

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

Writ Petition No. 15971 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:

Md. Anwar Hossain

..... **Petitioner.**

-Versus-

Chairman, Rajdhani Unnayan Kartipakkha (RAJUK),
RAJUK Bhaban, Dhaka and others,

..... **Respondents.**

Mr. Mohammad Mahabubur Rahman Kishore, with
Mr. S.M. Rifaz Uddin, Advocates,

.....For the **petitioner.**

Mr. A.M.Aminuddin, Senior Advocate with
Mr. Minhazul Hoque Chowdhury, Advocate

.....For **respondent No.7.**

Mr. Bepul Bagmar, D.A.G.

.....For **respondent No.6.**

Mr. Md. Imam Hasan, Advocate with
Mr. Md. Shahinul Islam, Advocate

.....For **respondent No.1.**

Judgment on: 13.03.2024

Present:

Mr. Justice Md. Khasruzzaman

And

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In an application under article 102 of the Constitution, the
Rule Nisi under adjudication was issued in the following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the impugned decision dated 11.05.2022
passed by the Appellate Sub-Committee and Appeal Authority,
Rajdhani Unnayan Kartipakkha (RAJUK), Dhaka in the appeal*

filed by the petitioner on 30.07.2017 under section 15 of the Building Construction Act, 1952 (Annexure-F) in pursuance to the final notice being Memo No. রাজউক/উ:ন:অ:অ:৫/২৫.৩৯.১১৬.৩২.১৩৩.১৬/৫০৯ স্থা: dated 22.08.2016 issued by the authorized officer-58, Plan Approved Unit of Rajdhani Unnayan Kartipakkha (RAJUK), Dhaka (Annexure-D) directing the petitioner to demolish the deviation part of the petitioner's 7(seven) storied constructed building on the land being Holding No.55/2, Enayetganj Lane, Hajaribagh, Dhaka should not be declared to have been issued without 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."

At the time of issuance of the above quoted *Rule Nisi*, the parties were directed to maintain status-quo in respect of construction of building for a period of 06(six) months which was subsequently extended for a further period of 06(six) months vide order dated 26.06.2023.

Facts as stated in the writ petition, in short, are that the petitioner got his plan approved from the Rajdhani Unnayan Kartipakkha (RAJUK) on 13.11.2001 and accordingly, constructed 07(seven) storied residential building being Holding No.55/2, Enayetganj Lane, Hazaribag, Dhaka appertaining to S.A. Khatian No.662, S.A. Plot No.1478, R.S.

Khatian No.236, R.S. Plot No.3727, Dhaka City Survey Khatian No.337 and Dhaka City Survey Plot No.2899 measuring .0360 ajutangsha of land vide Annexures-B and B-1 to the writ petition. But the respondent No.3, without considering his approved plan, issued notice to show cause vide Memo No. রাজউক/নঅঅ ৫/২৫.৩৯.০০০০.১১৬.৩২.১৩৩.১৬/৪৭৩ স্থা: dated 14.08.2016 asking the petitioner to show cause as to why he shall not be directed to dismantle the deviated part of his building vide Annexure-C to the writ petition. The petitioner did not give any reply to the said show cause notice dated 14.08.2016. It is stated in the writ petition that the said notice is arbitrary and without any lawful basis and the notice was issued at the instance of a vested quarter to harass the petitioner. The respondent No.3, without considering his approved plan again issued final show cause notice under Memo No. রাজউক/উ: ন: অ: অ: -৫/২৫.৩৯.০০০০.১১৬.৩২.১৩৩.১৬/৫০৯ স্থা: dated 22.08.2016 directing the petitioner to dismantle the deviated part of his building within 07(seven) days vide Annexure-D to the writ petition.

In such circumstances, the petitioner earlier had challenged the said final notice dated 22.08.2016 by filing Writ

Petition No. 2750 of 2017 and obtained *Rule Nisi* in the following terms:

“Let a Rule Nisi be issued calling upon the respondent Nos. 1-2 to show cause as to why the impugned Memo No. রাজউক/উ:ন:অ:অ:৫/২৫.৩৯.০০০০.১১৬.৩২.১৩৩.১৬/৫০৯ dated 22.08.2016 issued by the Authorized Officer, 5, Plan Approved Unit of Rajdhani Unnayan Kartipakkha (RAJUK), namely the respondent No.2 directing for demolishing the constructed building as per provision of section 7 of the Building Construction Act, 1952 (Annexure-D) should not be declared illegal, arbitrary, malafide and without lawful authority and no binding upon the petitioner and/ or to pass such other or further order or orders as to this Court may seem fit and proper” .

