

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

Writ Petition No. 9743 of 2013
And
Writ Petition No. 2340 of 2017

In the matter of:

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

AND

In the matter of:

Shah Nadir Uddin Ahmed and others

Petitioners(In W.P.No.9743/2013).

Tropical Homes Limited

Petitioner(In W.P.No.2340/2017).

-Versus-

Rajdhani Unnayan Kartipakkha, represented by the Chairman, RAJUK Bhaban, Motijheel, Dhaka and others,

Respondents(In both writ petitions).

Mr. Mohammad Ali Azam, Advocate,

For petitioners (In W.P.No.9743/2013).

Mr. Sherder Abul Hossain, Advocate with

Mr. Suvash Chandra Tarafder, Advocate

For petitioner(In W.P.No.2340/2017).

Mr. K.M. Saifuddin Ahmed, Advocate with

Mr. Md. Abdul Malek, Advocate

For respondent Nos.1 and 2(In W.P.No.9743/2013).

Mr. Sherder Abul Hossain, Advocate with

Mr. Suvash Chandra Tarafder, Advocate

For respondent No.4 (In W.P.No.9743/2013).

Mr. K.M. Saifuddin Ahmed, Advocate with

Mr. Md. Qamrul Islam, Advocate and

Ms. Shahida Akhter, Advocate

For respondent No.1 (In W.P.No.2340/2017).

Mr. Mohammad Ali Azam, Advocate with

Mr. Ali Ahsan Mullah, Advocate

For respondent Nos.3-9 (In W.P.No.2340/2017).

Judgment on: 23.01.2024

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice K M Zahid Sarwar

Md. Khasruzzaman, J:

In both the writ petitions, the subject matter and point of law involved are same and the parties are also same. As such,

both the writ petitions are taken up together for hearing and are being disposed of by this single judgment.

In Writ Petition No. 9743 of 2013, on 18.02.2014 the *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the respondent Nos. 1-3 should not be directed to take action against the respondent No.4 in respect of illegal construction of building made in the land of C.S. Plot No. 683(Part), Modhya Badda, Police Station-Gulshan, Dhaka-1212 and/or pass such other or further order or orders as to this Court may seem fit and proper.”

In Writ Petition No. 2340 of 2017, on 20.02.2017 the *Rule Nisi* under adjudication was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why action of the respondent Nos. 1 and 2 threatening to demolish the building of the petitioner being Tropical Molla Tower, Sha-15/1, Middle Badda, Pragati Swarani, Dhaka- 1212 issued by the respondent No.2 (Annexure-C) should not be declared to have been issued without lawful authority and is of no legal effect and why the respondent Nos. 1 and 2 should not be directed to dispose of the petitioner’s application dated 19.02.2017 as per section 3B(5) of the Building Construction Act, 1952 (Annexure-E) and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts as stated in Writ Petition No. 9743 of 2013, in short, are that the petitioners are the owners of House No. Sha-13 appertaining to Plot No.1481 and Khatian No. 2840 of

Madhya Badda, Gulshan, Dhaka. Md. Wahab Mollah and three others as owners of contiguous land of House No. Sha-15 appertaining to Plot No.683 (Part) of Madhya Badda, Gulshan, Dhaka has entered into an agreement with respondent No.4, Tropical Homes Limited, for constructing of a multi-storied building. As per the agreement, the respondent No.4 started construction in the land which is situated on the northern side of the petitioners land. In making construction, the respondent No. 4 has kept open space measuring 0.88 meter instead of 3.0 meters as required by the Building Construction Rules, 2008. So, the respondent No.4 in violation of the Building Construction Rules is continuing with the illegal construction and as such, the petitioners being the contiguous land owners have been seriously affected by such illegal construction. In such circumstances, on 27.08.2012 the petitioners made a representation to the respondent No.2, Authorized Officer-2, Rajdhani Unnayan Kartipakkha (hereinafter referred to as the RAJUK) for holding physical inspection and taking actions against the respondent No.4, if any deviation is found in the construction (Annexure-A). On the basis of their representation, on 11.09.2012 the respondent No.2 Authorized Officer-2, RAJUK issued show cause notice asking the respondent No.4 to show cause within 07(seven) days as to why he should not be directed to demolish the deviated portion of the construction (Annexure-

B). But the petitioners did not know about what was happened following the show cause notice. As such, on 26.11.2012 the petitioners again made a representation to the respondent No.1, Chairman, RAJUK, for taking action against illegal construction of the respondent No.4 (Annexure-C). The respondent No.1 did not pay any heed to their representation. In such circumstances, on 22.04.2013 the petitioners sent legal notice upon the respondents asking effective steps for demolition of illegal construction on the land (Annexure-D). But they did not take any such action which they are required by law to do.

