

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

Writ Petition No. 4355 of 2022

IN THE MATTER OF :

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

-And-

IN THE MATTER OF :

Saadman Faisal & others

..... Petitioners

-Versus-

Government of People's Republic of Bangladesh
Represented by the Secretary, Ministry of Cultural
Affairs, Bangladesh Secretariat Building, Abdul Gani
Road, Shahbagh Dhaka and others

..... Respondents

Mr. Manik Lal Ghosh, Advocate

.....For the petitioners

Md. Tushar Kanti Roy, D. A. G. with

Mr. Md. Salim Azad, A.A.G and

Mr. Anis ul Mawa, AAG

.....For respondents

**Heard on : 09.01.2024, 28.2.2024
and Judgment On : 19.03.2024.**

Present:

Mr. Justice Mustafa Zaman Islam

&

Mr. Justice Md. Atabullah

Mustafa Zaman Islam, J;

In this application under article 102 of the Constitution of People's
Republic of Bangladesh, a Rule Nisi was issued calling upon the
respondents to show cause as to why the impugned rejection order being
No. 25.39.0000.127.35.301.21 dated 25.11.2021 and No.

25.39.0000.127.35.108.21 dated 25.01.2022 issued by the respondent No. 5 and issued upon the petitioners rejection their application for passing a plan for constructing a multi storied building at 46, Rajani Chowdhury Road, Gandaria, Dhaka rejecting their application should not be declared to have been made without any lawful authority and is 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 necessary for disposal of the Rule, in brief are that the petitioners are the joint owner of the plot of land which schedule is District-Dhaka, Police Station –Gandaria, Mouja-Sutrapur, J.L No. 3, RS Khatian No. 3325, Dhaka City Survey No.1/1, Mutation Khatian No. 11875 and 15664, Plot No. 46 Rajani Chowdhury Road, area of land 3.92 Katha. The petitioner No. 1 father Md. Abdul Mazed and Md. Ayub Ali son of late Aktaruzzaman, house No. 46 No. Rajani Chowdhury Road, Post Office-Gandaria-1204, Thana-Gendaria, District-Dhaka jointly purchased the instant scheduled plot of land from the Government of Bangladesh by deed being No. 3840 dated 26.08.2010 and being No. 3612 dated 04.08.2010 and thereafter the petitioner No.1's father Md. Abdul Mazed transferred his ownership portion of land to his children with possession by a Heba deed being No. 2751, Book No. 1, Serial No. 2795 dated 31.08.2021 and the another co-sharer of the instant scheduled plot of land with possession to the petitioner No. 2 by a saf Kabla Deed being NO. 970 dated 16.03.2015. The petitioners have achieved the ownership with possession of the instant plot of land upon mutation from the proper authority after their name and the petitioners are regularly paying all the

relevant land taxes to the Government. Noted that the petitioners filed an application to the authority of RAJUK in their prescribed form annexing all the necessary documents asked for the release order for use of land of law of the instant plot of land which were rejected by orders dated 25.11.2021 and dated 25.01.2022 respectively

A social working NGO Urban Study Group prepared a list of heritage site of Dhaka City which includes the heritage buildings for the purpose of prevention of antiquity having architectural heritage of Bangladesh which in number of 2200 houses and submitted to the Director General of Archeology Department, Agargaon, Dhaka for the same purpose dated 05.12.2017 and the petitioner's house was enlisted as serial No.233 in the said list. It is stated in the writ petition that a Division Bench of this court comprising of their Lordships Mr. Justice Tarik UI Hakim and Mr. Justice Shohorwardi, after hearing of the said Writ Petition being No. 2959 of 2018 with Writ Petition being No.4656 of 2018 on 11.07.2018, 18.07.2018, 25.07.2018 and 02.08.2018 were pleased to pass a Judgment dated 13.08.2018 stating that- "after completion of all the formalities RAJUK through Gazette Notification dated 29.11.2017 published a revised modified list of heritage buildings after deleting the four areas and canceled the earlier Gazette Notification dated 12.02.2012 in Writ Petition No.12787 of 2012.

It is stated in his writ petition that in a list of heritage buildings published through a Gazette Notification dated 29.11.2017 by RAJUK only 75 buildings in Dhaka City were notified as national heritage building where the instant building of above stated schedule is not included. The

authority of RAJUK prepared a final list of Heritage Buildings of Dhaka City and was published through a Gazette Notification dated 06.10.2020 where 74 building are enlisted as heritage buildings and were the petitioner's building that is the subject matter of the instant writ petition is not included. But it was enlisted as heritage building in the list of heritage site prepared by Urban Study Group.

