

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

Writ Petition No. 2891 of 2013

In the matter of:

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

AND

In the matter of:

Gulshan Youth Club Limited

..... **Petitioner.**

-Versus-

Present:

Mr. Justice Md. Khasruzzaman

&

Mr. Justice Md. Iqbal Kabir

Government of the People's Republic of
Bangladesh represented by the Secretary,
Ministry of Housing & Public Works,
Bangladesh Secretariat, Shahbag, Dhaka
and others,

..... **Respondents.**

Mr. Masud R. Sobhan with

Ms. Fatema S. Chowdhury, Advocates,

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

Mr. Ekramul Haque, Advocate,

...For Respondent No.3.

Mr. M. Sayed Ahmed with

Mr. Sajed Sami Ahammad, Advocates

..Respondent Nos.11 & 12.

Mr. Bepul Bagmar, D.A.G.

.....For **respondents .**

Judgment on: 31.08.2022

MD. KHASRUZZAMAN, J.

On an application under article 102 of the Constitution, the
Rule Nisi under adjudication was issued on 13.03.2013 in the
following terms:

*“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the impugned Letter dated 05.03.2013 issued
under the signature of the respondent No.5 bearing Office
Memo No. রাজউক/প্রকৌশল/নিঃপ্রঃ/কেঃটাঃ/বিবিধ/০৫/০৯/১৩৪/(১৮)/স্বঃ dated*

05.03.2013 regarding demolishing of the structures and establishment situated at Plot No. 130A of Gulshan Avenue, Dhaka (not being part of the earlier wonderland park) removing the trespassers from the Plot No. 130A of Gulshan Avenue, on 10.03.2013, 11.03.2013 and 12.03.2013 (Annexure-A) should not be declared to have been issued 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.”

Facts necessary for disposal of the Rule Nisi in short are as follows:

That the writ petitioner namely “Gulshan Youth Club” (hereinafter referred to as “the petitioner club”) was established in 1977 with a view to engage the young generations for promoting sports, culture and other recreational activities in Gulshan Residential Area, Dhaka. The petitioner club was registered as a company under the Companies Act, 1994 in 1999. The petitioner club was given responsibility by the then Dhaka City Corporation (herein after referred to as DCC) to maintain the Gulshan Central Park situated at Plot Nos. 130 and 130A of Gulshan Avenue, Road Nos. 103, 108 and 109 measuring 8.87 acres of land by different resolutions in 2006 vide Annexure- C to the writ petition and subsequently, the responsibility to ensure the security of the park was also given to the petitioner club through the resolution vide Annexure-I to the writ petition. Thereafter the petitioner has been

maintaining the park by constructing walkway around 8 acres of land, swimming pool, tennis court, a badminton court including eastside of the park adjacent to Road No. 108 and also by keeping the rest of the land as open field and deploying guards for security and cleaners to clean up the entire area including the drains around the park. Anyone without being a member of the club can enter into the park without any entry fee. Besides, it is absolutely open for the public and children to play in the field for anytime of the day. The petitioner club incurred a huge amount of money to construct several infrastructures for the welfare of the children and young people. It is stated that after taking over the responsibility of the Gulshan Central Park the petitioner has been maintaining the same according to the decision and instructions made on different dates vide Annexure-L to the writ petition. The petitioner club is in possession of the premises legally with the knowledge of the RAJUK and DCC (presently Dhaka North City Corporation shortly DNCC). It is stated that on 02.06.2008 the Gulshan Society sent a letter to RAJUK with recommendation to allot the said Plot No. 130A of Gulshan Avenue, Dhaka in favour of the petitioner club for the greater interest of the local community so that the open space can only be used for sports or sport related activities vide Annexure-E to the writ petition. Thereafter, on 11.06.2012 the petitioner club submitted landscape plan of Gulshan Central Park to RAJUK for its approval which was received by the office of RAJUK on the same day vide Annexure-H to the writ petition. Then on 19.07.2012 the petitioner club made an application to the Hon'ble State Minister of

the Ministry of Housing and Public Works Affairs for giving authorization to maintain the said Gulshan Central Park vide Annexure-J to the writ petition, whereupon on 21.11.2012 the said Ministry issued a letter to the Chairman of RAJUK for taking necessary steps as per the application dated 19.07.2012 of the Gulshan Youth Club in accordance with law vide Annexure-K to the writ petition. Thereafter, on 03.12.2012 respondent No. 12, Chief Estate Officer, DNCC issued a letter to the Regional Executive Officer, Region-3, DNCC for giving direction for proper management of the said park vide Annexure-L to the writ petition and forwarded a copy to the petitioner. It is stated that the initiative and activities of the petitioner for maintaining the said park and the security with necessary infrastructures have been appreciated by other social organizations like Gulshan Society, Gulshan Central Mosque Committee, Gulshan Ladies Community Club. But, all on a sudden, the petitioner came to know that the respondent RAJUK issued the impugned letter dated 05.03.2013 to Police Commissioner, Dhaka Metropolitan Police, Dhaka (Annexure-A to the writ petition) requesting him to deploy police force at the time of eviction/demolition of illegal infrastructure/ occupants from the said park on 10.03. 2013, 11.03.2013 and 14.03.2013 respectively. Thereafter, on 07.03.2013 DNCC issued a letter to RAJUK requesting to withdraw the eviction programme vide Annexure-M to the writ petition. But, the RAJUK authority did nothing on the request of DNCC. Ultimately, upon swearing and affirming affidavit