Under such circumstances, the petitioners moved this Court under article 102 of the Constitution in Writ Petition No. 9743 of 2013 and obtained the present Rule Nisi in the form of mandamus as quoted above.

The very relevant facts for filing Writ Petition No. 2340 of 2017, in short, are that on the basis of an objection filed by the petitioners of Writ Petition No. 9743 of 2013 (respondent Nos. 3-9) before the respondent RAJUK against the present petitioner for taking action against him for illegal construction, RAJUK issued show cause notice dated 11.09.2012 asking reply as to why direction should not be given to demolish the illegal construction. Thereafter, the RAJUK issued final notice dated 25.09.2012 asking the petitioner to demolish the deviated portion of the construction. In this respect, the

petitioner of Writ Petition No. 2340 of 2017 was not aware of the notice. However, from the affidavit in compliance filed by the respondent RAJUK in Writ Petition No.9743 of 2013, the petitioner of Writ Petition No. 2340 of 2017 came to know about the final notice. It is stated that pursuant to the several orders passed in Writ Petition No. 9743 of 2013, the respondent RAJUK was threatening them to demolish the alleged deviation portion of the construction as per the final notice. In such circumstances, the petitioner Tropical Homes Limited made representation dated 19.02.2017 to the respondent RAJUK for taking necessary steps as per section 3B(5) of the Building Construction Act, 1952. Without getting any positive response, the petitioner filed Writ Petition No. 2340 of 2017 challenging the action of threatening as per the final notice dated 25.09.2012 and obtained *Rule Nisi* and interim order of injunction in the form of certiorari and mandamus as stated hereinabove.

The notice of the *Rules Nisi* having been served upon the respondents, the Rules were made ready for hearing. After the Rules were made ready for hearing, those were fixed for hearing in another Bench. Thereafter, due to chance in the constitution of that Bench, the matter was sent to the Hon'ble Chief Justice for order. The Hon'ble Chief Justice vide his order dated 01.12.2022 referred both the matters to this

Bench for hearing and disposal. Accordingly, both the Rules were fixed for hearing.

It appears from the records of Writ Petition No.9743 of 2013 that during the course of hearing of the Rule Nisi, by order dated 10.01.2017 the respondent Nos. 1 and 2 were directed to submit report before this Court as to what steps they have taken in response to the letter dated 27.08.2012 filed by the petitioners. By a subsequent order dated 22.03.2017 earlier Bench directed the respondent No.1 and others to file affidavit explaining the functions and duties of the RAJUK which they are required by law to do from the approval of the plan and design of any building or construction upto completion of the construction thereof. The respondent RAJUK having received the orders of this Court, filed affidavits in compliance of the same annexing reports and stating the actions what they have taken against the illegal construction as asked for by this Court.

Accordingly, respondent No.1, Chairman, Rajdhani Unnayan Kartipakkha (RAJUK) in their *affidavits in compliance and affidavits-in-opposition* stated *inter-alia* that RAJUK always ready to take necessary action against the illegal construction whenever any violation of the Building Construction Act and Rules is found against any construction. It is stated that the RAJUK through its officials physically inspected the site and found deviation in the common stair,

place of lift, ground floor of the north side and south side of the building. Thereafter, it issued show cause notice on 11.09.2012 upon the respondent No.4 to show cause as to why a direction should not be given to demolish the deviated portion of the construction. The show cause notice dated 11.09.2012 being not responded, final notice dated 25.09.2012 was issued directing the respondent No.4 to demolish the deviated portion of construction in the building. So, the process was in progress. But in the meantime, the instant Writ Petition No.9743 of 2013 was filed and the *Rule Nisi* was issued on 18.02.2014. Thereafter, during pendency of the instant *Rule Nisi*, RAJUK undertook an eviction programme by Mobile Court on 20.04.2017. In the meantime, the respondent No.4 filed Writ Petition No.2340 of 2017 challenging the final notice dated 25.09.2012 and obtained the *Rule Nisi* and an interim order restraining the respondent RAJUK from demolishing the building. Thereafter, eviction activities were done on 24.07.2017 and sealed off the building by evicting all the occupants and also disconnecting utility facilities of the building. Then the land owner of the respondent No.4 also filed Writ Petition No. 10564 of 2017 and obtained *Rule Nisi* and an interim order of unlocking the seal off by order dated 26.07.2017. In placing the legal position of the case, the respondent RAJUK stated that it has no laches or negligence to take any action against the illegal

