

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

Writ Petition No. 114 of 2024

In the matter of:

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

AND

In the matter of:

Mrs. Monowara Begum ... Petitioner.
 - Vs.-

Govt. of Bangladesh and others
 ... Respondents.

Mr. Md. Abdur Razzak Khan with
 Mr. Md. Towfiqul Islam Khan with
 Mr. Hasan Mahamud Khan with
 Ms. Nusrat Muslemin with
 Mr. Mohammad Hanif Bin Kashem with
 Ms. Shamsun Nahar Mahmood, Advocate
 ... For the petitioner.

Mr. Md. Imam Hasan with
 Mr. Md. Shahinul Islam, Advocate
 ... For respondent No.2.

Mr. Nadim Ahmed, Advocate
 ... For respondent No.7.

Mr. Md. Zainul Abedin with
 Mr. Md. Anisur Rahman Raihan
 ... For respondent No.13

Mr. Md. Shafiqur Rahman, DAG with
 Mr. Tanim Khan, DAG with
 Mr. Ashik Rubaiyat, AAG with
 Mr. Mohiuddin Md. Hanif, AAG with
 Mr. Eakramul Kabir, AAG with
 Ms. Mowsumi Akter, AAG with
 Mr. Sheikh Mohammad Faizul Islam, AAG
 ... For the Respondents.

Heard on: 08.05.2025

Judgment on the 22nd May 2025

Present:

**Justice Fahmida Quader
And
Justice Mubina Asaf**

Mubina Asaf, J:

In this Rule Nisi, issued under Article 102 of the Constitution the respondents have been called upon to show cause as to why the inaction of the respondents in failing to investigate the building plan violations of the 10 storied building situated at "FKS Mouhar", F-112/1, North Chaiyabithy Road, Hakkani Housing Society, Gazipur Sadar-1700, thereby causing serious risk to the petitioner and other occupiers of the premises and as to why the respondents should not be directed to investigate the building plan violations of the said 10-storied building, situated at "FKS Mouhar", F-112/1, North Chaiyabithy Road, Hakkani Housing Society, Gazipur Sadar-1700 and/or pass such other or further order or orders as to this Court may seem fit and proper.

After issuance of the Rule a Supplementary Rule was issued calling upon the respondent Nos.2-7, 9 and 13, RAJUK and GAJUK (Gazipur Development Authority) authorities to show cause as to why they should not be directed to take appropriate corrective measures under Section 3B of the Building Construction Act, 1952 for the 10-storied building situated at "FKS Mouhar", F-112/1, North Chaiyabithy Road, Hakkani Housing Society, Gazipur Sadar-1700 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 Court had directed respondent Nos.2-7 to investigate the building plan to check violations of the petitioners premises and submit report before this Court within 60 (sixty) days from the date of receipt of the order in accordance with law without fail. Accordingly, RAJUK and GAJUK both have submitted the reports.

Facts, in brief, are that the petitioner was owner of the property in Gazipur and had entered into a construction contract with Jasmine Builders Limited (hereinafter referred to as respondent No.13) on 23.09.2018 and as agreed respondent No.13 was supposed to handover the apartments within two and a half years but instead handed over on 21.06.2022 after more than three and a half years due to delays in construction. After petitioner started residing in the premises the petitioner realized that respondent No.13 did not construct the building according to the project plan. Respondent No.13 had never provided the petitioner the approved project plan from RAJUK despite repeated requests. Thereafter, the petitioner through representation dated 07.12.2023 requested RAJUK to do a full investigation into the suspected violations and take appropriate steps if the construction of the building was beyond the approved plan by RAJUK. Unfortunately, there was no response from RAJUK (respondent No.2). The inaction and failure of RAJUK to investigate and act upon the unauthorized construction of the petitioner's premises and inaction on their part in not disposing of the petitioner's representation was in violation of provisions of Sections 3 and 3A(2) of the Building Construction Act, 1952 it also violates the fundamental rights as guaranteed under Articles 31 and 40 of the Constitution.