on 10.03.2013 the petitioner filed this writ petition and obtained the above Rule Nisi on 13.03.2013.

It appears that the interim order of stay and direction obtained by the petitioner at the time of issuance of the Rule Nisi has already been expired and the same was not extended after 2018.

Respondent No.3 namely Rajdhani Unnayan Kartipakkha (RAJUK) filed an *affidavit-in-opposition* denying the material allegations made in the writ petition contending *inter alia* that the park in question being Plot No. 130/A at Gulshan Residential Area, Gulshan Avenue, Dhaka belonged to RAJUK (earlier known as DIT) and it was demarcated and marked as Children's Park (শিশু পার্ক) and on 29.11.1973 the same was handed over to Gulshan Paurashava for its maintenance [Annexure-B(I) to the writ petition], and subsequently as per Memo No. শাঃ-১১/এস-৩৯/৮৩/৮১৯ dated 23.08.1983, the Ministry of Housing and Public Works handed over the possession of the case property along with other lands of RAJUK which are marked as Children's Park (শিশু পার্ক) to DCC for the greater interest of public and also to control and ensure the uses of all these lands by public in general and to maintain its nature and the natural beauty of it. But the DCC most illegally leased out the park in question to 'Wonderland' and a portion thereof to Bangladesh Squash Federation and Gulshan Youth Club. After having come to know regarding the same the respondent RAJUK vide Memo No. 10533 শাঃ dated 16.10.2008 requested the DCC to cancel and

evacuate all illegal allotments and return all these to RAJUK. It is stated that Writ Petition No. 7232 of 2009 was filed by G.M. Mustafizur Rahman on behalf of 'M/S. Via Media Business Service' against Rajuk and the High Court Division without issuing any Rule Nisi disposed of the same "*directing the respondent RAJUK to consider the petitioners application dated 30.07.2009 in the light of the judgment of this Court in Writ Petition No. 2425 of 2005 (the actual year would be 1995) and Civil Petition for Leave to Appeal No. 374 of 2007 and Writ Petition No. 2915 of 2009 and dispose of the petitioner's application for an alternative plot to re-establish Wonderland Amusement Park in accordance with law within 6(six) months of the date of receipt of this order. In the meantime, the respondents RAJUK are directed not to disturb the petitioner's amusement park namely 'wonderland park' at Plot No. 130A, Gulshan, Dhaka. The petitioner was directed to remove all shops, restaurants, snack, bars etc. around the boundary wall of the said Park which are accessible to public from outside without entering wonderland park within 01(one) month of receipt of copy of this order failing which the respondents will be permitted to remove them*". Since the petitioner has failed to remove all structures stated hereinbefore as per the order, the eviction initiative was taken accordingly; and as such the respondents did not commit any illegality by issuing the impugned notice of eviction and as such the *Rule Nisi* is liable to be discharged.

Respondent Nos. 11 and 12 namely, Dhaka North City Corporation represented by its Administrator and Chief Executive

Officer of Dhaka North City Corporation filed *affidavit-in-opposition* denying the material allegations made in the writ petition and contending *inter alia* that the land in question measuring 8.87 acres of land appertaining to Khatian No.8, Mouza-Gulshan Residential Area, City Dag No. 4847(Park), 4848 and 4849(Garden) belongs to Dhaka North City Corporation, Dhaka. It is contended that as per Layout Plan of RAJUK, the said park cannot be converted into club or amusement centre for the benefit of particular persons and shall not be used for any purpose other than a park with free access to the general public as laid down in the plan of Gulshan Model Town. The assertion made by the petitioner club regarding the authorization of Dhaka City Corporation for management of the playground facilities of the said park is wrong, misconceived and distortion of true facts. The petitioner possessed the part of the park based on some resolutions of the meetings of the Corporation but the signature contained therein is the signature of the then ward councilor/commissioner which shows that Gulshan Youth Club has been given to maintain and develop the said park and the same is not an official document of DNCC and as such, the petitioner has failed to refer any official letter or resolution of DNCC to prove its contentions for which the claims of the petitioner are baseless.

