

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 141 of 2021

In the matter of:

Rajdhani Unnyan Kartipakkha (RAJUK)
represented by its Chairman, RAJUK Bhaban,
P.S. Motijheel, Dhaka-1000 and another.

... Appellants

-Versus-

Niloy International Proprietor- Abdul Marib
Ahmed House No. 2, Road No. 11, Block-K,
Bridhara Model Town, Dhaka. On its constituted
Attorney (1) Md. Tofazzel Hossain Fakir,
Assistant Manager, Legal cell Nitol Niloy Group,
Dhaka and others.

... Respondents.

Mr. Md. Aminul Islam, Advocate

... For the appellants

Ms. Meherunnnesa, Advocate

... For the respondent no. 1

Heard and Judgment on 25.06.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the defendant nos. 2 and 3 in Title Suit No. 123 of
2004, this appeal is directed against the judgment and decree dated

24.11.2008 passed by the learned Joint District Judge, 1st Court, Dhaka in that Title Suit decreeing the same.

The short facts leading to preferring this appeal are:

The present respondent no. 1 as plaintiff filed the aforesaid suit seeking following reliefs:

“১। ৩নং বিবাদী কর্তৃক স্বারক নং রাজউক/এস্টেট/৪৩১৯(৪)৩/স্বাঃ মোতাবেক ২০/১২/০৩ ইং তারিখে জারিকৃত বরাদ্দ পত্র বাতিলের নোটিশের কার্যকারিতা রদ, রিহত এবং বাদীর তপছিলের সম্পত্তির উপর কার্যকর নহে বর্মে ডিক্রী দিতে,
২। আইন ও ইকুইটি মতে বাদী আর যে যে প্রতিকার পাইতে পারে তাহারও ডিক্রী দিতে মর্জি হয়।”

The said suit was filed for the suit land measuring an area of 2 *kathas* and 8 *chataks* (out of plot no. 23) of Nikunja Residential Model Town.

The case of the plaintiff so described in the plaint in short is that, the pro-forma defendant no. 4 was originally allotted the suit properties by the appellant vide a “letter of allotment” dated 16.09.1997 and during enjoying title and possession over the said property by the defendant no. 4, the plaintiff was offered to purchase the said property by the said defendant no. 4 and he then (the defendant no. 4) obtained sale permission from defendant no. 3 on 08.03.2000. Upon obtaining the sale permission the defendant no. 4 then transferred the suit property by a registered sale deed in favour of the plaintiff on 13.03.2000 and possession was then handed over in his favour. After purchasing the suit property, the plaintiff then filed an application to the defendant no. 2 seeking mutation in his name on

24.09.2000 and accordingly, the plaintiff deposited relevant fees on 23.10.2000 and accordingly mutation was granted in favour of the plaintiff by the defendant nos. 2 and 3. However, all of a sudden, the plaintiff got a copy of a letter dated 20.12.2003 issued by the defendant no. 3 to the defendant no. 4 cancelling the allotment. Soon after receiving the said letter cancelling the allotment, the plaintiff then issued a legal notice on 31.12.2003 to the defendant no. 3 asking it to withdraw the said letter but in spite of receiving the said legal notice as the defendant no. 3 did not withdraw the said letter, the plaintiff filed the suit.

The appellants who are the defendant nos. 2 and 3 entered appearance in the suit and in order to contest the same filed written statement denying all the material averments so made in the plaint contending *inter alia* that some irregularities in regard to giving allotment of the suit property to the defendant no. 4 was committed as the suit property was earmarked as pathway and park and for that reason, an inquiry committee was formed who upon inspection, recommended to cancel allotment of the defendant no. 4. Accordingly, the impugned notice dated 20.12.2003 was issued by the defendant no. 3 upon the defendant no. 4. It has further been stated that, in the impugned notice issued by the defendant no. 3, an alternative proposal was given to the defendant no. 4 offering him another plot in place of impugned plot and as there was an alternative proposal accommodating the defendant no. 4 for giving him another plot there remains no cause of action to file the suit, and accordingly prayed for dismissal of the same.

In order to dispose of the suit, the learned Judge of the trial court framed as many as 4(four) different issues and both the plaintiff and the defendant nos. 2-3 produced several documents which were marked as exhibit 1-13 and exhibit 'ka' to 'umo' respectively. The plaintiff and the defendant nos. 2-3 also examined single witness each. After considering the materials and evidence on record, the learned Judge vide impugned judgment and decree, decreed the suit on contest against the defendant nos. 2 and 3 and *ex parte* against the rest declaring the notice issued by the defendant no. 3 dated 20.12.2003 as illegal and not binding upon the plaintiff.

