

Bench:  
Mr. Justice Bhishmadev Chakrabortty  
and  
Mr. Justice Murad-A-Mowla Sohel

Writ Petition No.8115 of 2009  
Redhoy Marble Company , represented by its  
proprietor Md. Fakhurul Alam.  
.....petitioner

-Vs-  
Rajdhani Unnayan Kartipaksha and others.  
.....respondents

Mr. Abdullah Al Mamun, Senior Advocate with  
Mr. Syed Muntazim Ali,  
Mr. Mehadi Hasan and  
Mr. Md. Abul Kashem, Advocates  
.....for the petitioner

Mr. Md. Khalequzzaman Bhuiyan, Advocate.  
.....for respondent 1

Judgment on 03.03.2026

Bhishmadev Chakrabortty, J:

The Rule in the afore quoted writ petition was issued in the following terms-

*“Let a Rule Nisi issue calling upon the respondents to show cause as to why they should not be directed to take necessary steps for delivery, handover of the allotment letter, possession and for registering the Sub-Kabala deed of the Plot No.10/A Baponon Commercial Area measuring less or more 1(one) Katha land situated at Sonargaon Road, Bangla Motor in the name of the petitioner as the accepted highest bidder as per the decision of the Board Meeting of the respondent No.1 being decision No.33.1(8) of the said Board Meeting at the bid price of Tk.43,11,000/- under Re-tender No.04/2003 dated 22.07.2004 and/or 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 this Division passed an order directing the respondents not to lease out the disputed property to any 3<sup>rd</sup> party for a limited period which is subsequently extended till disposal of the Rule.

The material facts for disposal of this Rule as stated in the writ petition, in brief, are that the disputed plot No.10/A situated at Sonargaon Road Baponon Commercial Area, Bangla Motor, Dhaka measuring more or less 1(one) katha belongs to Rajdhani Unnyan Kartripaksha (RAJUK). Respondent 1 RAJUK invited a re-auction tender notice on 22.7.2004 to sell the aforesaid plot. In the said tender notice, the disputed plot was shown at serial number 10. The petitioner purchased tender form, participated in the bid and became highest bidder at a consideration of tk. 43,11000/-. He deposited earnest money of taka 5 (five) lac through pay order bearing number 4327221 dated 22.08.2004 payable to the Chairman RAJUK. Respondent RAJUK in it's Board Meeting 9/2004 dated 01.11.2004 as per item No.33.1(8) decided to take all necessary steps to hand over possession of the plot to the petitioner. One Md. Solaiman challenging the said re-auction sale filed Writ Petition 6497 of 2004 before this Court making RAJUK and others respondents. Consequently, RAJUK decided to stop handing over process of the plot to the petitioner till disposal of that writ petition. Subsequently, the Rule issued in the aforesaid writ petition was discharged on 13.3.2008 for non-prosecution. Then, the petitioner submitted several applications to respondent 1 for handing over the plot

to him as highest bidder after complying all legal formalities, but the respondents are not doing it which they are required by law to do. The respondents in its Board Meeting 9/2004 dated 01.11.2004 took decision under item No.33.3 to send the matter to the Ministry of Housing and Public Works for taking opinion whether they would proceed for a new auction to sell the aforesaid plot. There could be no reason to send the matter to the Ministry and no dispute exists as to the petitioner's purchase through re-auction sale. Under section 101 of the Town Improvement Act, 1953 the respondent RAJUK has the authority to dispose of the plot in question. The RAJUK send the matter to the concerned Ministry with ill motive only to cancel the auction purchase of the petitioner at the behest of interested quarters. After withdrawal the writ petition filed by Md. Solaiman there is no legal bar for respondent RAJUK to deliver the plot to the petitioner complying with the formalities of law. The petitioner challenging the inaction of the respondents and decision so taken sent a notice to them on 14.11.2009 demanding justice. But the respondents did neither take any step to that effect nor intimated anything to the petitioner. The petitioner finding no other alternative approached this Court by invoking writ jurisdiction and obtained this Rule with an interim order.

Respondent 1 has filed an affidavit-in-opposition to contest the Rule. There it controverted the material facts stated in the writ petition further contending the facts of earlier decision of selling the plot to Md. Solaiman at a consideration of Taka 26 (Twenty six) lac, filing of the Writ Petition 6497 of 2004 by him and stopping the decision in the

Board Meeting till disposal of that writ petition. After disposal of writ petition 6497 of 2004, the matter was again placed before the Board Meetings 5 and 7 of 2009 wherein it has been decided that auction of the plot was held in 2004 but due to pending of the writ petition it could not be handed over to the highest bidder till 2009. In the meantime price of the plot has been increased and in the changing situation a direction is needed from the Ministry of Public Works whether the plot would be handed over to the petitioner or it will be placed in new auction sale. The RAJUK seeking a direction from the Ministry has been waiting for its result. The statement made in the writ petition is misconceived and RAJUK is still trying to dispose of the plot, but could not be successful in the aforesaid abstraction. The RAJUK wants to resolve the matter but could not solve it for the want of concerned file. It has been further stated that RAJUK got the acquired land from the government free from all sorts of obstacle of title and possession and as such section 3A(2) of the Building Construction Act, 1953 shall not apply in respect of the plot. The Rule, therefore, bears no merit.

