interruption on the part of the LESSOR.*

*Provide that nothing herein contained shall limit or restrict the right of the LESSOR to use any land,*

*buildings, structures etc, in the neighborhood of the demised property in any manner it may think fit.''*

He also draws attention to clause 30(iv) which is reproduced below:

"*30(iv) In the event of the LESSEE failing to quit or give up peaceable possession of he whole of the demised property in clean and good order an condition on the determination of this lease under the terms of these presents or within such further time as may be allowed to the LESSEE, the LESSOR may forthwith re-enter into or upon the demised property and summarily eject the LESSEE or any the person or persons thereon without intervention of any court of law and may retin everything found on the demised property as its absolute property free from all claims and encumbrances whatsoever from anybody, including the LESSEE and or sell free from such claims and encumbrances whatsoever all or any of the goods or things found upon the clean and good order and condition and all such cost be recovered from out of the said sale proceeds and of from the LESSEE.*"

Taking us through these clauses he submits that these clauses presuppose that even if there is an allegation of suppression of facts or materials inter alia other material factor whatsoever, it is manifest that a notice under clause 29 must be given to the lessee. He points out that however it is clear that in this case no such notice was issued under clause 29 upon the petitioner prior to cancelling the said plot.

He particularly draws attention to clause 26 wherefrom he points out that clause 26 clearly contemplate that in case of any irregularity or suppression of facts by the allottee the procedure in accordance with the provision of clause 29(1) of the lease deed shall be mandatorily exhausted. He submits that clause No. 26 clearly presupposes that the procedure under clause 29 is to be mandatorily exhausted in the face of allegation of suppression of facts or any other material factor. He assails that in this case it is admitted by the respondents that no such notice under clause 29 was issued upon the petitioner. He submits that therefore the respondents themselves violated the terms of the lease deed which terms they are duty bound to follow law and rules and that may be relevant for the purpose. He reiterates that the petitioner is a bona fide lessee and therefore the cancellation of the plot which is lawfully alloted in the petitioners name is without lawful authority. He further submits that the petitioner as a ‘new’ and ‘independent’ lessee of RAJUK is entitled to have a ‘notice to quit’ served upon her under clause 29(i) of the original lease deed dated 30.012013 (Annexure-F). He argues that since no such notice has been issued ever consequently the impugned order becomes a product of illegality. He also submits that the RAJUK has no authority to take over/re-enter the property of the petitioner without cancelling the lease of the petitioner and as such RAJUK acted illegally, arbitrarily and with malice. He asserts that any false statement, suppression of facts etc. by the respondent No. 8 at the time of making his application for allotment of plot No. 5 is an issue between the lessor (RAJUK) and the previous lessee (respondent

No. 8)) and is not applicable at all to the present lessee. He contends that since the plot has been freshly leased out to the petitioner by the lessor RAJUK, the new lessee / petitioner cannot be blamed for no fault of her own. He concludes his submission upon assertion that the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the respondent No. 2 by way of affidavit in opposition followed by two other supplementary affidavit vehemently opposes the Rule. He submits that the original allottee, predecessor of the petitioner admitted that before acquiring 'plot in case' he filed application for a plot, deposited money to RAJUK and thereafter became aware of that he has got a plot and admitted fact need not be proved. And conversely, the Dhaka Improvement Trust (Allotments of Lands ) Rules, 1969 as Gazetted in the Dhaka Gazette, part-1, dated the 15th January, 1970 debar any person, his wife/husband, dependent children or other dependent to acquire any plot other than allotted one which is contemplated in rule 9 of the Dhaka Improvement Trust (Allotments of Lands ) Rules, 1969 . He submits that the writ petitioner annexed the provisional allotment letter as Annexure 1 to the writ petition in distorted version. He contends that the said document contain 2(two) pages and page No. 2 of the allotment letter contains the terms and conditions of the lease and bears cardinal importance. He argues that the petitioner deliberately relied only on the 1st page. He continues that such distortion / suppression amounts to fraud and fraud vitiates everything.

He further submits that on perusal of the writ petition and annexure therewith including power of attorney (Annexure-C) it transpires that Md. Mojibur Rahman is husband of the petitioner and attorney of the alleged original allottee, Md. Abdul Hai (Birprotik) and they live in same address being house No. Road No. 3, Block-B, Pink City Zanovally Modl Town, Mumuri, Khilkhet, Dhaka. He argues that Annexure 'O' reveals that the petitioner hurriedly tried to transfer the plot in case to a third person but was unsuccessful. He contends that these facts not only smack of collusion but also establish collusion for grabbing two plots from Rajuk.

He next agitates that admittedly the RAJUK upon affording opportunity of being heard to the petitioner and respondent No. 8 and upon scrutinizing the papers cancelled the plot in case by the impugned letter. He asserts that the petitioner's predecessor having admitted about acquiring the earlier plot; whether fraud was practiced upon the respondent No. 8 is a disputed question of fact and same cannot be decided without evidences in writ jurisdiction. He further argues that the plot in case has already been transferred to the original owner of the land and possession has been delivered thereof to the respondent No.8. He contends that the petitioner's husband's activities smacks of fraud and collusion, so petitioner is not entitled to relief under writ jurisdiction.

