

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

Writ Petition No. 10558 OF 2023

IN THE MATTER OF:

An application under Article 102 read along with Articles 27, 31, 42, and 44 of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Mst. Firoza Khatun @ Firoza and others
... Petitioners

-Versus-

Government of Bangladesh, represented by the Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Ramna, Dhaka and others
... Respondents

Mr. S.N. Goswami with
Mrs. Rowshan Ara Begum, Advocates
... For the petitioner

Mr. Khan Ziaur Rahman, DAG with
Ms. Nasrin Hena, AAG with
Mr. Al Faishal Shiddique, AAG and
Mr. Kamrul Islam, AAG
... For the respondents

Present:

Mr. Justice Mohammad Ullah
and
Mr. Justice Foyej Ahmed

Heard on : 28.08.2024, 03.09.2024 and
20.11.2024

Judgment on: 28.11.2024

Mohammad Ullah, J.

On an application under Article 102 read along with Articles 27, 31, 42, and 44 of the Constitution of the People's Republic of Bangladesh, this Court, by an order dated 04.09.2023, issued Rule upon the respondents in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction shall not be passed upon them for taking action/steps to make specific allotment of a-3(three) katha plot in favour of the petitioners in the project namely "পঞ্চদশলা এশি 3u fhÑ fĒLÒf BhjçpL HmjLj", and hand over possession thereof to the petitioners and/or why such other or further order or orders as to this Court may seem fit and proper shall not be passed."

Subsequently, on 07.02.2024, considering an application of the petitioners, this Court directed the respondents to keep/preserve 6(six) individual plots to make allotment of three Kathas plots in favour of the petitioners within the project area, namely পঞ্চদশলা এশি 3u fhÑ fĒLÒf BhjçpL HmjLj.

The facts leading to the disposal of the Rule, in short, are that the government under L.A. Case No.7/2000-2001 acquired 16.50 decimals of land from the petitioner Nos.1, 5 and 6 while 16.63, 17.40, 24.00 decimals were acquired from petitioner Nos.2-4 respectively for establishing a residential project namely "পঞ্চদশলা এশি 3u fhÑ fĒLÒf BhjçpL HmjLj", (in brief "the project") in respect of aforesaid acquired land respective notification of awards were issued in favour of the petitioners. According to the award

notification, the petitioners obtained compensation as the affected persons. Rajdhani Unnayan Kartipakka (in brief, "RAJUK") initiated the establishment of the residential project on the acquired land.

On 07.05.2001, respondent No.2, RAJUK, published an advertisement in the National Daily asking the affected land owners whose land had been acquired under L.A. Case No.7/2000-2001 to submit applications for allotment of plots of three Kathas land for their residential purpose.

Accordingly, the petitioners comply with the requirements for allotment of plots for their residential purpose, having deposited taka 50,000/-(fifty thousand) earnest money each applied to the RAJUK. Photocopies of the respective bank receipts have been Annexed to this writ petition as Annexures-C, C-1, C-2, C-3, C-4, and C-5, and the photostate copy of the respective applications have been Annexed as Annexures-D, D-1, D-2, D-3, D-4 and D-5.

From those applications for allotment, it appears that the petitioners submitted their applications on 13.08.2001, 29.08.2001, 28.08.2001, 14.08.2001, 23.07.2001, and 31.07.2001. After filing the applications for allotment of plots, the petitioners, through their lawful agents, requested respondent No.2 RAJUK to allot their respective plots, but it kept silent inexplicably.

Subsequently, RAJUK informed that the petitioners' applications for allotment of plots could not be traced as they were missing. After a few years, when the affected persons, including the petitioners, demonstrated their serious dissatisfaction against the RAJUK, the Ministry of Housing and Public Works (in brief, "Housing Ministry") held a meeting on 14.01.2009 regarding the allotment of plots to the

affected persons. At their meeting dated 14.01.2009, the housing Ministry and the RAJUK took the following decisions:

“pÇfÐpçla Ešl; BhçpL Hm;L; (3u fhÑ) fËL-Òf rçaNËØq LÉ;V;NIËI SeÉ pwlçra fÔ-VI j-dÉ ®k...-m; HM-e; hl;ÿ L; quçe ®p...-m; eŁçaj;m; 8 (L) J 8 (M) fËçaf;ime L-l hl;-ÿI SeÉ l;SEL fË-u;SeŁu hÉhØq; NËqe LI-hz”

eŁçaj;m; 8 (L) and 8 (M) runs as follows:

“8 (L) - -k pLm rçaNËØq hÉçš² hpaççV Sçj qçl-u-Re Hhw k;l; OI hjhc rçafšle NËqe L-l-Re a;cl hpaççV Sçjl çljje k;C ®q;L e; ®Le a;l; çlh;l fËça 1 çV fÔV f;hz”

“8 (M) - ®k pLm rçaNËØq hÉçš² L«ço/e;im Sçj qçl-u-Re a;cl rçaNËØq Sçjl çljje çh-hQe;u H-e ANËçdL;l ççš-a fÔV fËçje L;l q-hz a-h çlh;l fËça HLçdL fÔV fËçje L;l q-h e;z (Annexure-E) ”.