At the time of issuance of the above quoted *Rule Nisi*, the operation of the said final notice was stayed initially for a period of 01 (one) month on condition to file appeal under section 15 of the Building Construction Act, 1952 before the concerned authority. Against the said final notice, on 30.07.2017 the petitioner filed appeal before the Rajdhani Unnayan Kartipakkha (RAJUK) under section 15 of the Building Construction Act, 1952. The appeal was heard by the

appellate authority of RAJUK. The appellate authority vide its order dated 11.05.2022 dismissed the appeal directing the petitioner to demolish the deviated part of the constructed building within 07(seven) days. The concerned Authorized Officer was also directed to submit report in respect of demolition within 11.06.2022.

After dismissing the appeal by the appellate authority which was filed in compliance of the order passed in Writ Petition No.2750 of 2017, Rule Nisi issued in that writ petition was fixed for hearing. After hearing it was fixed for delivery of judgment on 14.12.2022. On the day of delivery of judgment on 14.12.2022, the petitioner had filed an application for getting the Rule Nisi discharged for non-prosecution. The prayer was not considered. Rather, this Court vide judgment and order dated 14.12.2022 discharged the Rule Nisi on merit upon discussing and considering the order dated 11.05.2022 passed by the appellate authority in dismissing the appeal under section 15 of the Building Construction Act, 1952.

On the following day of discharging the *Rule Nisi* in Writ Petition No.2750 of 2017 i.e. on 15.12.2022 the petitioner has filed the instant Writ Petition No. 15971 of 2022 challenging the order dated 11.05.2022 passed by the appellate authority

in dismissing his appeal filed under section 15 of the Building Construction Act, 1952 and obtained *Rule Nisi* and an order of stay as quoted hereinabove vide order dated 03.01.2023.

Respondent No.1 namely, Chairman, Rajdhani Unnayan Kartipakkha (RAJUK) filed *affidavit-in-opposition* stating *inter-alia* that RAJUK accorded permission vide Memo No. ২৫.৩৯.০০০০.১১৬.৩৩.০৪৭.১৬.৮৭ স্থা: dated 24.04.2016 for construction of 05(five) storied building. As a routine work, RAJUK visited the building and found the deviation of the approved plan in constructing the building. As such on 14.08.2016 RAJUK issued show cause notice under section **3(Kha)** of the Building Construction Act, 1952 asking the petitioner to reply as to why he should not be directed to demolish the deviated part of the construction. The petitioner did not give any reply to the same. Hence, on 22.08.2016 RAJUK issued final notice directing the petitioner to demolish the deviated part of the constructed building failing which illegal and unauthorized part of the construction would be demolished by RAJUK and cost of which would be realized from the petitioner in accordance with law. The petitioner without complying with the order had filed Writ Petition No.2750 of 2017 challenging the said final notice dated 22.08.2016 and obtained *Rule Nisi* and an order of stay

subject to file appeal before the appellate authority as required under section 15 of the Buildings Construction Act, 1952. In compliance of the said direction, on 30.07.2017 the petitioner filed appeal before the appellate authority. At the time of hearing of the appeal before the appellate authority, it is admitted by the representative of the petitioner that they got their plan approved for construction of 05(five) storied residential building and they have constructed 07(seven) storied residential building on the impression to have the revised plan for 07(seven) storied building approved by RAJUK. He also stated that revised plan was not submitted before the RAJUK for approval. It is stated that the petitioner did not make any statement opposing the sanction letter dated 24.04.2016 nor the statements given by his representative at the hearing of appeal and as such, the petitioner is guilty of false and misrepresentation that he has approved plan for construction of 07(seven) storied residential building. It is stated that since the Rule Nisi issued in Writ Petition No.2750 of 2017 has been discharged having considered all aspects of law as well as the order of the appellate authority, the instant Rule Nisi is liable to be discharged.

Respondent No.7 namely Khandakar Zahid Mohammad filed *affidavit-in-opposition* stating *inter-alia* that the petitioner obtained an approved plan for construction of 05(five) storied residential building. But, the petitioner by deviating from the approved plan has constructed 07(seven) storied building encroaching the access road of the respondent No.7 connected with the main road. Several requests were made from the respondent No.7 and other neighbours, but the petitioner did not stop his illegal construction. Consequently, they filed an objection to RAJUK in 2016 for taking necessary action. On the basis of their objection, RAJUK held physical inspection and found the deviation. Thereafter, RAJUK issued show cause notice and then final notice directing him to demolish the deviated part of his building. The petitioner did not take any step either to give any reply to the show cause notice or to comply with the same. Thereafter the petitioner filed Writ Petition No. 2750 of 2017 and obtained a *Rule Nisi* and an order of stay. *Rule Nisi* was heard and ultimately discharged vide judgment and order dated 14.12.2022 wherein the order impugned in the instant writ petition was elaborately discussed and considered. It is stated that the petitioner filed the instant writ petition only to protect his unlawful

construction and as such, the Rule Nisi is liable to be discharged.