Mr. Abdull-Al-Mamun, learned Senior Advocate for the petitioner taking us through the materials on record, the decision passed in the Board Meetings, deposition of earnest money of taka 5(five) lac by the petitioner and his representations to respondent 1 as contained in annexure-A-series submits that it is clear from the Board Meeting of different dates as well as affidavit-in-opposition filed by respondent 1

that this petitioner had participated in an open tender of auction sale of the plot in question situated at Bangla Motor and became highest bidder at tk. 43,11000/-. One Solaiman earlier wanted to purchase the land in auction at Taka 26 (Twenty six) lac. After accepting the bid of the petitioner, said Solaiman filed Writ Petition 6497 of 2004 in this Court and obtained Rule. Accordingly, RAJUK by its Board Meeting 9 of 2004 stopped the process of selling of the plot subject to the disposal of aforesaid writ petition. The Rule issued in the aforesaid writ petition was subsequently discharged. But the respondents without allotting the plot to the petitioner took decision in the aforesaid Board Meeting under item number 33.3 to send the matter to the Ministry to take decision whether the plot would be handed over to the petitioner, the highest bidder or a tender would be floated afresh, inspite of the facts that RAJUK holds every power to dispose of the land, which is in gross violation of the schedule of tender as well as decision taken by the RAJUK earlier. The RAJUK can take decision about the plot without any opinion or instruction of the Ministry. The petitioner became the highest bidder in open tender and deposited earnest money of Taka 5(five) lac. The handing over plot and other formalities were kept pending only for disposal of the writ petition filed by a 3<sup>rd</sup> party. But now, the RAJUK with malafide intention has been trying to shift the fate of the plot to the concerned Ministry which is without lawful and is of no legal effect. The petitioner after disposal of the aforesaid writ petition filed several representations to respondent RAJUK but they did not pay any heed to those. In the premises above, the Rule would be

made absolute and the respondents be directed to take necessary steps for handing over the plot to the petitioner after complying all legal formalities.

Mr. Md. Kalequzzaman Bhuiyan, learned Advocate for respondent 1 on the other hand pointing us to the auction notice for sale published on 22.7.2004 submits that in the said notice the RAJUK reserves all rights to accept or reject any auction and also to cancel the whole process taken without assigning any reason. The Ministry of Housing and Public Works is the controlling authority of RAJUK. The RAJUK only took decision to send the matter to the concerned Ministry for taking opinion or guideline. The petitioner has not acquired any legal or vested right to file this writ petition praying direction upon the respondents to execute and register the sale deed in respect of the suit plot. The writ petition challenging the decision of the Board Meeting is not at all maintainable. The Rule, therefore, having no merit would be discharged.

We have considered the submissions of both the sides and gone through the materials on record. It transpires from the auction notice dated 22.7.2004 as reproduced in paragraph 5 of the writ petition that RAJUK decided to sell the suit plot in open tender. The disputed plot is at serial 10 of the aforesaid tender notice. The petitioner participated in the bid and became highest bidder to purchase the plot at the consideration of Taka 43,11,000/-. He deposited earnest money of Taka

5 (five) lac through pay order as quoted in paragraph 6 of the writ petition. The aforesaid fact is not denied by the respondent 1 RAJUK.

The decision taken in Board Meeting 9 of 2004 by RAJUK has been reproduced in paragraph 8 of the writ petition. The relevant part of serial 33.1 and serial 33.3 of the decision are as under:

৩৩.১/ কার্যপত্রের বিবরণঃ

১।.....

২।.....

৩।.....

৪।.....

৫।.....

৬।.....

৭।.....

৮। নিলাম দরপত্রে অংশগ্রহণকারীদের মধ্যে “হৃদয় মার্বেল কোম্পানী” সর্বোচ্চ দর টাকা ৪৩,১১,০০০/- (তেতাল্লিশ লক্ষ এগার হাজার) মাত্র দাখিল করে সর্বোচ্চ দরদাতা হিসেবে বিবেচিত হয় মর্মে আবেদন থেকে জানা যায়। এবং তিনি সর্বোচ্চ দরদাতা হিসেবে তার বরাবরে পুটটি হস্তান্তরের জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুরোধ জানিয়েছেন।