Mr. Masud R Sobhan, the learned Advocate appearing on behalf of the petitioner submits that the petitioner is neither the owner nor lessee of the aforesaid park in question but he cannot be termed as a trespasser or illegal occupant of the case park, rather

the petitioner was authorized and allowed by Dhaka City Corporation to maintain the park according to their decisions and instructions made on different dates from 2006. Referring to papers annexed with the writ petition and the affidavit-in reply the learned Advocate submits that the respondent authority at times on different dates has given permissions and instructions to continue with the maintenance of the park in question without limiting the time frame, and the petitioner has incurred a huge amount of money for construction of several infrastructures in the said park and still they are in possession of the premises legally with the knowledge of RAJUK, DCC and presently DNCC without any objection from the nearby residents and as such, it cannot be alleged that the petitioner is occupying the land of Gulshan Central Park illegally without any permission from the authority. Accordingly, the learned Advocate for the petitioner submits that due to their possession over the land for a long time, the petitioner as well as its members acquired vested interest. So, neither RAJUK nor the City Corporation can throw the petitioner out of the possession of the park in question without following due process of law and without serving any notice regarding demolition of the petitioner's playground and as such the petitioner has been deprived from the natural justice and thus the impugned letter of eviction is liable to be declared to have been issued without lawful authority and is of no legal effect.

Mr. Md. Ekramul Hoque, the learned Advocate appearing on behalf of the respondent No.3-RAJUK submits that after

exhausting all rules and regulations, RAJUK served notice for eviction of the illegal infrastructures of the plot in question, and as such, no illegality has been committed by the respondent RAJUK. He further submits that the writ petitioner is neither the owner nor lessee of the park in question and as such the writ petitioner has no *locus standi* to file the writ petition since the impugned notice dated 05.03.2013 has been issued by the respondent RAJUK in compliance with the judgment and order dated 02.11.2009 passed in Writ Petition No. 7232 of 2009 and those dated 18.03.2012 passed in Civil Petition for Leave to Appeal Nos. 306 of 2010 and 406 of 2012 and as such the impugned notice being in accordance with law, the same cannot be interfered with by this Division. He also submits that the writ petitioner has no right to challenge the eviction notice because firstly he is not the owner or lessee of the case park and secondly he has not been served with the impugned notice rather the same is an internal correspondence between one office to another office of the government and as such, the Rule Nisi issued in the writ petition is liable to be discharged.

Mr. M Sayed Ahmed, the learned Advocate appearing on behalf of the respondent Nos. 11 and 12 City Corporation submits that Gulshan Central Park measuring 8.87 acres of land was handed over by RAJUK (earlier known as DIT) to Gulshan Pourashava on 29.11.1973 and thereafter, the same was recorded in the name of Dhaka North City Corporation in the Metropolitan Survey of Dhaka and as such, the DNCC is the lawful owner of the said park. He further submits that the claim of the petitioner as to

accord permission from the City Corporation to use the said land as playground of the petitioner club is false and baseless. Referring to letter dated 17.09.2006 basing on which the writ petitioner tries to show the permission of maintaining the said park, Mr. M Sayed Ahmed submits that the same is the minute and decision of the meeting issued under the signature of the then Commissioner, Ward No. 19 (Banani-Gulshan), Dhaka City Corporation and the same not being an official document of DNCC and the claim of the writ petitioner that he got permission regarding maintenance of the park is not tenable in the eye of law. Referring to judgment and order passed in Writ Petition No. 3474 of 2005 and the layout plan of the RAJUK, he submits that Plot No. 130/A was shown as the Park in the layout plan and as such, as per the said verdict of the High Court Division, without changing the plan, neither RAJUK nor DNCC has any authority to allot the park or permission to anyone violating the plan, and therefore, the contention of the petitioner that DNCC has given lease or granted permission to the petitioner club is wrong and misconceived. He also submits that a public park is necessary for protecting health and hygiene of the inhabitants of the area providing open space with garden and as such, the trespasser like the petitioner cannot be allowed to remain in possession or occupy the same on different plea of their ultimate own interest and as such, the respondents rightly issued the eviction notice to evict and dismantle the illegal infrastructure and the occupants from the plot in question in accordance with law and he has prayed for discharging the Rule Nisi with cost.

We have heard the learned Advocates appearing on behalf of their respective party and perused the writ petition, affidavits-in-opposition, supplementary affidavit-in reply as well as the papers annexed thereto and a copy of memo of Writ Petition No.7232 of 2009 produced by learned Advocate for the respondent No.3 RAJUK.