Finding no other alternative efficacious remedy, the petitioner has moved this Court and obtained the instant Rule Nisi.

Mr. Md. Abdur Razzak Khan, the learned Senior Counsel appearing on behalf of the petitioner submits that, the petitioner entered into a contract with respondent No.13 on 23.09.2018 to construct a 10 storied building and as per their verbal commitment to finish and deliver the same within two and a half years. The petitioners were instead compelled to move into the unfinished building on 21.06.2022 after more than three and a half years due to delays in construction. The petitioner started residing in one of the flats with her family and gradually started occupying the remaining flats through tenants. After starting to reside in the said flat, the petitioner realized that the developer did not construct according to the initial project plan. That contrary to the beautiful design of the south facing side of the petitioner's old house in the middle of the district headquarters, where there should have been balconies, light wells etc., the developer had built a dark, ventilation-less prison-like structure with numerous irregularities, including small balconies and closed light wells, which does not match the project plan at all and raised doubts about whether it had been approved by RAJUK. The learned Senior Counsel also submits that each floor of the building, which was supposed to have four flats as per the developer's commitment, instead had five flats lacking light and ventilation. The area designated for the garage housed a security room and an electrical substation with constant water logging underneath, leading to the stair room, creating a hazardous situation with the meter room and raising doubts about its load capacity. The developer also attempted selling the

garage space promised to the petitioner to others who had purchased flats from the developer. He points out that the developer (respondent No.13) has not shown or provided the approved plan from RAJUK despite repeated requests from the petitioner. Furthermore, the developers did not collect any signatures from the petitioner when submitting files for RAJUK plan approval and there has also been deceit regarding the connection of Titas Gas. In that regard, a GD No.1445 was filed at Gazipur Sadar Police Station on 14.10.2023 and subsequently, Titas removed the illegal gas lines and returned the petitioners legal gas connection along with the gas bill book. The learned Counsel argues further that due to these activities of the developer, the petitioner suspected whether they had followed the original approved building plan from RAJUK which is a clear violation of the law and could lead to a serious accident at any time and as such repeatedly asked MD of Jasmine Developers-respondent No.13 to show the RAJUK building construction permit, but he kept delaying with promises and various excuses. The learned Senior Counsel again submits that according to Section 3A of the Building Construction Act, 1952, it is mandatory to strictly adhere to the approved building plan for construction. Therefore, the construction of the building by respondent No.13 outside the approved plan is a clear violation of the law and creates potential risks for safety and urban planning. He further submits that, the petitioner through her representation dated 07.12.2023 to the respondents (RAJUK) requested a full investigation into the mentioned violations and appropriate steps to be taken regarding the construction of the building beyond the approved plan, but to no avail. He argues that no positive action had aslo been taken by respondent No.13 despite the risk posed to the

occupiers of the faulty 10-storied building located at FKS Mouhar, F 112/1, North Chaiyabithy Road, Hakkani Housing Society, Gazipur Sadar 1700, in contravention of the approved construction permit granted by the respondents, which inaction is illegal as the respondents are required under Section 3A of the Building Construction Act, 1952 to ensure that buildings strictly adhere to the approved building plan and where necessary to take steps to remove unapproved parts of the building. He also points out that, although the petitioner had not served any notice or representation upon the respondent No.13, as he was not the proper authority to investigate the unauthorized plan or construction of the building; but serviced the representation letter and legal notice upon other respondents. Respondent No.13 sent a letter dated 31.12.2023 purporting to ask the petitioner/landowner to vacate her own premises within 15(fifteen) days, stating further that the respondent company management understands that due to her representations further 'development' is required for her portion of the premises, which was frivolous, and devoid of any legal and factual reasoning. The petitioner replied to the same through her lawyer denying the allegations made in the notice. However, the fact that the representation to the respondent authorities (RAJUK) had instead resulted in a letter from respondent No.13 (developer) to vacate the premises, instead of any disposal of the petitioner's representation (Annexure-D) by the respondent authorities, shows that the respondent authorities refrained from disposing of the petitioner's representation with mala fide intentions. Furthermore, Section 36 of the Real Estate Act (Regulation and Development) Act, 2016 there is no provision of taking corrective measures.