On the point of notice he persuaded that notice was duly served upon the petitioner also and he particularly takes us to annexure-Z2 of the supplementary affidavit in opposition. He takes us to the writ

petition and submits that the petitioner himself has admitted to the হাজিরা as annexure-Z-2. He however contends that since the original allotment was not in the name of the petitioner but in the name of the respondent No. 8, therefore the petitioner virtually transposed herself in his place since she is not the lessee since but only a transferee from the original lessee. He submits that the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 is applicable to the original lessee and no subsequent transfer of the plot can defeat the purpose of the law. There was a query from this bench regarding the petitioner's contention that the respondents granted permission to transfer the original lessee respondent No. 8 to transfer the plot in the name of the petitioner having full knowledge of the circumstances. There was also a query from the Bench regarding the petitioner's contention that she is a bonafide purchaser and therefore her right cannot be affected. Controverting this contention, he draws attention to a decision of our Apex court in the case of Metro Makers and Developers Ltd. Vs. BELA reported in 65 DLR (AD)(2013) 181. He submits that the principle expounded by our Apex court in this case is that the concept of bonafide purchasers for value without notice is applicable only in respect of transfer of immoveable property and specific performance of contract for transfer in immoveable property and not in respect of use of immoveable property and it is an equitable principle which cannot override the bar placed by any statutory provision. He submits that the basic principle which was held in this decision by our

Appellate Division is that only being a bonafide purchaser for value cannot defeat the law in the event of any inherent defect the original allotment. He continues that in this case also the original allotment itself suffers from inherent defects by violating the provisions of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969.

He further contends that the term used in Rule 10 that the allotment shall be cancelled is particularly significant given that it indicates that whenever it is revealed that there was a suppression of facts regarding allotment of plot whatsoever the plot shall automatically cancelled. He submits that in pursuance of the mandatory rules the petitioner cannot claim any independant right to the plot regardless of her being a transferee of the property.

Regarding the petitioner's contention of non compliance of clause 26 and 29 of the lease deed, the learned Advocate for the respondent No. 2 asserts that on the face of the power to cancel the plot by way of clause 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 there is no need to issue any notice upon the petitioner or any other person in such circumstances. He reasserts that clause 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 presupposes that the plot shall automatically cancelled if any suppression of fact is revealed. He contends that therefore the petitioner cannot avail any benefit of claim of his bonafide purchase. He contends that following the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 nor by way of fresh being lessee whatsoever the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 do not

presuppose any notice before cancelling any plot. He concludes his submission upon assertion that the Rule bears no merit ought to be discharged for ends of justice.

Learned senior Advocate Mr. Momtaz Uddin Fakir by way of affidavit in opposition appeared for the respondent No. 10. He makes his submission relying from the affidavit in opposition filed by the respondent No. 10. Placing his reliance on clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969, he echoes the submissions of the learned Advocate for the respondent No. 2.He argued that clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 clearly presupposes that in the face of any discovery of suppression of fact the plot shall stand automatically cancelled. He also echoes the submission of the learned Advocate for the respondent No. 2 that since the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 significantly state that the plot shall stand cancelled, he persuades that the language of the clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 do not presuppose any prior notice and therefore no notice is necessary to be served by the term of the lease deed whatsoever.

Next he submits that the petitioner has no locus standi to file the writ petition since the cancellation of plot was made against the original lessee and not in the name of the petitioner. He concludes his submission upon assertion that the Rule bear no merits ought to be discharged for ends of justice.

We have heard the learned Counsels, perused the application and materials before us. Evidently the respondent No. 2 cancelled the plot in question which was originally allotted in the name of the respondent No. 8 who is the original lessee. Admittedly the respondent No. 2 pursuant to allotment in the name of the original lessee in 2011 after exhausting necessary procedures also executed lease deed in 2012 in the name of the present lessee the petitioner here. It is an admitted fact that subsequently the respondent No. 8 with the clear permission of the respondent No. 2 transferred the plot in the name of the petitioner. Several documents have been annexed in the writ petition in support of the transfer in the name of the petitioner by the respondent No. 8 with clear permission of the respondent No. 2. We have particularly drawn our attention to annexure L1 of the writ petition wherein the respondents upon allowing the plot to be transferred in the name of the petitioner by its letter dated 22.08.2013 issued by the office of the respondent No. 2 inter alia clearly stated এখন হইতে আপনাকে উক্ত প্লরে হস্তান্তর সূত্রে লীজ গ্রহতিা / গ্রহিত্রী হিসাবে গণ্য করা হইবে . Therefore it is clear that the respondents while granting permission to transfer the plot in the name of the petitioner also acknowledged the petitioner as a lessee in the said plot. The respondents upon a query from this bench could not deny that the petitioner is not a lessee in the said plot.

Sitting in writ jurisdiction it is primarily our duty to monitor as to whether any fundamental right of any person has been violated and

it is also our duty to monitor as to whether due process has been served upon concerned person.