৯। উক্ত নিলামের বিরুদ্ধে জনাব সোলায়মান রিট পিটিশন নং- ৬৪৭৯/২০০৪ দায়ের করেন। বিষয়টি কর্তৃপক্ষের ০৯/২০০৪তম সাধারণ সভায় উপস্থাপন করা হলে মহামান্য হাইকোর্টের নির্দেশনা নিষ্পত্তি না হওয়া পর্যন্ত উক্ত পুটের বিক্রয় কার্যক্রম বন্ধ রাখার সিদ্ধান্ত গ্রহীত হয়। তবে সর্বোচ্চ দরদাতার দর বহাল রাখার সিদ্ধান্ত গ্রহীত হয়।

১০। বর্তমানে রিট পিটিশন নং-৬৪৭৯/২০০৪ মামলাটি খারিজ হয়েছে এবং মোকদ্দমাটির রায় রাজউকের পক্ষে গেছে মর্মে আইন কর্মকর্তার প্রেরিত পত্রে জানা যায়।

৩৩.৩। সিদ্ধান্তঃ

পূর্বের নিলাম ২০০৪ সালে অনুষ্ঠিত হয়। মামলাজনিত কারণে এ পর্যন্ত সর্বোচ্চ নিলাম ডাককারীকে প্লটটি হস্তান্তর করা যায়নি। দীর্ঘদিন অতিবাহিত হওয়ায় সর্বোচ্চ দরদাতা “ হৃদয় মার্বেল কোম্পানী”-কে তাদের উদ্ধৃত দর ৪৩,১১,০০০/- (তেতাল্লিশ লক্ষ এগার হাজার) টাকা-এ প্লটটি বরাদ্দ প্রদান করা হবে কিনা অথবা পুনরায় নিলাম আহ্বানের ব্যবস্থা করা হবে বিষয়টি বিস্তারিত ব্যাখ্যাসহ সদয় দিকনির্দেশনার জন্য গ্রহায়ন ও গণপূর্ত মন্ত্রণালয়ে পত্র প্রেরণের সিদ্ধান্ত গৃহীত হলো। (emphasis added)

It is found from the above quoted decision of the Board Meeting that although as per the statements made in paragraph 13 of the affidavit-in-opposition and the provision of section 101 of the Act, 1953 the RAJUK got the land from the government from all sorts of obstacles and encumbrances and it has the authority to transfers it or dispose of it in accordance with law without taking any opinion from the concerned Ministry but they decided to send the matter to the Ministry for guideline and opinion in disposing the matter. Certainty the Ministry of Housing and Public Works is the controlling authority of respondent 1 RAJUK, but we find no necessity of sending the matter to the Ministry for taking opinion as to whether it should be allotted to the petitioner as per auction sale or a fresh tender would be invited because in the same Meeting it has been decided, “বিষয়টি কর্তৃপক্ষের ০৯/২০০৪ তম সাধারণ সভায় উপস্থাপন করা হলে মহামান্য হাইকোর্টের নির্দেশনা নিষ্পত্তি না হওয়া পর্যন্ত উক্ত প্লটের বিক্রয় কার্যক্রম বন্ধ রাখার সিদ্ধান্ত গ্রহীত হয়। তবে সর্বোচ্চ দরদাতার দর বহাল রাখার সিদ্ধান্ত গৃহীত হয়।”(emphasis added)

It is clear from the aforesaid decision that the bid of the petitioner being the highest was accepted and confirmed by respondent RAJUK. It is found that the auction notice was published in 2004 the petitioner participated in the bid and became highest bidder. He deposited take 5 (five) lac as earnest money through challan of Pubali Bank Ltd. Sonargaon Road Branch, Dhaka bearing P.O. No.4327221. But neither the plot was allotted to the petitioner nor possession of the same was handed over to him for the reason of filing writ petition by one Md. Solaiman. The writ petition is found to have been disposed of on 14.03.2008. Thereafter, the petitioner made representations to the respondent RAJUK as contended in Annexure-A-series but the latter did not make response to those. In the meantime 22 years have already been passed but respondent RAJUK has not yet finalised the matter even after conclusion of the litigation. Respondent RAJUK did neither complete the transaction nor executed and registered sale deed and handed over possession of the plot to the petitioner despite compliance of all the terms by him. The petitioner made repeated requests to the respondent and having no reply sent a notice of demanding justice. After receiving the notice of demanding justice, the respondent RAJUK has kept silent which is nothing but denial of justice. Respondent 1 has started dilatory tactics for collateral purpose at behest of interest quatters which is found unfair. In the premises above, we find that in the writ petition challenging the unreasonable and arbitrary decision of the Board Meeting of RAJUK is very much maintainable.

In view of the discussion made hereinabove, we find merit in this Rule. Accordingly, the Rule is made absolute. However, there will be no order as to costs. Respondent RAJUK is directed to proceed with the allotment of the suit plot in pursuance of the auction purchase of this petitioner through re-tender auction dated 22.7.2004 in accordance with law on receipt of balance amount from the petitioner and complete the whole process within 6 (six) months, failing which the law shall take its own course.

Communicate this judgment and order to the concerned.

Murad-A-Mowla Sohel, J.

I agree.