Affidavit-in-oppositions have been filed by respondent Nos.2, 7 and 13.

Mr. Md. Zainul Abedin, the learned Senior Counsel appearing on behalf of respondent No.13 submits that, the petitioner took possession of her flats on 21.06.2022 and started living in those flats. The learned Counsel argues that throughout the construction phase the petitioner never raised any issues that the building was being constructed without adhering to the permissions of RAJUK but after two years of taking delivery the petitioner started complaining to RAJUK and other authorities about the deviations in construction. He informed the Court that Gazipur Development Authority has already taken steps to address the issues raised by the petitioner by following the procedures laid down in Sections 3A and 3B of the Building Construction Act, 1952. The learned Senior Counsel has candidly submitted that respondent No.13 is ready to rectify all the deviations which might have occurred in course of the construction work and they are also ready to follow instructions of Gazipur Development Authority (GAJUK) for fulfilling their statutory duties under Section 3B of the Building Construction Act, 1952 and that they would require close co-operation from GAJUK and the petitioner to adhere to all kinds of health and safety hazards as well as co-operation from all the occupiers of the building in the event they need to vacate the premises.

Mr. Md. Imam Hasan, the learned Counsel appearing on behalf of respondent No.2 (RAJUK) submits that, in compliance with the direction of the Hon'ble High Court Division with a view to inquiring into the building in question about the deviation visited the building and measured the same as to check the violation of the approved plan and found the following deviations:

i) সেটব্যাক এ ব্যত্যয়:

দিক	অনুমোদিত নকশায় সেটব্যাক	সরেজমিনে প্রাপ্ত সেটব্যাক	বিচ্যুতি	মন্তব্য
সমুখ (দক্ষিণ পার্শ্ব)	২.৫২/৩.২০	০.৮৮ মিটার	১.৬৪/২.৩২ মিটার	
পশ্চাত (উত্তর পার্শ্ব)	৫.৬০/৩.৬১/২.০০	২.৮৭/১.২১/১.৩৯	২.৭৩/২.৮০/০.৬১	
ভান (পূর্ব পার্শ্ব)	২.৫১/৫.৮৮/৫.১১ মিটার	০.৮৮/০.৭৮/০.৭৩ মিটার	১.৬৩/৪.৭০/৪.৩৮ মিটার	
বাম (পশ্চিম পার্শ্ব)	১.৩০ মিটার	০.৮৮/০.৯১ মিটার	০.৪২/০.৩৯ মিটার	

ii) ভয়েড এ ব্যত্যয়:

দিক	অনুমোদিত নকশায় ভয়েড	সরেজমিনে প্রাপ্ত নকশায় ভয়েড	বিচ্যুতি	মন্তব্য
সমুখ (দক্ষিণ পার্শ্ব)	(৪.৯৭ মি: X ১.৬০ মি:)= ৭.৯৫ বর্গমিটার	(৩.১০ মি: X ১.২১ মি:)= ৩.৭৫ বর্গমিটার	৮.২০ বর্গমিটার	
পশ্চাত (উত্তর পার্শ্ব)	(৩.৪১ মি: X ২.০০ মি:)= ৬.৮২ বর্গমিটার	(৩.৪৫ মি: X ১.২১ মি:)= ৪.১৭ বর্গমিটার	২.৬৫ বর্গমিটার	
ভান (পূর্ব পার্শ্ব)	ভয়েড (৪.৬৩ মি: X ১.৬০ মি:)= ৭.৪০ বর্গমিটার	(৬.১০ মি: X ১.২১ মি:)= ৭.৩৮ বর্গমিটার	০.০২ বর্গমিটার	
বাম (পশ্চিম পার্শ্ব)	ভয়েড-২ (৪.৫৭ মি: X ১.৫০ মি:)= ৬.৮৫ বর্গমিটার	০.০০ বর্গমিটার	৬.৮৫ বর্গমিটার	বাস্তবে কোন ভয়েড নাই