Admittedly, the writ petitioner is neither the owner nor the lessee of the aforesaid park. It is stated that the writ petitioner is not a trespasser or illegal occupant of the said park as he was duly authorized and allowed by the Dhaka City Corporation to maintain the park according to their decisions and instructions made at times on different dates, and thus it cannot be alleged that the petitioner is occupying the land of Gulshan Central Park illegally without any permission. In this respect, the petitioner has annexed series of documents to make it clear that the Dhaka City Corporation gave the full recognition of the petitioner in the land in question. The writ petitioner also stated that the petitioner has invested huge money in the park to facilitate the public users of all walks of life. It appears that although the writ petitioner in paragraph No.28 of the writ petition has stated that the petitioner has accrued '*possessory right*' to the playground of the park because of its investment but subsequently by filing affidavit-in-reply to the affidavit-in-opposition filed by respondent Nos. 11 and 12 the petitioner has shifted his claim from "*possessory right*" and rather it is stated that the petitioner is in possession of the

premises legally with the knowledge of the RAJUK, DCC and presently DNCC.

In the aforesaid backdrop, the learned Advocate appearing on behalf of the writ petitioner-club has submitted that RAJUK did not serve any show cause notice upon the petitioner before issuing the impugned letter dated 05.03.2013 regarding demolition of the structures on the playground of the said park and also RAJUK did not carry out any enquiry to come to a definite finding as to whether the petitioner has actually constructed any unauthorized structures on the said land and as such, the action of the RAJUK has violated the principles of natural justice in case of the petitioner club.

On the other hand, the respondents collectively disowned the claim of the writ petitioner stating that the writ petitioner was not given any such permission as claimed because Dhaka City Corporation has no authority to give such permission to the writ petitioner in respect of the said park. Admittedly, the writ petitioner has no title in the said park. The respondents have submitted that the impugned notice dated 05.03.2013 was issued complying with the provision of law and the judgment and order passed in Writ Petition No. 7232 of 2009 and moreover the petitioner is not a party to the impugned notice dated 05.03.2013 which is an internal correspondence between the government offices and as such, the petitioner has no *locus standi* to file the writ petition challenging the said impugned letter cum internal correspondence.

To justify and appreciate the submission made by the learned Advocate for the respondent No.3 RAJUK that the impugned notice is the output of the judgment and order dated 02.11.2009 passed in Writ Petition No. 7232 of 2009. We need to go through the judgment and order dated 18.03.2012 passed by the Appellate Division in Civil Petition for Leave to Appeal No. 306 of 2010 heard along with Civil Petition for Leave to Appeal No. 406 of 2012 as appears from Annexure-2 to the *affidavit-in-opposition* filed by respondent No.3 RAJUK.

On perusal of the same it appears that one G.M. Mustafizur Rahman filed Writ Petition No. 7232 of 2009 *stating inter-alia* that they filed an application dated 30.07.2009 before the Chairman, RAJUK with a prayer for amendment/alternation of the existing *layout plan* for Gulshan Model Town so as to re-designate/reassign the portion of Gulshan Shishu Park run by them '*an amusement park*' and to lease such park to them under a new agreement. It was further stated to the effect that if it was not possible to alter the *layout plan*, then to allot a suitable alternative site to which they may move the establishment of wonderland park and continue its operation until such alternative site was allotted to allow the petitioner to continue the wonderland park in its present location. The whole grievance of the petitioner in that writ petition was that despite filing of the application dated 30.07.2009 with the prayers as stated hereinbefore, no reply was given by RAJUK and as such, after serving notice demanding justice the aforesaid Writ Petition

No. 7232 of 2009 was filed with a prayer for a Rule Nisi to be issued in the following terms:

“Issue a Rule Nisi calling upon the respondents to show cause as to why the failure of the respondent Nos. 1 to 3 to consider the petitioner’s prayer contained in its representation dated 30.07.2009(Annexure-M) for revision of the layout plan of Gulshan Model Town so as to allow the petitioner to continue operation of ‘Wonderland Park’ on Plot No. 130A or in the alternative, allot a suitable land to the petitioners to where the said ‘Wonderland Park’ may be shifted shall not be declared to be without lawful authority and is of no legal effect and as to why the respondents shall not be directed to grant the prayer of the petitioner.”

Ultimately, the High Court Division by its judgment and order dated 02.11.2009 disposed of the writ petition summarily with the observation and direction as follows:

“At this stage we are not inclined to issue any Rule. However, the respondent Nos. 1 to 3 RAJUK are directed to consider the petitioner’s application dated 30.07.2009 in the light of the judgment of this Court in Writ Petition No. 2425 of 2005(the year has been mentioned wrongly. It would be 1995) and Civil Petition for Leave to Appeal No. 374 of 2007 and Writ Petition No. 2915 of 2009 and dispose of the petitioner’s application for an alternative plot to re-establish ‘Wonderland Amusement

Park' in accordance with law within 06(six) months of the date of receipt of this order."