construction. It is further stated that as per order dated 22.03.2017 the respondent No.1 has produced report dated 29.03.2017 by way of affidavit-in-compliance dated 02.04.2017 giving the actual picture of taking actions in the preceding two years against the Authorized Officer, Building Inspector who failed to discharge their duties in accordance with law in case of finding any deviation in the construction of building. Accordingly, this respondent stated that they have no negligence or laches and they are always duty bound to take action as required under law, and thereby pray for disposing of the *Rule Nisi* in accordance with law.

Petitioner of Writ Petition No.2340 of 2017 as respondent in Writ Petition No.9743 of 2013, Tropical Homes Limited filed *affidavit-in-opposition* stating *inter-alia* that the owners of the land obtained approval of their plan for construction of 15 (fifteen) storied residential cum commercial building vide Memo dated 30.12.2004 as required under section 3 of the Building Construction Act, 1952. Thereafter, they through their nominated developer company namely- Neer Limited constructed upto 5th floor in part of the land. There was no question of deviation from the RAJUK. The developer company could not complete the construction due to financial constrain. As such, the owners of the land again entered into a deed of agreement on 31.07.2011 with the respondent No.4 to complete the project and also executed registered power of

attorney. The respondent No.4 accordingly completed the construction without any deviation from the approved plan. It is further stated that the approval for using the land and the plan were given in the year 2004 under the Building Construction Act, 1952 and the Building Construction Rules, 1996. As per the setback space mentioned in the plan approved by the RAJUK under the Construction Rules 1996, the construction was made keeping the mandatory open space by the side of the building and as such, there is no scope to raise the question of any deviation in the construction. It is also stated that the construction was started in 2006 whereas after more than 06 (six) years the objection was made by the petitioner about deviation in the construction. Actually, there is no violation or deviation from the approved plan and the law applicable at the relevant time and as such, the *Rule Nisi* is liable to be discharged.

Mr. Mohammad Ali Azam along with Mr. Ali Ahsan Mullah, the learned Advocates appearing on behalf of the petitioners in Writ Petition No.9743 of 2013 and also on behalf of the respondent Nos. 3 to 9 in Writ Petition No. 2340 of 2017, submits that the respondent No.4 in Writ Petition No. 9743 of 2013 who is the petitioner of Writ Petition No. 2340 of 2017 in violation of the Dhaka Metropolitan Building (Construction, Development, Conservation and Removal) Rules, 2008 has constructed the building and also deviated

from the approved plan and as such, the petitioners being the owners of contiguous land of the building have seriously affected by such illegal and unauthorized construction. Therefore, they made representation to the respondent RAJUK on 27.08.2012 for physical inspection and taking action if any deviation is found. He further submits that the respondent No.4 did not give any reply to the show cause notice issued pursuant to their representation dated 27.08.2012 which indicates that their allegation as to deviation in the construction is correct. Even then the respondent RAJUK did not demolish the deviated portion of the construction and as such he prays for a direction to be issued upon the respondent RAJUK to demolish the deviated portion of the construction in accordance with law and hence, he prays that the *Rule Nisi* in Writ Petition No. 9743 of 2013 should be made absolute and that of Writ Petition No.2340 of 2017 should be discharged.