According to the direction of the Ministry of Housing and Public Works, respondent No.2 RAJUK at its Board Meeting No. 9/2010 dated 23.09.2010 and 26.09.2010 decided that:-

“14(3) L. eŁçaj;m; 8 M Aeα-µRc Aeαk;uŁ AçdNËqeL«a Sçjl çljje-el ANËçdL;l ççš-a ešeÉaj 0.1650 HLI J acαÛÑ çljje Sçj rçaNËØq q-u-R Hje 560çV B-hc-el çhflŁ-a 560çV fÔV hl;-ÿI SeÉ p;ççuLi;-h çehÑ;Qe L;l ®k-a f;-l (Annexure-F)”z

Subsequently, respondent No.2 RAJUK, at its Board Meeting No.6/2012 held on 28.06.2012, decided to allot three Kathas of land to those people from whom it had acquired a piece and parcel of land measuring 16.50 decimals or above (Annexure-G).

Subsequently, after long years on 12.09.2021, RAJUK, at its Board Meeting No. 5/2021 held on 12.09.2021, took a similar decision that from whom 16.50 decimals of land were acquired they would be provided to

a three kathas residential plots (Annexure-H).

Upon addressing the issue in the assembly of the National Parliamentary, the Minister of Housing and Public Works informed that there are a total of 95 vacant plots remaining for the affected persons from whom 16.50 decimals of land had been acquired for the project under L.A. Case No.7/2000-2001.

It has been stated in the writ petition that some of the affected persons filed Writ Petition Nos.1342 of 2017, 150 of 2019, 151 of 2019, and 263 of 2019, whereby the High Court Division issued a Rule on those writ petitions and finally made the Rule absolute, directing the respondents therein, including RAJUK, to allot 3(three) Kathas plots to each of the petitioners therein within 60 days from the date of receipt of that judgment.

This Court further directed before allotting the petitioner plot, the RAJUK shall not allot any plot to any stranger, and if there is no plot remaining in the scheme area, the RAJUK shall accommodate each of the petitioners therein with a 3(three) Kathas residential plot to any other scheme or project of RAJUK as soon as possible.

In those writ petitions, though respondent No.2 RAJUK filed an affidavit in opposition, it did not controvert the claim made by the petitioners therein; instead, it conceded that the respective files were missing, for which it could not give a final allotment letter.

When respondent No.2 RAJUK did not take any step to allot plots for the residential accommodation of the petitioners, they, through their learned Advocate, sent a notice demanding justice on 24.07.2023 to the respondents requesting them to allot three Kathas plots in favour of the petitioners in

the project and hand over the possession thereof (Annexure-J and J-1).

In such facts and circumstances, when the respondent RAJUK kept silent, the petitioners approached this Court and obtained the Rule and the direction as stated above.

The respondent RAJUK did not contest the Rule.

The learned Deputy Attorney General could not assist this Court without any instruction.

The learned Advocate for the petitioners submits that RAJUK made a general declaration in the prospectus that the affected persons would be rehabilitated by allotting three Kathas plots, and as such, RAJUK can not go beyond its promise and hence, the inaction of the RAJUK in allotting plots in favour of the petitioners are barred by the principle of promissory estoppels in as much as the inaction of the respondents in this regard are liable to be declared to be without lawful authority and are of no legal effect. The learned Advocate submits further that according to the decision of the Housing Ministry, RAJUK was required by law to allot residential plots in favour of the petitioners, and hence, a direction should be given to the RAJUK to allot the residential plots in favour of the petitioners. The learned Advocate next submits that since the RAJUK made a declaration in the prospectus that the affected persons would be rehabilitated, the petitioners can legitimately expect that the RAJUK shall go by at its own decision and, accordingly, RAJUK should be directed to allot plots in favour of the petitioners.

We have heard the learned Advocate for the petitioner and perused the writ petition and Annexures.

The Annexures-B, B-1, B-2, B-3, B-4, and B-5 information slips show that 16.50 decimals of land were acquired from petitioner Nos.1, 5, and 6 while 16.63, 17.40, and 24 decimals of land were acquired from petitioner Nos.2-4 under L.A. Case No. 7/2000-2001 for establishing the project.

