

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

WRIT PETITION NO. 8282 OF 2005

In the matter of:

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

And

In the matter of:

Md. Helaluddin

... Petitioner

-Versus-

Rajdhani Unnayan Kartipakhya and others

... Respondents

Mr. Mustafizur Rahman Khan, Senior Advocate
with

Mr. Sk. Sharif Uddin, Advocate

...For the petitioner

Mr. K.M. Saifuddiun Ahmed, Senior Advocate

...For the respondent no.2

**Heard on 07.08.2025, 20.08.2025
and Judgment on 12.11.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the
People's Republic of Bangladesh, a Rule Nisi was issued calling upon the
respondents to show cause as to why they should not be directed not to

make settlement of the greeneries in the south and west of plot Number 35 CWN(A), new plot 13 of Gulshan Model, Town, Gulshal, Dhaka and narrow down road No. 43 as evidenced in Annexure-‘E-1’ to the writ petition and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the act of spoiling greenaries in the west and south of plot Number 35 CWN(A), new 13, Gulshan Model Town, Gulshan by lease and allowing construction and narrowing down road No. 43 was stayed for a period of 03(three) months from date. Record shows that the said order of stay was not subsequently extended.

The short facts leading to issuance of the instant rule are:

The petitioner is a citizen of Bangladesh by birth whereas the respondent no. 1 is a body constituted under Act no. XIII of 1953 and engaged in regulating building construction and settlement of acquired land for the purpose of development of Dhaka City being Capital city of the Republic, Narayanganj and Tongi Municipalities and it came into existence as Dhaka Improvement Trust and presently it is known as *Rajdhani Unnayan Kartipakha* (shortly, RAJUK) by amendment of the said Act.

It has further been stated that the erstwhile Dhaka Improvement Trust after acquisition of land established Gulshan Model Town and a layout plan was prepared where a plot Number 35 CWN(A) was a lake side plot having lake in the south and in the west.

It has also been stated that one, Mr. Quamrul Huda as back as in 1965, applied for allotment of the plot and plot no. 35 CWN(A) with lake

view in two sides was allotted to said Mr. Quamrul Huda by a registered deed dated 30.01.1965 where it was described lake in the west and south shown in the map attached and described in the lease deed.

It has been stated that then the lessee, Mr. Quamrul Islam following the provision of the lease deed transferred the said property in favour of one, Akhtaruzzaman with the permission of the then DIT by registered document dated 01.08.1968. Md. Akhtaruzzaman in his turn while enjoying the property, transferred the same in favour of the petitioner by registered deed of transfer with the permission taken from RAJUK by registered deed dated 11.06.1976. In the said document, the lake view has been maintained and the name of the petitioner has been duly mutated in the office of RAJUK in recognition of his purchase. The petitioner thereafter made a new construction upon the land and the said plan was duly approved on 29.06.1976 for construction of building upon plot no. 35 and in the said plan, lake was shown in two sides of the plot and plot no. 35 CWN(A) was then renumbered plot no. 13 with lake in south and west.

It has next been stated that because of the existence of lake of the adjacent south and west of the petitioner plot, there happened erosion from the lake side and the petitioner had taken protective measure against such erosion with intimation to RAJUK.

It has also been stated that the petitioner purchased the particular land since it has direct lake approach both in the south and in the west and he had to pay higher amount because of the lake view and upon purchase, the petitioner acquired the land with all appendages and easement. It is to

be stated that the lay out plan subsequently modified till 1979 which retained lake view of the land of the petitioner and that of others. Subsequently, RAJUK made earthwork in the lake side and developed greeneries but now is preparing to modify the layout plan and has created three plots being plot no. 15, 17 and 11B in the western side of the plot Number 35 CWN(A) and plot no. 11A(2) in the southern side, without any knowledge of the petitioner which has been impugned in this writ petition. Then the petitioner in order to protect such modification took allotment of 4.75 khatas of land by memo dated 05.01.1998 and the petitioner made payment of entire *salami* (value) but the respondent subsequently cancelled the allotment and the petitioner thereupon filed a writ petition being writ petition no. 3474 of 2000 before this court and the said writ petition was heard and rule was made absolute by order dated 18.07.2000. However, the petitioner had to take settlement of additional land to keep his lake view greenery intact. Afterwards, the petitioner filed another application to keep his lake view intact at the south and prayed for further allotment of 2 ¼ khatas of land and he kept no stone unturned to keep the lake view unimpaired and finally a summary was placed before the board o RAJUK with recommendation for settlement 2 ¼ khatas of land to the petitioner. `However, the matter was then placed before the Board Meeting of RAJUK on 01.03.2001 wherein the prayer of the petitioner was placed at Serial 26 and referred the matter for decision after obtaining opinion from the Town Planner. When the petitioner was waiting for the decision in the matter, then it appeared that the board did not decide the issue after obtaining the opinion of the Town Planner and it

has been kept in limbo. However, the petitioner came to learn that the said land remained vacant as greeneries and is being leased out to different persons without consideration of the application of the petitioner as per decision of the Board Meeting held on 01.03.2001 and the greeneries in the south are being spoilt and the road in front of plot number 35 CWN(A) being road no. 43 for the use of lessees of the locality is being narrowed down from 40" to 30" feet wide. The petitioner thereupon approached the then Hon'ble Prime Minister and the Hon'ble Prime Minister asked the respondent to take action as per the rule on 18.01.2003. The petitioner thereupon filed an application on 31.10.2004 to RAJUK and Ministry of Housing and Public Works to consider the matter of lake view and make settlement of the land toward the lake and dispose of the matter once for all. But nothing was done when the petitioner approached to the Ministry of Housing and Public Works and the Ministry by a Memo dated 13.04.2005 asked the RAJUK to decide the matter but to no avail.