Mr. K.M. Saifuddin Ahmed along with Mr. Md. Abdul Malek and Mr. Md. Qamrul Islam, the learned Advocates appearing on behalf of the respondent No.1 in both the writ petitions submit that the allegation against the RAJUK about inaction against the illegal construction or any violation of the building is not correct. They further submit that RAJUK physically inspected the site and found deviation in the common stair, place of lift, ground floor of the north side and south side of the building and thereafter, issued show cause

notice on 11.09.2012 upon the respondent No.4 as to why he should not be directed to demolish the deviated portion of the construction. Since the respondent No.4 did not give any reply against final notice dated 25.09.2012 directing the respondent No.4 to demolish the deviated portion of construction in the building, the process of taking action was in progress and the representation dated 27.08.2012 was considered by the respondent authority. Nevertheless, the petitioners filed the instant Writ Petition No.9743 of 2013 and obtained the *Rule Nisi* on 18.02.2014. Mr. K.M. Saifuddin Ahmed, the learned Advocate also submits that during pendency of the instant *Rule Nisi*, the respondent No.4 also filed Writ Petition No.2340 of 2017 challenging the final notice dated 25.09.2012 and obtained the *Rule Nisi* and interim order restraining the respondent RAJUK from demolishing the building. Since there was a restraining order against the RAJUK, deviated portion of the building could be demolished. But by an eviction drive made on 24.07.2017, the building was sealed by disconnecting all utility facilities of the building. Thereafter, challenging the action of sealing and disconnecting the utility facilities in the eviction drive made on 24.07.2017, the land owner of the respondent No.4 also filed Writ Petition No. 10564 of 2017 and obtained the *Rule Nisi* and interim order of unlocking the seal off by order dated 26.07.2017. In such circumstances, the respondent RAJUK could not demolish the deviated portion of

the construction and thereby submitted that the respondent RAJUK has no laches or negligence to take any action against the illegal construction. Accordingly, the learned Advocate submits that the *Rule Nisi* may be disposed of in accordance with law.

Mr. Sherder Abul Hossain along with Mr. Suvash Chandra Tarafder, the learned Advocates appearing on behalf of the respondent No.4 in Writ Petition No.9743 of 2013 and for the petitioner in Writ Petition No.2340 of 2017, at the very outset pointed that since the owners of the land obtained approval of their plan for construction of 15(fifteen) storied residential cum commercial building vide Memo dated 30.12.2004 as required under section 3 of the Building Construction Act, 1953, they will be guided by the Building Construction Rules, 1996 which was prevailing at the relevant time. As such, the alleged deviation assessed by the respondent RAJUK as per provision of the Building Construction Rules, 2008 and the notice purported issued alleging the deviation made as per the Rules 2008 is out and out illegal and not tenable in the eye of law. He further submits that the approval for use of the land and plan was given in the year 2004 under the Building Construction Act, 1952 and the Building Construction Rules, 1996 framed thereunder. As per the setback space mentioned in the plan approved by the RAJUK under the Building Construction

Rules 1996, the construction was made keeping the mandatory open space by the side of the building and so, there is no scope to raise the question of any deviation in the construction. Actually, there is no violation or deviation from the plan and approval and the law applicable at the relevant time. He also submits that the petitioners in Writ Petition No. 9743 of 2013 are the contiguous land owners of the same family. Their house is situated by 04(four) feet width path way whereas the building is situated in the contracted land of respondent No.4 and there is sufficient setback space as per approved plan and as such, question of damage raised by the petitioners is not maintainable. As such, the *Rule Nisi* issued in Writ Petition No. 9743 of 2013 is liable to be discharged and that of Writ Petition No.2340 of 2017 be made absolute.

We have considered the submissions of the learned Advocates of the respective parties and perused the writ petitions, orders passed by this Court during the hearing of the Rule Nisi, *affidavits-in-compliance*, *affidavits-in-opposition* and other papers annexed thereto.

On perusal of the materials on record in Writ Petition No.9743 of 2013, it appears that the approval for use of the land for construction of 15 (fifteen) storied residential cum commercial building was given to the land owners of the respondent No.4 vide Memo No. রাজউক/ন:প:/২১-২৫(ম-৮৪)/২৪৮ স্থা: dated 15.03.2004. Thereafter, plan was approved for

construction of 15 (fifteen) storied residential cum commercial building vide Memo dated 30.12.2004. After obtaining approval as stated above, the land owners through the first nominated developer company by a power of attorney started construction in 2006. Whereas, in 2012 the petitioners raised objection in the construction stating that there has been deviation from the approved plan and the applicable law without keeping mandatory open space by the side of the building. It appears that in the meanwhile construction upto 06(six) storied was completed and none raised any such objection.