While examining the relevant law of the land we drew our attention to the Dhaka Improvement Trust (Allotment of Lands) Rules 1969. For our purpose we have particularly drawn attention to clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969. Whoever or whatever might be done subsequently by any person which also include the respondents, nevertheless the statutory rules cannot be derogated or deviated from. The crux and principle of clause 9 and 10 of the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 is that any person who has been allotted any plot by the RAJUK, Government etc. cannot apply for a second allot presupposes that if such fact of being allotted a second plot is revealed or discovered by the RAJUK at any stage the second allotment shall stand cancelled. The learned Advocate for the respondents submitted that since the RAJUK clearly mandate that the second allotment shall stand cancelled on the basis of false information whatsoever, therefore there is no necessity to issue any notice.

Against this submission of the learned Advocate for the respondent No. 2, we are of the considered view that even if the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 does not directly presuppose a notice but however principles of natural justice demand that a notice must be given to a person and no person shall be condemned until he has been given a chance to explain himself. In this case before us the respondent No. 2 contends that since the plot

was allotted in the name of the original lessee therefore there is no need to serve any notice upon the petitioner. The respondents however argued that although no notice needs to be served upon the petitioner since she is not the original lessee, but however the respondents on several dates asked the petitioner to appear before them and accordingly the petitioner appeared before the respondents and which is manifest by way of হাজিরা which is annexure-Z-2 of the affidavit in opposition.

We have perused the writ petition wherein the petitioner admitted that she was present by way of হাজিরা. The petitioner contended that since no reason for her appearance was stated in the said the notice therefore such notice cannot be treated as a proper show cause notice in the eye of law.

Our considered view is that although the reasons are not cited directly in the notice but however it may be presumed that the petitioner was aware of the reason calling for her to appear before the respondents.

However as mentioned above our duty here presently is to supervise as to whether there has been any violation of any primary right of any person particularly the petitioner here. Since admittedly by way of annexure-L1 the respondent acknowledged the petitioner as a fresh lessee therefore we are of the considered view that the parties are mutually duty bound to each other by way of the lease deed which is annexure F of the writ petition. Since the respondents have

acknowledged the petitioner as a lessee therefore both the parties are legally duty bound to each other to abide by the terms of the lease deed. In the event of violation of the terms of the lease deed by any party the other party is bound to answer the reason of the said violation.

With this principle in mind we have drawn our attention to clause 26, clause-29 and clause 30 of the lease deed. Clause 26 of the lease deed presupposes that in the event of false statement or suppression of facts etc. including other circumstances the lessor shall be entitled to cancel the allotment to determine the provisions of the lease in accordance with clause 29 of the lease deed. Such being the express intention of clause 26 of the lease deed we have next drawn ourselves to clause 29 of the lease deed. Clause 29 among other factors clearly contemplate the procedure on giving one calendar month's notice in writing to the lessee. Clause 30(iv) of the lease deed also presupposes the circumstances under which a lease may be finally rejected and the circumstances are clearly described therein.

For proper adjudication of this matter as to whether due process was given to the instant petitioner or not we have to mainly confine ourselves to the provision of service of notice as intended under clause 29(i) of the lease deed read with clause 26 of the lease Deed. As mentioned above the respondent No. 2 could not deny that the petitioner stepped into the shoes of the lessee albeit with all the duties and liability of the previous lessee by virtue of being the new lessee. As discussed elsewhere in this judgment the Dhaka

Improvement Trust (Allotment of Lands) Rules 1969 must be complied with. However since admittedly the respondents particularly by way of Annexure-L1 clearly acknowledge the petitioner as the new lessee of the allotted plot therefore the terms of the lease deed must be abided by both parties. In this particular case however it is clear that the provisions of clause 29 read with clause 26 was not followed by the respondents. Therefore we are of further considered view that in accordance with the principles of natural justice no person should be condemned unheard. In this particular case we are relying upon the terms of the lease deed. We are of the opinion that the respondents owe a duty to afford due process to the petitioner since she is admittedly a fresh lessee in the allotted plot.

Under the facts and circumstances and the foregoing discussions made above and after hearing the submissions of the learned Advocate for both sides we are inclined to dispose of the Rule with the above observations.

In the result, the Rule is disposed of. The cancellation of allotment of the land measuring 3(three) Katha situated at Plot No. 5, Road No. 4, Sector-15/C-1, Uttara (3rd Phase) Extension Project Residential Area, Uttara, Dhaka which has been transferred to the petitioner by the lessee by way of a registered deed with due approval from the respondent No. 2 and confiscating the money deposited against the said land vide Memo No. RJUK/ESTATE and Land-2/UTTARA/562 Stha; dated 09.03.2020 issued by the respondent No. 6 (Annexure-‘P’ to the writ petition) is hereby set aside.

The respondents are at liberty to issue a notice under clause 29(1) of the terms of the lease deed Annexure- L-1 read with clause 26 if they are advised and dispose of the matter in accordance with the Dhaka Improvement Trust (Allotment of Lands) Rules 1969 including any other Rules that may be applicable in the instant case.

The order of status-quo granted earlier by this court is hereby vacated.

Communicate this judgment at once.

**Kazi Zinat Hoque, J:**

I agree.

Arif(B.O)