Mr. S.M. Rifaz Uddin, the learned Advocate appearing on behalf of the petitioner submits that without holding any enquiry and/or physical inspection and without considering the relevant document and plan regarding his construction of 7(seven) storied residential building, the appellate authority vide his impugned order dated 11.05.2022 dismissed the appeal filed by the petitioner under section 15 of the Building Construction Act, 1952 directing him to demolish the alleged deviated part of the constructed building is malafide, arbitrary, without any lawful authority and of no legal effect. He next submits that the petitioner did not make any deviation and he has all valid document regarding construction of 07(seven) storied building. As such, the decision of the appellate authority is violative of articles 27 and 31 of the Constitution. Hence, he prays for making the *Rule Nisi* absolute.

Mr. Md. Imam Hasan, the learned Advocate appearing on behalf of the respondent No.1 submits that the representative of the petitioner appearing at the hearing of the appeal before the appellate authority candidly admitted that they got their plan approved from RAJUK for construction of 05(five) storied

residential building. The representative of the petitioner admitted before the appellate authority that building was constructed upto 7th floor on the expectation of getting the revised plan approved from the RAJUK and he further admitted that no such revised plan for construction of 07(seven) storied residential building was submitted for approval. As such the claim of the petitioner that he has an approved plan for construction of 07(seven) storied residential building is false, fabricated, disputed and not maintainable in law and as such the same cannot be adjudicated upon under the summary jurisdiction of this Court under article 102 of the Constitution. Referring to the judgment and order dated 14.12.2022 passed by this Court in Writ Petition No. 2750 of 2017 he further submits that the order dated 11.05.2022 passed by the appellate authority in the appeal challenging which, the instant writ petition has been filed, was elaborately discussed and considered by this Court in the said judgment and order dated 14.12.2022 while discharging the *Rule Nisi* in that Writ Petition No.2750 of 2017 and as such, if he feels aggrieved the petitioner could have challenged the said judgment before the Appellate Division. In not doing so, filing of the instant writ petition and obtaining *Rule Nisi* and an order of status quo is a technique of the petitioner to protect

his unlawful act and construction on the building. The learned Advocate submits that considering the facts and circumstances of the case the *Rule Nisi* should be discharged.

Mr. A.M. Amin Uddin, the learned Senior Advocate with Mr. Minhazul Hoque Chowdhury, the learned Advocate appearing on behalf of the respondent No. 7, submits that the petitioner filed this writ petition with some false statements regarding approval of 7 (seven) storied building on the land and as such he did not come before this court with clear hands. Mr. A.M. Amin Uddin, the Senior Advocate further submits that the petitioner constructed the building deviating the approved plan of Rajuk and the same has been admitted before the appellate authority by the representative of the petitioner. He also submits that the petitioner filed the instant writ petition challenging the decision of the Appellate Sub Committee and the Appellate Authority which was elaborately discussed and considered at the time of judgment in Writ Petition No. 2750 of 2017 and as such the present writ petition is not maintainable and the same should be discharged.

We have considered the submissions of the learned Advocates of the respective party and perused the writ

petition, *affidavits-in-opposition* and other papers annexed thereto.

It appears that the respondent No.2, Authorized Officer-5, Plan Approved Unit of Rajdhani Unnayan Kartipakkha (RAJUK) vide his final notice under Memo No. রাজউক/উ:ন:অ:অ:৫/২৫.৩৯.০০০০.১১৬.৩২.১৩৩.১৬/৫০৯ dated 22.08.2016 directed the petitioner to demolish the deviated part of the constructed building as per provision of section 7 of the Building Construction Act, 1952 within 7(seven) days from the date of receipt of the notice. Challenging the said final notice dated 22.8.2016 the petitioner filed Writ Petition No. 2750 of 2017 and obtained *Rule Nisi* and an order of stay subject to file appeal as required under section 15 of the Building Construction Act, 1952 against the said final notice. During the pendency of the Rule Nisi of Writ Petition No. 2750 of 2017, on 30.07.2017 the petitioner filed appeal before the RAJUK. The appeal was heard in presence of the representative of the petitioner on 11.05.2022. The representative of the petitioner at the hearing of the appeal had stated and admitted as follows:

“১.৩ আপীলকারীর বক্তব্য- বাদী অসুস্থ হওয়ায় উপস্থিত না থাকায়, তাঁর পক্ষে তাঁর প্রতিনিধি মো: আইয়ুব উপস্থিত হোন। অনুমোদিত ০৫(পাঁচ) তলা আবাসিক ইমারতের নকশার অনুমোদন