In the judgment, the High Court Division also directed the petitioner to remove all shops, restaurants, snack bar etc., around the boundary wall of the said park which are accessible to the public from outside without entering the park within 01(one) month of the receipt of the order failing which the respondents will be permitted to remove them. Challenging the aforesaid judgment and order dated 02.11.2009 passed in Writ Petition No. 7232 of 2009 two civil petitions being Civil Petition for Leave to Appeal Nos. 306 of 2010 and 406 of 2012 were filed; one is by H.M. Ershad and another and the other one is by RAJUK and others.

However, from the judgment and order dated 02.11.2009 passed in Writ Petition No. 7232 of 2009, it appears that as back as in 1995 challenging the grant of lease of the Central Park of Gulshan Model Town located at Plot No. 130A for the purpose of an amusement centre under the name and style of *Wonderland Park*, Writ Petition No. 2425 of 1995 was filed by one M.Reza and Nasiruddin Ahmed in the form of public interest litigation and Rule Nisi was issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the lease granted of the Central Park of the Gulshan Model Town, Dhaka by respondent Nos. 3 and 4 for the purpose of an amusement centre under the name of Wonder Land as contemplated in Annexure-C published in the Daily

Janakantha dated 15.11.1995 should not be declared to have been done without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.”

In the said writ petition, the proprietor/lessee of Wonder Land Park was impleaded as respondent No.04. During the pendency of that writ petition, in 2005 the lessee of the park i.e. G.M. Mustafizur Rahman filed Writ Petition No. 3479 of 2005 in the form of mandamus praying for a direction to renew the lease period in respect of three parks including Gulshan Shishu Park (known as Wonderland) and obtained Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondent to show cause as to why they should not be directed to renew the lease period in respect of three parks namely, Gulshan Shishu Park(known as Wonderland), Shamoli Shishu Park and Swamibagh Shishu Park in favour of the petitioner on acceptance of 10% enhance rate of the next as per clause 13 of the lease agreement dated 19.02.2002(Annexure-B) and/or such other or further order or orders passed as to this Court may seem fit and proper.”

However, after hearing both the aforesaid writ petitions together, Rule Nisi in Writ Petition No. 2425 of 1995 was made absolute declaring the granting of the lease of the central park to be without lawful authority and Rule Nisi in Writ Petition No. 3479 of 2005 was disposed of by the common judgment and order dated

24.05.2007 with the observation that the lease agreement was beyond the jurisdiction and illegal and accordingly the lessee was directed to remove all of its establishments from the park within 06(six) months and side by side the RAJUK and the Dhaka City Corporation were called upon to provide an alternative site/accommodation where the amusement centre can be shifted.

Challenging the aforesaid judgment and order dated 24.05.2007 passed in Writ Petition Nos. 2425 of 1995 and 3479 of 2005 Mr. G.M. Mustafizur Rahman i.e. lessee then filed Civil Petition for Leave to Appeal Nos. 180 of 2008 and 181 of 2008 before the Appellate Division and after hearing, both the aforesaid leave petitions were dismissed on 09.03.2009 observing as under:

“It appears that the High Court Division held that the respondent No.3, the Dhaka City Corporation is not the owner either of Gulshan Model Town or of the case Park and therefore rightly held that without taking any approval of RAJUK, the real owner, the granting of lease in favour of respondent No.4, the present petitioner, was without any lawful authority.

It further appears that the lease died a natural death after three years as it was never renewed. The High Court Division further considered that park cannot be converted into amusement center.

However, if the present petitioner has invested on the basis of a wrong order that matter can be looked into by appropriate authority but for that matter they cannot be allowed to run the amusement center in the name of ‘Wonderland’.”

Thus, the judgments of the High Court Division passed in both the aforesaid writ petition Nos. 2425 of 1995 and 3479 of

2005 were affirmed by the Appellate Division on 09.03.2009. In adherence to the judgments of the High Court Division in both the aforesaid writ petitions as well as those of the Appellate Division, Dhaka City Corporation by its memo No. Estate/888(1)2008-2009 dated 30.04.2009 directed the lessee of Wonderland Park to remove all structures from Gulshan Shishu Park(Wonderland) within 07(seven) days challenging which said G.M. Mustafizur Rahman again filed another Writ Petition No. 2915 of 2009 whereupon the High Court Division considered the judgment and order dated 24.05.2007 passed in Writ Petition No. 2425 of 1995 and 3479 of 2005 and accordingly without issuing any Rule Nisi disposed of the same summarily by the judgment and order dated 05.05.2009 with the observation and direction as follows:

“In view of our order passed in the above writ petition, the operation of the Memo No. Estate/888(1)2008.2009 dated 30.04.2009(Annexure-A) be stayed for a period of 06(Six) months from date so that the authorities of the Wonderland Park may shift the said establishment in a suitable place in order to continue the amusement park for the benefit of the children and for their enjoyment. We also call upon Dhaka City Corporation and also RAJUK to consider in the interest of the children to provide an alternative accommodation to establish the said Wonderland amusement Park.”