From Annexures-C, C-1, C-2, C-3, C-4, and C-5, along with Annexures-D, D-1, D-2, D-3, D-4, and D-5, it appears that according to the advertisement for allotment of plots, the petitioners filed respective applications for allotting three Kathas residential accommodation each. RAJUK decided by a general declaration that the affected persons would be rehabilitated by allotting three Kathas residential plots.

Accordingly, the petitioners filed the respective applications to RAJUK for obtaining three Kathas plots each, and they deposited earnest money in favour of Chairman RAJUK at taka 50,000/- each, along with requisite papers and documents. Time and again, the Housing Ministry and RAJUK made several decisions that from whom at least 16.50 decimals of land have been acquired, they would be provided three Kathas residential plots to rehabilitate the affected people with their residential accommodation.

Despite such facts, RAJUK has not yet allotted any plot in favour of the petitioners.

The RAJUK, in the exercise of the power conferred in section 38 of the Town Improvement Act, 1953 (in brief, "the act 1953"), may proceed to frame an improvement scheme.

Section 42 of the Act 1953 provides for the re-housing of persons displaced by an improvement scheme which runs as follows:

"42. The Kartripakkha may frame schemes (herein called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops as they may consider, ought to be provided for persons of the poorer and working class who-

(a) are displaced by the execution of any improvement scheme sanctioned in this Act or (b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the government for the sanctioned under this Act."

Under section 42 of the Act, 1953, the RAJUK is to provide dwelling houses or shops, as the case may be, for the persons to the poorer and working class who are displaced by the execution of such scheme.

On acquisition of what quantum of land the affected persons shall be construed as poorer or working classes has not been defined in the law.

Article 15(a) of the constitution casts a duty on the government to provide, amongst others, shelter to the citizens of the country. Accordingly, a residential plot should be allotted to the respective petitioners for their shelter since they have no alternative plot in Dhaka City. It shall be the fundamental responsibility of the state to secure the shelter for the petitioners by first rehabilitating them to residential accommodation.

Therefore, the provision of section 42 of the Act 1953 is mandatory as shelter is a basic necessity for the displaced persons whose land was acquired for the improvement scheme. Accordingly, the residential plots should be allotted to the petitioners for their shelter as it shall be the fundamental

principle of the state to secure the shelter for the petitioners in rehabilitating them to residential accommodation.

Moreover, it appears from clause 8 of the "pÇfÐpçla Ešlĭ 3u fhÑ fĒLÒf BhçpL HmĭLĭu fÔV hlĭÿ eŁçajĭmĭ, 2004"(eŁçajĭmĭ, 2004) that to the priority basis the affected persons should be rehabilitated taking into consideration of their displaced situation from their homestead or agricultural land.

On a plain reading of clause 8 of the allotment eŁçajĭmĭ, 2004, it appears that it does not put any limitation or restriction for qualifying the affected person on the quantum of land acquired. As such, as per eŁçajĭmĭ anybody would be considered an affected person from whom some land has been acquired for the improvement scheme.

The preamble of the plot allotment eŁçajĭmĭ, 2004 runs as follows:

"The Town Improvement Act, 1953 Hl 102 dĭlĭ AdŁ-e fĒeŁa YĭLĭ CĭfĒĭi-j¼V VĒĭø (AĒĭmV-j¼V Ah mĒĭä) ĩmp, 1969 ®ĭjĭaĭ-hL pÇfÐpçla Ešlĭ 3u fhÑ fĒLÒf BhçpL HmĭLĭu fÔV hlĭ-ÿĭ çeçĭš çe-jĀĭš² eŁçajĭmĭ fĒZue Llĭ q-mĭz"

It further appears that the allotment eŁçajĭmĭ was framed under the Town Improvement Act 1953. So, it has a legal force, and according to allotment eŁçajĭmĭ, RAJUK made an explicit promise to take measures for allotting plots among the land owners of the scheme area.

In such facts and circumstances, the RAJUK is bound to perform its promise by allotting plots to the affected petitioners.

In Writ Petition No. 150 of 2019, heard and disposed of along with Writ Petition No.151 of 2019 and 263 of 2019, we have made a clear finding that the RAJUK is to

rehabilitate the distressed or affected persons first and then to allot the plot to any stranger to the scheme area.

It should be the prime duty of the RAJUK to rehabilitate the displaced people first and then accommodate the stranger.

By an order dated 07.02.2024, this Court directed the respondents to keep/preserve 6(six) individual plots to make allotment of three Kathas residential accommodations in favour of the petitioners within the project area.

Accordingly, before allotting the petitioner's plot, the RAJUK shall not allot any plot to any stranger.

In such view of the matter, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The respondents are hereby directed to allot a residential plot measuring three Kathas to each petitioner within sixty days of receipt of a certified copy of this judgment.

Let a copy of this judgment and order be communicated to the respondent nos.1 and 2 for compliance.

Foyej Ahmed, J.

I agree.