প্রতি তলায় মোট ১৩.৭২ বর্গমিটার (ভয়েড) ব্যত্যয় রয়েছে।

iii) এছাড়া অনুমোদিত নকশায় ০২ (দুই)টি সিঁড়ি রয়েছে তবে বাস্তবে ০১
(এক)টি সিঁড়ি রয়েছে এবং ছাঁদের উপর নকশা বহির্ভূত ০২ (দুই)টি রুম
রয়েছে।

He also submits that although the plan of the building in question was approved by the RAJUK, but subsequently after establishment of Gazipur Development Authority (GAJUK) by enactment of গাজীপুর উন্নয়ন কর্তৃপক্ষ আইন, ২০২০ the building in question fell within the jurisdiction of গাজীপুর উন্নয়ন কর্তৃপক্ষ. Hence, RAJUK has no territorial jurisdiction to take any legal action against the building in question, however, RAJUK in compliance with order of Hon'ble High Court Division has already inquired into the building and prepared a report thereof. RAJUK has already sent the original file regarding approval of plan to GAJUK. Hence, RAJUK cannot take any action against the building in question legally and factually. He further submits that RAJUK sent the record

of the plan to the Gazipur Development Authority (GAJUK) on 10.09.2024 to take further necessary actions in accordance with law, which was received by the Gazipur Development Authority and acknowledged by letter dated 06.10.2024.

An affidavit-in-compliance was also filed on behalf of respondent No.2 where the learned Counsel submitted that the Government of Bangladesh established the Gazipur Development Authority by enactment of গাজীপুর উন্নয়ন কর্তৃপক্ষ আইন, ২০২০ giving effect from 15.09.2020. Land in question is situated at Gazipur City Corporation. He further submits that, the Gazipur Unnayan Kartipakkha issued notice upon the Developer to submit the approved plan (if any) before the Gazipur Unnayan Kartipakkha, as the Developer did not submit the approved plan, they have issued show cause notice as to why the legal action should not be taken for constructing the building in violation of the law.

Mr. Nadim Ahmed, the learned Counsel appearing on behalf of respondent No.7 submits that Gazipur Development Authority (GAJUK) on 02.05.2024 served a notice on the petitioner and respondent No.13 under Section 10(2) of the Building Construction Act, 1952 and asked them to produce the approved plan within 7 (seven) days (Annexure-2). But the petitioner and respondent No.13 failed to do so. Hence, this respondent could not take appropriate action in the matter. A notice under Section 3(B) of the Building Construction Act, 1952 was issued to the respondent No.13 on 06.05.2024 asking them to refrain from constructing the building in question.

In view of the submissions advanced by the learned Senior Advocate Mr. Md. Abdur Razzak Khan, appearing on behalf of the petitioner, Mr. Md. Zainul Abedin the learned Senior Advocate appearing on behalf of respondent No.13, Mr. Md. Imam Hasan, the learned Advocate appearing on behalf of respondent No.2-7, we have gone through the Writ Petition along with the annexures appended thereto including the affidavit-in-oppositions and supplementary affidavit-in-opposition filed on behalf of the respondents.

Admittedly, the petitioner entered into a construction contract with respondent No.13 on 23.09.2018 to develop her estate and construct a 10(ten) storied building whereby the petitioner would get a total of 9(nine) flats after completion of the development work.

The cause of action which gave rise to filing of the instant Writ Petition is that RAJUK failed to investigate and thereafter inaction of RAJUK in disposing of the petitioner's representation and for the fact that respondents Nos.2-7 and 9 have a continuing duty under Sections 3A and 3B of the Building Construction Act, 1952, to ensure compliance with the approved building plan and to take corrective actions for violations that pose risks to public safety.