However, on the basis of the representation cum objection made by the petitioners, it appears that RAJUK physically inspected the site and found some deviations in the construction. The deviation appears to have been ascertained as per the Building Construction Rules, 2008. Show cause notice dated 11.09.2012 was issued upon the respondent No.4 as to why direction should not be given to demolish the deviated portion of the construction. The show cause notice dated 11.09.2012 being not responded, final notice dated 25.09.2012 was issued directing him to demolish the deviated portion of construction in the building. In the midst of the proceedings the final notice was in progress but the petitioners filed the instant Writ Petition No. 9743 of 2013 and the *Rule Nisi* was issued on 18.02.2014. During pendency of the *Rule*

Nisi, RAJUK undertook an eviction programme by Mobile Court scheduled to be held on 20.04.2017 for demolition of the unauthorized construction.

In the meantime, the respondent No.4 filed Writ Petition No.2340 of 2017 challenging the said final notice dated 25.09.2012 and obtained the *Rule Nisi* and interim order restraining the respondent RAJUK from demolishing the building vide order dated 20.02.2017. This being the legal position, the respondent RAJUK was not in a capacity to demolish the deviated portion in the construction as stated by them in their affidavit in compliance.

However, eviction drive was made on 24.07.2017 and the building in question was sealed off and also disconnected all utility facilities of the building. As such, being aggrieved by such action of the RAJUK as stated above, the land owner of the respondent No.4 filed Writ Petition No. 10564 of 2017 and obtained *Rule Nisi* and interim order of unlocking the seal off by order dated 26.07.2017. The learned Advocate for the respondent No.4 submits that the *Rule Nisi* issued in Writ Petition No. 10564 of 2017 was discharged for non prosecution vide order dated 31.05.2013.

So, from the facts and circumstances as stated above, it appears that since the final notice of demolishing the deviated portion of the construction was challenged in Writ Petition No.

2340 of 2017 and since there has been an interim order of restraint/injunction from demolishing the building pursuant to the final notice issued on the basis of the representation of the petitioners dated 27.08.2012, we are of the view that there is nothing left for adjudication in Writ Petition No. 9743 of 2013 as the same is the subject matter of Writ Petition No. 2340 of 2017. Accordingly, the issue raised is taken up for discussion.

However, the petitioners in their writ petition No.9743 of 2013 alleged that the construction was made in violation of Building Construction Rules, 2008. The respondent RAJUK also in their different reports annexed with the *affidavits-in-compliance* produced certain deviations which appear to have been made based on the Building Construction Rules, 2008. Because, the setback space as mentioned in the Building Construction Rules, 1996 and that of 2008 are not similar.

In this respect, the learned Advocate for the respondent No.4 of Writ Petition No.9743 of 2013 and petitioner of Writ Petition No.2340 of 2017 stated and submitted that the construction of the building in question would be guided by the Building Construction Act, 1952 and the Building Construction Rules, 1996 because the approval of plan and use of the land was given in the year of 2004 during the period when the Bangladesh Construction Rules, 1996 was prevailing.

Under such circumstances, this matter should be clarified. In this respect, we need to go through the terms of the approval for use of the land for construction of 15(fifteen) storied residential cum commercial building (Annexure-IX to the supplementary affidavit-in opposition filed by the respondent No.1 dated 15.10.2023). The relevant portion of the terms is quoted below:

“শর্ত সমূহ:

(১).....

(২) ইমারত নির্মাণ বিধিমালা ১৯৯৬ ও বিভিন্ন সংস্থার ছাড়পত্রের নির্দেশিত শর্ত পূরণ করতে হবে।

(৩).....

(৪) ইমারতের উচ্চতা বিভিন্ন সংস্থার প্রদত্ত ছাড়পত্র পরীক্ষান্তে ইমারত নির্মাণ বিধিমালা ১৯৯৬ অনুযায়ী বি.সি. কমিটি নির্ধারণ করবে।

(৫).....

(৬).....”

Question may arise that which Rules would be applicable in case of the instant subject matter since the law of Building Construction Rules, 1996 has been repealed by the Building Construction Rules, 2008. The law says that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. So, the statements and submissions of the petitioners regarding deviation basing on Bangladesh Construction Rules, 2008 and the deviation assessed by the respondent RAJUK on the

basis of Bangladesh Construction Rules 2008 appears to be misconceived.