It has further been asserted that, the petitioner has now come to know that the greeneries in the south and west of the land of the petitioner is being leased out as residential plots by making new plots and the road in front of the plot of the petitioner and those of other lessees being road no. 43 is being narrowed down from 40 to 30 feet wide. Having aggrieved with the arbitrary action, of the respondent and to protect his own interest and the interest of others the petitioner finding no other alternative compelled to file the instant writ petition.

Mr. Mohammad Mustafizur Rahman Khan, the learned senior counsel along with Mr. Sk. Sharifuddin the learned counsels appearing for

the petitioner upon taking us to the writ petition and all the annexure appended therewith at the very outset submits that, the respondent cannot function in a manner to spoil the greeneries and fill up the same to accommodate people of their choice and thereby spoil the ecological balance by filling up the lake in south and west and if they are allowed to do so, they then lake will seal off in course of time. It has further been submitted that, the respondent is bound to act for the improvement of model town and it cannot act to the prejudice of the petitioner and other lessees and narrow down the public road to the prejudice of the users of the road and lessees under the respondent number. 1.

The learned counsel also submits that, the petitioner and other lessees of the area has a right to be considered in accordance with law and the respondents have no right to destroy the greeneries and the lake view permanently and narrow down the road causing serious inconvenience in the name of charging the layout plan.

The learned counsel goes on the submit that by the act of respondent, the lay out plant is going to be modified for collateral purpose and to favour some interested persons at the cost of others and thereby spoil the greeneries around plot number 35 CWN(A), plot no. 13 in the south and west by filling up the lake and thereby spoil the ecological balance and amenities attached to the land of the petitioner and other lessees.

The learned counsel wrapped up his submission contending that the respondents have a duty to maintain the common facility and thereby retain the road and lake intact which are also attached to the lease hold

land and the lay out plan cannot be modified to the prejudice to the lessees and thereby cause ecological balance and to give extra benefit of others at the cost of the petitioner and other lessees and gradually the lake will be sealed off and finally prays for making the rule absolute.

On the contrary, Mr. K.M. Saifuddiun Ahmed, the learned senior counsel appearing for the respondent no. 2 by filing an affidavit-in-opposition vehemently opposes the contention taken by the learned counsel for the petitioner and contends that, the respondent no. 1 is statutory authority and what it has done so described in the writ petition is very much correct as well as for the interest of the public and thus the instant rule is liable to be discharge with costs.

Be that as it may, we have considered the submission so placed by the learned senior counsel of the parties, perused the writ petition and the affidavit-in-opposition so filed by the respondent no. 2. Together, we have also very meticulously considered the submission advanced by the learned counsel for the petitioner and the rule issuing order as well. On going through the rule issuing order, we find that the petitioner has challenged the action taken by the RAJUK in giving settlement of the greeneries to the south and west plot no. 35 CWN(A) of new plot no. 13 of Gulshan Model Town which belonged to the petitioner and thereby it has claimed that by that very act of settlement, the greeneries of the unused land which is not belonged to the petitioner is going to be destroyed. But on going through paragraph nos. 11 and 12 to the writ petition, we find that the petitioner has also taken lease of 4.75 kathas of land and subsequently also applied for another 2¼ kahtas of land. So the assertion made in the

writ petition to protect the greeneries of the plot belong to the RAJUK is totally contradictory one. Because, on the one hand the petitioner is harping to protect the greeneries adjacent to his own house on the other hand he is taking lease of such greeneries from RAJUK and kept on praying for another portion of land that is, 2.14 kathas of land. So that very contradictory position cannot be adjudicated upon by this court in a writ jurisdiction. Furthermore, if the right of the petitioner in enjoying the greeneries is infringed, he has the alternative remedy to file a suit before a competent court of law for protecting his enjoyment right. But under no circumstances can the petitioner claim not to use the property which absolutely belong to RAJUK by leasing out the same by making plots and to give lease to other lessees. Furthermore, before filing of the instant writ petition, the petitioner has not made any representation to RAJUK by asserting his grievance and straight came before this court and challenged settlement of the plot which belonged to RAJUK. Furthermore, it is the absolute authority of RAJUK as to how it will utilize its own land which will not be any look out of the petitioner. So there has been no authority ever assumes by the petitioner to protect the land which does not belong to him. On top of that, in terms of condition provided in clause no. 27 to the agreement executed between RAJUK and the predecessor of the present petitioner dated 30.01.1965, it has clearly been asserted that *“nothing here in contain shall limit or restrict the right of the lesser to any land, building structure etc in the neighbor hood of the demise property in any manner they think fit”*. So, in view of that very clear assertion so have been made in the agreement, the petitioner has got

nothing to do with the action taken by RAJUK. So, we are of the view that it is totally a test case initiated by the petitioner as the petitioner has got no locustandi to challenge the lay out plan made by Annexure-‘E-1’ to the writ petition and therefore the writ itself is not maintainable in its present form.

Accordingly, the rule is discharged however without any order as to costs.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Md. Bashir Ullah, J.

I agree.