It is at that stage, the defendant nos. 2 and 3 as appellants prepared the instant appeal.

Mr. Md. Aminul Islam, the learned counsel appearing for the appellants upon taking us through the impugned judgment and decree and by reading the deposition of the witnesses of the parties as well as other documents appended therewith in the paper book, at the very outset submits that there has been no cause of action in filing the suit by the plaintiff-respondent no. 1 since the respondent no. 3 (defendant no. 4) was offered alternative plot in place of the plot earlier allotted to him.

The learned counsel further contends that since irregularity has been committed on the part of some official attached with appellants, RAJUK and upon detection of such irregularities by an inquiry committee it was revealed that plot allotted to the defendant no. 4 had earlier been earmarked as park and pathway so such plot cannot be allotted to any individual for

residential purpose yet the learned Judge of the trial court did not take into consideration of the said material facts.

The learned counsel lastly contends that since the defendant no. 4 was provided with alternative arrangement by cancelling his earlier allotment, so the plaintiff had nothing to be aggrieved with the impugned notice and entitled to get any relief as prayed for in the suit.

On the contrary, Ms. Meherunnesa, the learned counsel appearing for the plaintiff respondent no. 1 by taking us through the exhibited documents at the very outset submits that since the sale permission was obtained by the defendant no. 4 before selling the property to the plaintiff so the appellants reserved no authority to cancel the allotment vide impugned letter issued to him (the defendant no. 4.)

The learned counsel by referring to the exhibited documents in particular, exhibit nos. 8, 9, 10, 11 and 12 also contends that soon after purchasing the suit property by the plaintiff, mutation was also given by none but by the appellants, RAJUK itself and accordingly the plaintiff mutated his name in the khatian in the office of Assistant Commissioner (Land) and obtained DCR, so all these material documents clearly demonstrate that, within the very knowledge of the appellants, the plaintiff-respondent acquired title and possession over the suit property and since the original allotment was cancelled vide impugned notice dated 20.12.2003, so it cast cloud over the title of the plaintiff in the suit property and to remove such cloud, and as it is none but the plaintiff has only been aggrieved with the said notice, it filed the suit and the learned Judge of the trial court has perfectly decreed the suit cancelling the

impugned letter which calls for no interference by this Hon'ble court and finally prays for dismissing the appeal.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellants and that of the respondent no. 1.

Record shows, all formalities were performed by the defendant no. 4 in transferring the suit property to the plaintiff. On top of that, since before selling the suit property by the defendant no. 4 to the plaintiff by sale deed dated 13.03.2000, the appellants gave sale permission to the vendors that is, to the defendant no. 4 on 08.03.2000 (evident from exhibit nos. 7 and 6). So, no question can arise that the appellants, RAJUK has got no knowledge about the category of land allotted to the defendant no. 4.

Furthermore, upon taking delivery of possession of the suit property from the defendant no. 4 which has also been asserted in the plaint and corroborated by P.W-1, the plaintiff also mutated his name in the office of the appellants. So all those admitted facts exemplifies, in order to cover up their misdeeds the appellants have illegally canceled allotment given to the defendant no. 4 vide impugned notice.

The learned counsel for the appellants though argues that there has been no cause of action on the back of offering an alternative plot to the defendant no. 4 but we don't find any iota of substance in the said submission because after giving sale permission and that of transferring the suit property to the plaintiff by the defendant no. 4, no question can arise to cancel the allotment vide impugned notice dated 20.12.2003 as at that point of time, earlier allotment dated 16.09.1997 of the defendant no. 4 never existed. It has been argued by the learned counsel for the appellants that the

plaintiff has not complied with the provision of section 169 of the Town Improvement Act, 1953 where it has been provided that if any individual wants to file a suit against RAJUK, a notice is to be given to the Chairman of RAJUK. But that very assertion has got no leg to stand, because we find from exhibit-13 that, before filing the suit, the plaintiff issued the said notice on 31.12.2003 and therefore, no illegality has been committed by the plaintiff to file the suit against the present appellants.

Regard being had to the above facts and circumstances, we don't find any iota of substance in the submission so placed by the learned counsel for the appellants and at the same time, we don't find any illegality or impropriety in the impugned judgment and decree.

Resultantly, the appeal is dismissed however without any order as to costs.

The impugned judgment and decree dated 24.11.2008 passed by the learned Joint District Judge, 1st Court, Dhaka is thus affirmed.

Let a copy of this judgment and decree along with the lower court records be transmitted to the learned Joint District Judge, 1st Court, Dhaka forthwith.

Md. Bashir Ullah, J.

I agree.