So, under such circumstances, the final notice dated 25.09.2012 which was issued showing the deviation purportedly made as per Building Construction Rules, 2008 based on which the respondent RAJUK tried to demolish the building has got no basis in the eye of law. If we make comparative study of the statement and figure of the setback space given by the RAJUK in their notices along with the Rules of 1996 and 2008 it will make us clear that basing on the setback space given in Building Construction Rules, 2008 RAJUK has issued the final notice alleging deviation in the construction inspite of the fact that the Rules of 2008 are not applicable in case of the construction in question which was started as per the approved plan and permission given as per Building Construction Rules, 1996. As such, the final notice dated 25.09.2012 issued by the respondent RAJUK on the basis of representation cum objection made by the petitioners of Writ Petition No. 9743 of 2013 alleging deviation as per Building Construction Rules, 2008 (Annexure-C to the Writ Petition No.2340 of 2017) is hereby declared to have been made without lawful authority and is of no legal effect. But we are not in a position to observe whether in constructing the building any deviation has been made, because, the same requires inspection and assessment on the basis of the

provision of the Building Construction Rules, 1996. As such, we are refrained from making any comment on the deviation.

Now let us come to the 2nd portion of the Rule Nisi in Writ Petition No. 2340 of 2017 as to whether direction can be issued upon the respondent Nos. 1 and 2 to dispose of the petitioner's application dated 19.02.2017 as per section 3B(5) of the Building Construction Act, 1952 vide Annexure-E to the writ petition. In this respect, the law has provided the guidelines. Under section 3B(5), the Administrative Officer is prohibited from passing any order under section 3B from directing any person to remove the unauthorized portion of construction unless it is found that such unauthorized construction is contrary to the master plan or development plan of the area in which the building is situated or cannot be constructed in accordance with the terms and conditions of sanction alleged to have been breached or causes undue inconvenience in respect of use or occupation of any land or building or passage in the area adjacent to it; or sanction as prayed for, could not be granted for construction of the building.

However, under section 3B(5) of the Act, the unauthorized portion of construction can be legalized on payment of fine not less than TK.5,000.00, not more than TK.50,000.00 and upon making necessary addition or alteration to the building as may be directed by the

Administrative Officer within such time and may obtain necessary sanction on payment of fees 10(ten) times the amount of fees so prescribed in the statute.

So, that being the legal position, the respondent RAJUK is empowered to deal with the application filed by the petitioners under section 3B(5) of the Building Construction Act, 1952.

Now a days we observe in various dailies that construction is being made haphazardly causing serious trouble to the adjacent inhabitants as well as causing serious pollution in the environment. To prevent and control of such haphazard construction of the building, the Building Construction Act, 1952 was enacted and the Building Construction Rules were framed from time to time. So, whenever any land owner needs to construct building, he is entitled to construct his building as his fundamental right. But before going to make such construction he or she has to go by certain steps and procedures to have permission for construction in the land as required under the law. On the other hand, the RAJUK having the controlling and supervising authority has been bestowed with certain powers to approve a plan for construction, permission to use a land, issuance of occupancy certificate and regular inspection on each and every site to see whether any deviation is being made in the construction. Any sort of negligence or failure on the part of

the respondent RAJUK in discharging the duties in this field is not expected rather the same is deprecated. Side by side, the developer or the land owner involved in construction shall cautious about compliance of the approved plan and existing law while constructing any building.

However, we find merit in the Rule Nisi so far issuance of the notice in Writ Petition No. 2340 of 2017 which was issued on the basis of representation cum objection made by petitioners of Writ Petition No. 9743 of 2013 alleging deviation as per Building Construction Rules, 2008. But we are refrained from making any comment on the question as to whether any deviation has been made in the construction.

Accordingly, the *Rule Nisi* of Writ Petition No. 2340 of 2017 is made absolute in part. The respondent Nos. 1 and 2 are hereby directed to dispose of the petitioner's application dated 19.02.2017 as per section 3B(5) of the Building Construction Act, 1952.

Consequently, the *Rule Nisi* issued in Writ Petition No. 9743 of 2013 is disposed of.

There will be no order as to costs.

Communicate the order.

K M Zahid Sarwar, J.

I agree.