In the given context, let us first have a look at the relevant provisions of Sections 3A and 3B of the Building Construction Act, 1952.

Section 3A of the Building Construction Act, 1952 runs as follows:

3A. Restriction on improper use of lands and buildings.-

(I) No owner or occupier of a building shall, without obtaining previous permission from the Authorized

Officer or the Committee, as the case may be, use the building for the purpose other than that mentioned in the sanction.

(2) When the 1 [Government] is satisfied that the existing use of any land or building does not conform to the scheme of land utilization indicated in the master plan, the 1 [Government] may, by an order in writing, direct the owner, occupier or the person in charge of the land or building to discontinue such use and, in the case of a building, also to remove or dismantle such building;

Section 3B of the Building Construction Act, 1952 runs as follows:

3B. Direction for removal of construction, etc.-

(1) Where it appears to the Authorized Officer or the Committee, as the case may be, that –

(a) any building has been constructed or re-constructed, or any addition or alteration to any building has been made, or any tank has been excavated or re-excavated, before or after the commencement of the Building Construction (Amendment) Ordinance, 1986 (Ordinance No. LXXII of 1986),

(b) any building is being constructed or re-constructed, or any addition or alteration to any building is being made or any tank is being excavated or re-excavated,

without obtaining the sanction under Section 3, or in breach of any of the terms or conditions subject to which sanction was granted under that section, he or it may, by a notice, direct the owner, the occupier and the person in charge of the building or the tank to show cause, within such period, not being less than seven days, as may be mentioned in the notice, why-

(i) the building or any portion thereof, whether constructed or under construction, as may be specified in the notice, should not be removed or dismantled; or

(ii) the tank or any portion thereof, whether excavated or under excavation, specified in the notice, should not be filled up; or

(iii) further construction or re-construction of, or addition or alteration to, the building, or excavation or re-excavation of the tank, should not be stopped.

(2) Where a person is asked by a notice under sub-section (1) to show cause why further construction or re-construction of, or addition or alteration to any building or excavation or re-excavation of any tank, should not be stopped, he shall stop such further construction or reconstruction or addition or alteration or excavation or re-excavation, as the case may be, from the date the notice is served on him till an order is made under sub-section (3).

Section 3B of the Building Construction Act, 1952 empowers the authorized officer to issue directions for removal, demolition or modification of unauthorized structures. The provision is meant to ensure planned urban development and adherence to safety and zoning regulations. However, while exercising such power, the authority must act with fairness, proportionality and keeping in view the interest of the innocent purchasers.

Under Sections 3A and 3A(2) of the Building Construction Act, RAJUK is obliged to satisfy itself that the building has been constructed in accordance with the sanction thereof and conforms to the scheme of land use and thereafter issue notice against unauthorized or non-conforming use of land and take action against the same.

The said building was constructed in clear violation of the approved plan and without compliance with essential conditions as required under the Building Construction Act, 1952 and the relevant Rules. The authorities, upon inquiry, have confirmed such violations. However, no corrective steps have

been taken and the building has been fully constructed and handed over to the flat owners, many of whom are now residing therein.

It appears that the developer (respondent No.13) proceeded with the construction without adhering to the mandatory requirements and in doing so, violated the law.

Once a violation is detected, the authority is under a statutory duty to take corrective and/or punitive action, including demolition or modification.

The developer is primarily responsible for ensuring that the construction complies with:

- The sanctioned building plan;
- Full adherence to the Building Construction Act, 1952;
- Zoning regulations; and
- Environmental and fire safety norms.

The developer's violation of statutory obligations constitutes a breach of public duty. Hence, we find the following -

(i) Violation of Building Constitution Act, 1952-

- The developer proceeded with construction beyond the approved plan.