দেয়া হয়। পরবর্তীতে পুনরায় রিভাইজড ০৭(সাত) তলা ইমারতের অনুমোদন এর চিহ্নিত
 প্রেক্ষিতে ভবন নির্মাণ করেন বলে প্রতিনিধি তাঁর স্বীকারোক্তি প্রদান করেন। তিনি আরও বলেন
 যে, ০৭ (সাত) তলার কোন রিভাইজড নকশা রাজউক বরাবর জমা প্রদান করা হয় নাই।”

The appellate authority also found from their record that by Memo No. ২৫.৩৯.০০০০.১১৬.৩৩.০৪৭.১৬.৮৭ স্থা: dated 24.04.2016 sanction was given to the petitioner for construction of 05(five) storied residential building at Holding No.55/2, Enayetganj Lane, Hazaribag, Dhaka. Whereas the petitioner constructed 07(seven) storied residential building. The appellate authority also found deviation of the setback by not keeping open space in surrounding the building as required under the law. Having found definite deviation of the approved plan and considered the admission of the representative of the petitioner, the appellate authority vide his order dated 11.05.2022 dismissed the appeal and directed the petitioner to demolish the deviated part of his building within 01(one) month and to inform the RAJUK. The concerned Authorized Officer was also directed to give report by 11.06.2022 in this regard.

After dismissal of the appeal by appellate authority, Writ Petition No. 2750 of 2017 was fixed for hearing. On the day of delivery of judgment on 14.12.2022, the petitioner by filing an application prayed for discharging the *Rule Nisi* for non-

prosecution. But the prayer for non prosecution was refused. This Court vide judgment and order dated 14.12.2022 discharged the Rule Nisi of Writ Petition No.2750 of 2017 having considered the findings of the appellate authority and the admission given by the representative of the petitioner at the hearing of the appeal before the appellate authority. The petitioner did not challenge the judgment and order dated 14.12.2022 passed by this Court discharging the Rule Nisi in Writ Petition No.2750 of 2017 before the Appellate Division. That means, the petitioner has no grievance against the findings, observations and decision arrived at by this Court in that judgment.

It further appears that without challenging the aforesaid judgment and order dated 14.12.2022 passed in Writ Petition No. 2750 of 2017, i.e. on 15.12.2022 the petitioner filed the instant Writ Petition No. 15971 of 2022 challenging the appellate order which was already discussed and considered in that judgment and obtained *Rule Nisi* and an order of status quo. In this writ petition, the petitioner claims that he has all papers and approved plan for construction of 07(seven) storied residential building which he obtained on 13.11.2001. In support of his claim the petitioner annexed documents as

Annexures- B and B-1 to the writ petition. On the contrary, by filing affidavit-in opposition the respondent-RAJUK denied the claim of the writ petitioner stating that he was given approval for construction of 05(five) storied residential building vide approval dated 24.4.2016. Moreover, the representative of the petitioner appearing at the hearing of the appeal admitted that they have no approval for construction of 07(seven) storied residential building.

We know that writ petition is disposed of on affidavits and affidavits-in opposition. Since the claim of the petitioner as stated in the writ petition is denied by the respondent RAJUK by filing affidavit in opposition, the claim of the petitioner that he has approved plan for construction of 07(seven) storied building becomes a disputed question of fact which can be decided by a competent Court upon taking evidence. This view finds support in the case of DLR (AD) 232 wherein it has been held at paragraph 15 as follows:

“However, extraordinary its powers, a writ court cannot and should not decide any disputed question of fact which requires evidence to be taken for settlement. The principle is well-settled and we have no hesitation therefore in observing that all the findings, orders and observations

made by the High Court Division on the question of title and possession of the disputed lands are wholly untenable and uncalled for and the dispute can only be decided one way or the other by a competent civil court upon taking evidence.”

Moreover, since the earlier judgment and order dated 14.12.2022 has been passed by this Court in Writ Petition No.2750 of 2017 relying on the findings, observations, decision of the appellate authority dated 11.05.2022 as well as on the admission of the representative of the petitioner made at the time of hearing before the appellate authority and since the petitioner did not challenge the aforesaid judgment before the Appellate Division and as such the petitioner is now barred from raising a new claim contradicting the admission made by his representative at the time of hearing of the appeal and consequently, the allegation made against him about deviation of the approved plan appears to be correct. Moreover, since the claim of the petitioner as raised in the instant writ petition has been denied by filing affidavit in opposition, the same has become a disputed question of fact which cannot be adjudicated upon under the summary jurisdiction under

article 102 of the Constitution and hence, the writ petition is not maintainable.

In the circumstances stated above, we do not find any substance in the submissions of the learned Advocate for the petitioner as well as merit in the *Rule Nisi*. Hence, the Rule Nisi is liable to be discharged.

Accordingly, the *Rule Nisi* is discharged without any order as to costs.

The interim order of *status quo* in respect of construction of the building granted at the time of issuance of the Rule is hereby recalled and vacated.

Communicate the order.

K M Zahid Sarwar, J.

I agree.