In the circumstances, the Appellate Division while passing the judgment and order dated 18.03.2012 in Civil Petition for Leave to Appeal Nos. 306 of 2010 and 406 of 2012 arising out of judgment and order dated 02.11.2009 passed in Writ Petition No. 7232 of 2009 observed as follows:

“We wondered how Writ Petition No. 2915 of 2009 could be maintained after the judgment and order passed by this Division on 09.03.2009 affirming those passed by the High Court Division in Writ Petition Nos. 2425 of 1995 and 3479 of 2005. Moreso, the period of 06(six) months allowed to the writ petitioner to remove his machinery and other establishments from the wonderland park had already expired. The petitioner did not stop there and again filed the instant writ petition and the High Court Division disposed of the same in the terms as quoted hereinbefore.

From the above, it appears to us that the whole intention of the petitioner is to keep the wonderland park in existence by any means, such as, by filing writ petitions, one after another, in the name of pendency of his application before RAJUK to allot him an alternative plot. It would like to further observe that in view of the order passed by this Division in Civil Petition for Leave to Appeal Nos. 180 and 181 of 2008 dismissing both petitions, there was no scope on the part of the High Court Division to pass the impugned order whatever may be the cause pleaded in the writ petition. Whether RAJUK would consider the petitioner’s prayer for giving him an alternative plot to establish his wonderland park as per the pious wish expressed by the High Court Division in Writ Petition No. 2915 of 2009 is altogether a different matter but on the plea of pendency of such an application filed by the petitioner cannot be a ground to remain in possession in the plot in question and thus, keeping the wonderland park operational.

In the above backdrop, the High Court Division was not at all justified in passing the impugned order. But since we find no legal impact in the order passed by the High Court Division for the reasons stated hereinbefore, we see nothing to be examined by this Division by granting leave.

With the above observations this leave petitions are disposed of.”

So, it appears from the above scenario of the facts that in 1990 the Dhaka Municipal Corporation leased out the Gulshan Shishu Park at Plot No. 130A to G.M. Mustafizur Rahman proprietor of M/S. Via Media Business Service for a period of 03(three) years who after making infrastructures therein opened Wonderland Park in 1995. Challenging such granting of lease one M.Reza and Nasiruddin Ahmed in the name of public interest litigation filed Writ Petition No. 2425 of 1995 and obtained Rule Nisi on 20.11.1995 in the manner as stated above. During the pendency of that writ petition in 2005 the lessee i.e. G.M. Mustafizur Rahman filed Writ Petition No.3479 of 2005 with a prayer for renewal of the aforesaid lease and obtained Rule Nisi on 23.05.2005 in the manner as stated hereinabove. Both the writ petitions were heard analogously and ultimately the High Court Division by its single judgment and order dated 24.05.2007 made the Rule Nisi issued in Writ Petition No. 2425 of 1995 absolute and that of Writ Petition No. 3479 of 2005 has been disposed of with the observations.

Despite the decision observation given in the said writ petitions, the interested party of the Wonderland Park again filed representation dated 30.07.2009 to RAJUK to make amendment/alternation of the existing layout plan of Gulshan Model Town so as to re-designate/reassign the portion of Gulshan Shishu Park located at Plot No. 130A occupied by them as an amusement park and to lease out to him. Subsequently, Writ

Petition No. 7232 of 2009 was filed alleging inaction and failure of the respondent RAJUK in disposing of the representation dated 30.07.2009. The High Court Division considered the judgment and order passed in Writ Petition No. 2425 of 1995 and 3479 of 2005 and ultimately without issuing any *Rule Nisi* summarily disposed of the writ petition with observation and direction as follows:

“At this stage we are not inclined to issue any Rule. However, the respondent Nos. 1 to 3 RAJUK are directed to consider the petitioner’s application dated 30.07.2009 in the light of the judgment of this Court in Writ Petition No. 2425 of 2005(the year has been mentioned wrongly. It would be 1995) and Civil Petition for Leave to Appeal No. 374 of 2007 and Writ Petition No. 2915 of 2009 and dispose of the petitioner’s application for an alternative plot to re-establish ‘Wonderland Amusement Park’ in accordance with law within 06(six) months of the date of receipt of this order.

In the meantime, the respondents are directed not to disturb the petitioner’s amusement park namely ‘Wonderland Park’ at Plot No. 130A, Gulshan, Dhaka. The petitioner is however directed to remove all shops, restaurants, snack bar etc., around the boundary wall of the said ‘Wonderland Park’ which are accessible to the public from outside without entering the ‘Wonderland Park’ within 01(one) month of the receipt of the order failing which the respondents will be permitted to remove them.”