(ii) Unauthorized structural deviations-

- The developer misrepresented the legality of the construction to the landowner and purchasers. Such misrepresentation constitutes a breach of consumer protection rights and contractual obligations.

(iii) Endangering Public Safety and Urban Planning-

- The unauthorized construction jeopardizes structural safety contravening public interest.

(iv) Lack of Bonafide Intent-

- The developer acted in bad faith, showing disregard for legal norms and breach of contractual obligations. Respondent No.13 built and sold non-compliant building/apartments and exploited the vulnerability of the land owners and purchasers.

On the other hand, the failure of RAJUK to monitor, inspect or prevent illegal construction. In the present case, we find the following-

(i) Negligence in Enforcement-

- RAJUK/GAJUK, as the statutory regulators failed to detect or stop the illegal constructions despite having powers under Section 5 of the Building Construction Act, 1952.

(ii) Failure to monitor and inspect-

- RAJUK/GAJUK's inaction shows failure to conduct routine inspections, enabling the developers to carry on their illegal activities without interruption.

(iii) Breach of Public Duty-

- RAJUK/GAJUK's inaction constitutes a dereliction of its statutory duties and violates the public trust doctrine under which public bodies are obligated to protect public land, environment and urban integrity.

(iv) Failure to protect Citizens-

- The failure to act allowed violations that affected innocent landowner/buyers, neighbourhood safety and

overall planning goals, for which RAJUK/GAJUK is equally responsible.

As the first part of the Rule has been acted upon now on the issue of corrective measures to be undertaken by respondent No.13, this Court is of the considered view that appropriate corrective measures need to be taken to rectify the deviations. In the course of hearing as respondent No.13 had conceded candidly that they are ready to undertake corrective measures to rectify all the deviations by adhering to safety measures for the residents in accordance with law. The concession made by the learned Senior Counsel is noted and appreciated by the Court.

Accordingly, in view of the above observations and findings, the Rule is disposed of with the following directions:

- (i) The respondent authorities (2-7 & 9) will oversee and cooperate to complete all the corrective measures undertaken by respondent No.13 (developer) after proper assessment of the building, including its structural integrity and safety in accordance with the applicable laws;
- (ii) Respondent No.13 (developer) is directed to correct the deviations according to the report dated 15.11.2024 within 6(six) months from the date of receipt of this judgment in accordance with law;
- (iii) Rental for the temporary accommodations required for the petitioner and/or other tenants to stay while the corrective measures are undertaken in order to rectify the deviations will be borne by respondent No.13 (developer); and
- (iv) A report of compliance to be submitted before this Court on 28.11.2025.

Before parting, this Court notes with concern the growing trend of unauthorized constructions which are deliberate violations of the Building Construction Act, 1952. These acts amount to willful defiance of the law, compromising public safety and deceiving consumers. The Court is aware of RAJUK/GAJUK's tendency of systemic indifference to public discomfort. This raises serious concerns about its administrative accountability. The respondent authorities are reminded of their obligations to oversee and to enforce the law proactively and safeguard the rights of the citizens. RAJUK/GAJUK bears a constitutional and statutory duty to serve the public interest by ensuring orderly, lawful and sustainable urban development.

We look forward to RAJUK and its other development authorities role as a proactive guardian of the urban development, public safety and the fundamental rights of the citizens.

It is the solemn responsibility of RAJUK and its other development authorities to function in a manner that ensures citizens are not compelled to approach the Courts for redress of their grievances that arise due to regulatory failure, inaction or collusion. The need for judicial intervention should be an exception, not the norm.

When citizens are forced to seek justice for illegal constructions, violation of laws and administrative negligence, it reflects a failure of RAJUK's regulatory governance. RAJUK and all its other development authorities must, therefore, perform their duties diligently, transparently and proactively, so that the citizens can rely on the system, not the Courts, to uphold their rights.

No order as to costs.

Communicate the judgment and order at once.

Fahmida Quader, J:

I agree.