In the Gazette Notification dated 06.10.2020 it is stated that-

"উল্লেখ্য ইতোপূর্বে বাংলাদেশ গেজেটে (অতিরিক্ত সংখ্যা) ১২ ফেব্রুয়ারি, ২০০৯ তারিখে প্রকাশিত নং রাজউক/পরিঃ (উঃ নিঃ)/১-এম-২২০/০৭/প্রশাঃ/১৮৫ স্বাঃ তারিখঃ ০২ ফেব্রুয়ারি ২০০৯, নং-২৫.৩৯.০০০০.০৪৬,০০০১.এম.৪৬.০৮.৪৪৫ তারিখ ২৯ নভেম্বর, ২০১৭ এবং নং-২৫,০৯,০০০০.০৪৬.০০০.১.এম.৪৬.০৮.৪৫২ তারিখ ১১ ডিসেম্বর ২০১৭ বিজ্ঞপ্তি ০৩ টি এতদ্বারা বাতিল মমে ঘোষণা করা হইল।"

It is stated that the Department of Archeology has submitted their report regarding the Judgments in Writ Petition No. 3959 of 2018 and Writ Petition No.4656 of 2018, this court asked for No.43.23.0000.121.04.185.21 dated 09.02.2022.

In the facts and circumstance, the petitioners has come to this court and moved and obtained the present Rule. The Rule is being opposed by respondent No. 3 RAJUK by filing an affidavit-in-opposition.

Mr. Manik Lal Ghosh, Advocates for the petitioner submits that the petitioners are the absolute owner of the instant scheduled property which the petitioner No.1 achieved from his father through a heba deed and the petitioner No.2 received from other co-sharer through a Saf Kabla deed and

so it is necessary to construct a building is necessary for the purpose of best use of property and as such rejection of such another is unlawful and malafide. He submits that a senile building built in the ruling period of Pakistan situated on the instant property and has already been seniled through passes of decades and there is also a risk of accident upon falling any time which may cause loss of life and injury and so it is necessary to construct a building for the purpose of best use of property and as such rejection with such an order is unlawful, malafide and without lawful authority. Lastly, he submits that there is no special construction architecture in the said building at instant scheduled property and as there is no historical significance or any antiques or historical heritage or significance is the said building and as the said building is not included in the list of heritage buildings published through a Gazette Notification dated 29.11.2017 by RAJUK and so it is necessary to construct a building for the purpose of best use of property and as such rejection by such an order is unlawful, malafide and without of authority and is of no legal effect. The building situated in the instant scheduled property has not any antique value as per definition stated in section 2 (c) (ii) of the Antiquities Act, 1968 and even also the said building is in senile by passes of decades and has a risk of fallen any time which may cause an accident with lose of life injury and so it is necessary to construct a building is necessary for the purpose of best use of property and as such rejection with such an order is unlawful and malafide.

Per contra, Mr. Md. Imam Hasan, the learned Advocate appearing on behalf of respondent No. 3, he submits that vide memo dated 19.02.2024

informant it is the learned Advocate that the Respondent it to the learned Advocate that the Respondent RAJUK is agreed with the letter dated 09.02.2022 issued by the Director General, Department of Archeology Ministry of Cultural Affairs. He next submits that Respondent RAJUK Caused no injustice upon the petitioner, RAJUK be complied with the direction given by this Hon'ble Court only, RAJUK has nothing but to comply with direction given by this Court as the plot in question is amongst the said 2200 plots.

The Respondent no.2, Department of Archaeological, Ministry of Cultural Affairs is not opposed the instant Rule by an affidavit.

The impugned rejection order vide numbers dated 25.11.2021 and dated 25.01.2022 (Annexure C and C1) issued by the respondent No. 5 Sub-urban planer, RAJUK , By there messes, the RAJUK refund to issue land use cateticati to the petitioner with reference of judgment and order passed in writ petition Nos. 3956 of 2018 (SIC) and 4656 of 2018. It is apt to were that, earlier, the RAJUK authority prepared a final list of Heritage building of Dhaka city and was published through a Gazette Notification dated 06.10.2020 where is 74 building are declared enlisted as heritage building was not listed as heritage building. For proper disposal of the Rule, it is profitable to reproduce the relevant portion of the judgment is writ petition Nos. 3959 of 2018 and 4656 of 2018. Where in has observed that – “ In view of the above that -

"Director General, Department of Archaeology of the Ministry of Cultural Affairs, the respondent No. 3 in both the aforesaid writ petitions is directed to examine and ascertain the historical and

archaeological importance of the all the 2200 buildings and sites mentioned in the list submitted by the petitioner in his letter dated 05.12.2017 and accordingly take appropriate step under Section 3 of the Antiquities Act, 1968 for their preservation in accordance with law and report compliance to this Court about the progress every three months as a continuous mandamus.

Further the respondent No. 4 RAJUK is directed not to approve or allow construction of building in any of the site covered in the aforesaid list of 2200 building (Annexure-A) un finalization of report by the Advisory Committee except Holding Nos. 41/1, 41/2, 42/1, 42/2 and 27 of Hrishikesh Das Road, Sutrapur, Puran Dhaka and the owners of the said buildings are directed to not alter and modify its structures from their present condition.

With the aforesaid direction and observation both the Rules are disposed of.

In view of the aforesaid observations and discussions made hereinabove, we are constrained to hold that the Rule has substance and is bound to succeed.

In the result, the Rule is made Absolute, the Memos dated 25.11.2021 and dated 25.01.2022 (Annexure –C and C1) issued by the respondent No. 3 RAJUK are under the signature of respondent No. 5 declared to have been done without lawful authority and is of no legal effect. The respondents are directed to allow the petitioner to construct building on the land in question in accordance with law.

Communicate the Judgment and order at once.

Md. Atabullah, J:

I agree.