After the judgment and order of the Appellate Division in Civil Petition for Leave to Appeal Nos. 306 of 2010 and 406 of 2012 arising out of the judgment and order passed in the said Writ Petition No. 7232 of 2009 although several months have passed but the interested party of the Wonderland Park did not take any step to remove its establishment and his machinery and other illegal infrastructures from the case park. As such, the respondent RAJUK vide Memo dated 05.03.2013 (Annexure-A to the Writ Petition No. 2891 of 2013) requested the Commissioner, Dhaka Metropolitan Police, Dhaka to extend his cooperation in respect of deployment of police force on Plot No. 130/A, Gulshan Avenue, Dhaka on the three consecutive days fixed for eviction of illegal establishments/ occupants from the case park.

For better and easy appreciation the impugned notice is quoted as follows:

“রাজধানী উন্নয়ন কর্তৃপক্ষ
রাজউক ভবন, ঢাকা।

স্মারক নং-রাজউক/প্রকৌশল/নি:প্র:/কে:টা:/

বিষয়- উচ্ছেদ কার্যক্রম পরিচালনার জন্য পুলিশ ফোর্স মোতায়েন প্রসঙ্গে।

উপর্যুক্ত বিষয়ের প্রেক্ষিতে আদিষ্ট হয়ে জানানো যাচ্ছে যে, রাজধানী উন্নয়ন কর্তৃপক্ষের আওতাধীন গুলশান এভিনিউ এর ১৩০এ নং প্লটে বিদ্যমান অবৈধ স্থাপনা/দখলমুক্ত করার জন্য আগামী ১০/০৩/২০১৩ইং, ১১/০৩/২০১৩ইং ও ১৪/০৩/২০১৩ইং তারিখ, রবিবার, সোমবার ও বৃহস্পতিবার উচ্ছেদ কার্যক্রমের দিন ধার্য করা হয়েছে।

এমতবস্থায়, বর্ণিত উচ্ছেদ কার্যক্রমে আইন শৃংখলা পরিস্থিতি নিয়ন্ত্রনের লক্ষ্যে উল্লেখিত তারিখে সকাল ১০.০০টায় ০১(এক) প্লটন মহিলা পুলিশসহ মোট ০৫(পাঁচ) প্লটন পুলিশ ফোর্স মোতায়েনের প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুরোধ জানানো হ'ল।

কমিশনার
ঢাকা মহানগর পুলিশ, ঢাকা।

সচিব
রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা”

The impugned notice shows that the programme of eviction drive was taken by the RAJUK to remove illegal establishment/infrastructures and also to dispossess the illegal possessors/trespassers from the Plot No. 130A, Gulshan Avenue, Dhaka.

Now, impugning this eviction memo, the writ petitioner filed the present writ petition and obtained Rule Nisi along with an interim order of stay and direction not to interfere with the possession of the petitioner initially for a period of 03(three) months and the same has been extended from time to time upto 2018 and thereafter, no prayer for extension of stay was made and allowed. From the terms of the Rule Nisi it appears that the petitioner very cunningly and technically used the words to the extent "*not being part of the earlier Wonderland*" and thereby impliedly wanted to show that the judgment and orders passed by this Division as well as by the Appellate Division in the cases discussed above are not applicable in case of Gulshan Youth Club despite of the fact that the 'Wonderland Park' and the 'Gulshan Youth Club' are situated at Plot No. 130A, Gulshan Model Town.

Admittedly, the said Plot No.130A located at Gulshan Model Town, Dhaka has been earmarked as Central Park (known as Gulshan Shishu Park) in the layout plan of Gulshan Model Town. It is stated in the writ petition that in

the eastern side of the said park, Gulshan Youth Club has established its infrastructures and in the western side of the park Wonderland Park was set up. It has already been settled and decided by this Division as well as by the Appellate Division in the cases discussed above that Gulshan Central Park i.e. Gulshan Shishu Park shall remain there as park and under no circumstances any sorts of establishments can be made therein on any other pleas. We have already found that the High Court Division while passing the judgment and order dated 24.05.2007 in Writ Petition No. 2425 of 1995 filed by one M Reza and Nasiruddin Ahmed in the form of public interest litigation along with Writ Petition No. 3479 of 2005 filed by G.M. Mustafizur Rahman on behalf of Wonderland Park rightly held as under:

“গুলশান সেন্ট্রাল পার্ক বা ইউ এন পার্ক শুধুমাত্র পার্ক হিসেবেই থাকিবে, তথায় অন্যকোন প্রকার স্থাপনা কোন অজুহাতেই তৈরী করা যাইবে না।

ইহার আইনগত অবস্থা নিম্নরূপ:

ক) তর্কিত গুলশান পার্কটি কাহারও নিকট ইজারা প্রদান করিবার কোন অধিকার ঢাকা সিটি কর্পোরেশনের ছিল না এবং এখনও নাই।

খ) গুলশান মডেল টাউনের পরিকল্পনা অনুসারে তর্কিত ১৩০এ নং প্লটটি শুধুমাত্র পার্ক ব্যতিত অন্য কোন প্রকার কাজে ব্যবহার করা যাইবে না।

গ) তর্কিত পার্কে সকল বয়সের সকল ব্যক্তির বিনা বাধায় ও বিনা খরচে ভ্রমণ করিবার অধিকার রহিয়াছে। সংশ্লিষ্ট সকল কর্তৃপক্ষ শুধুমাত্র নিরাপত্তা জনিত কারণ বা পার্কের উন্নতিকরণের জন্য গৃহীত পদক্ষেপ ব্যতিরেকে অন্য কোন প্রকার বাধা বা বিরক্তির পরিস্থিতি সৃষ্টিকরণের আইনগত ব্যবস্থা গ্রহণ করিতে বাধ্য থাকিবেন।

ঘ) ৩নং প্রতিবাদী বা অন্য কোন কর্তৃপক্ষ কোন অজুহাতে তর্কিত পার্কটি কাহারও নিকট ইজারা প্রদান করিবার কোন অধিকার নাই।

ঙ) গুলশান পার্ক বা ইউ এন পার্ক বা ইহার অংশের ইজারা নবায়ন দাবী করিবার কোন আইনগত অধিকার রীট পিটিশন নং ২৪২৫/১৯৯৫ মোকদ্দমায় ৪নং প্রতিবাদী বা রীট পিটিশন নং ৩৪৭৯/২০০৫ মোকদ্দমার দরখাস্তকারীর নাই।”

So, the present writ petition cannot be maintained in view of the decisions settled by both the Divisions of the Supreme Court in the aforesaid cases.

However, having gone through the judgment and orders in Writ Petition Nos. 2425 of 1995, 3479 of 2005 and 7232 of 2009, and Civil Petition for Leave to Appeal Nos. 180 and 181 of 2008 and 306 of 2010 and 406 of 2012, we are of the view that the present petition is not maintainable in the eye of law and as such there is no scope for the High Court Division to interfere the impugned memo of eviction process whatever may be the cause pleaded in the writ petition.

Admittedly, the petitioner is not the owner or lessee of the plot in question. But he candidly admits that after taking permission and investing huge amount of money for constructing infrastructures, the petitioner club is maintaining the park for the welfare of the children and the young people of the Gulshan Model Town. It is admitted that the petitioner has no title on the case land, he was not a party to the impugned eviction notice, the said impugned notice was not communicated to the petitioner and it was an internal communication of the government and as such, the same cannot be enforceable under the judicial review. In this

respect reliance may be made in the cases of **Bangladesh Vs. Dhaka Steel Works Ltd, 45 DLR(AD)70** and **Secretary, Internal Resources Division, Ministry of Finance and Chairman, National Board of Revenue, Dhaka Vs. Nasrin Banu and 5 others, 48 DLR(AD) 70.**

In 45 DLR case as stated above, it has been held as follows:

“Internal exercises of the Government not communicated to the concerned person are not enforceable. No legal right can be founded on those notings done by the Government and furnished in the writ petition.”

Further, in 48 DLR case, as stated above, it has been held as follows:

“The various Ministries/Divisions were thinking aloud, within themselves as to what to do with the erstwhile employees of the Tribunals. None of these annexures were communicated to the writ petitioners. No specific decision was taken by the appellant Ministry in favour of the respondents after these correspondences ended. No legal right can be founded on these inter ministerial/ divisional communications.”

In view of the above decisions, we are of the view that since the impugned notice was not communicated to the writ petitioner and as the petitioner has no legal right to be remained in possession of the said plot in question and moreover, the plot in question has been earmarked as Park in the Layout Plan of Gulshan Model Town, the petitioner cannot be said to be aggrieved by the impugned notice and to file the instant writ petition. Moreover, when both the Divisions of the Supreme Court by their judgments and orders have already settled that Gulshan Central Park shall

remain as Park and under no circumstances any sorts of establishment can be set up in the said plot in question, and also settled that “গুলশান মডেল টাউনের পরিকল্পনা অনুসারে তর্কিত ১৩০এ নং প্লটটি শুধুমাত্র পার্ক ব্যতিত অন্য কোন প্রকার কাজে ব্যবহার করা যাইবে না।”

In view of the discussions made hereinabove and the decisions as referred to above, we are constrained to hold that the writ petition is not maintainable as well as the Rule Nisi issued in the writ petition does not have any merit which is liable to be discharged.

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

Thus, the respondent No. 3 is directed to demolish all unauthorised structures from the Plot No. 130A, Gulshan Avenue, Dhaka to restore the character of the park and protect the same.

Interim order granted earlier stands vacated.

Communicate the order

Md. Iqbal Kabir, J.

I agree.