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

WRIT PETITION NO. 11898 of 2014

IN THE MATTER OF:
An Application under Article 102 (2) of the Constitution of the People's Republic of Bangladesh
-AND-
IN THE MATTER OF:
Md. Abdul Haque
....Petitioner
-Versus-
The Chairman Rajdhani Unnayan Kartipokkha (RAJUK), RAJUK Bhaban, Motijheel, Dhaka, and others
....Respondents
Mr. Md. Sarowar Hossain, Advocate
....For the petitioner
Mr. Md. Imam Hasan, Advocate
....For the Respondent No. 1
Mr. Md. Anichur Rahman Khan, D.A.G with
Mr. Md. Mizanur Rahaman, D.A.G with
Mr. Mir Moniruzzaman, A.A.G with
Mr. Md. Sarwar Alam Khan, A.A.G with
Ms. Nargis Parvin (Alija), A.A.G
....For the Respondents
Heard on 25.11.2025, 02.12.2025, 07.12.2025 and 08.12.2025

Judgment delivered on 14.12.2025

Present:

Mr. Justice Md. Shohrowardi
And
Mr. Justice Md. Sagir Hossain

Md. Shohrowardi, J.

On an application under Article 102 (2) of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued in the following terms:-

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why notice dated 30.11.2014 issued vide memo No. রাজউক/নঅঅ-৪/২সি-০৬৮/২০১৪/১৪৩৯ ছাঃ under the signature of the respondent No.2, i.e., the Authorized Officer-4, Rajdhani Unnayan Kartipokkha (RAJUK), RAJUK Bhaban, Motijheel, Dhaka for demolishing the house of the petitioner within 07(seven) days (as contained in Annexure-"F" to the writ petition) should not be declared to have been issued without lawful authority and is of no legal effect and/or such other or further order or orders be passed as to this Court may seem fit and proper."

The relevant facts for disposal of the Rule Nisi are that the petitioner purchased .0288 ¾ decimals of land appertaining to City Khatian No. 6617, corresponding C.S

and S.A Dag No. 217 of Mouza Ulun vide registered deed dated 07.01.2003, and on 30.10.2005 obtained the approval of the design of the building from RAJUK. After obtaining approval of the design, the petitioner constructed a three-storied building in 2006 and started living there without any objection from RAJUK. On 12.03.2014, the respondent No. 2 issued a notice to the petitioner to submit the approved design of the building. Accordingly, on 16.03.2014, the petitioner submitted the approved design of the building to RAJUK. On 15.09.2014, the respondent No. 2 issued another show cause notice to the petitioner, directing him to show cause as to why the building constructed in violation of the approved design should not be demolished. On 22.09.2014, the petitioner submitted the reply to the said show cause notice stating that he constructed the building following the design of RAJUK. After that, the respondent No. 2, without hearing the petitioner and also without enquiry, illegally issued the final notice on 30.11.2014, giving 07(seven) days to the petitioner to demolish the building.

The petitioner filed the supplementary affidavit on 07.12.2025 stating that, as per the approved design, the building is 12.65m/41.6ft long from south to north and 9.15m/30ft wide from east to west. The building has been constructed on 11.3m/36.2ft (including 1m/3.28ft setback), leaving 12.65m-11.03m/41.6ft-36.2ft=1.64m/5.4ft area on the south front setback. As per plan and Sub-Rule 5 of Rule 8, 1.5m/4.92ft is the front setback (south). The petitioner left 1.64m/5.4ft - 1.5m/4.92ft= 0.14m/0.45ft area more than the required setback. There was no violation of the approved design of the building.

The respondent No. 1 RAJUK filed an affidavit in opposition stating that on 09.02.2014, at the time of inspection of the building of the petitioner by RAJUK, the petitioner was asked to show the approved design of the building, but he failed to show any design of the building. On 12.03.2014, the RAJUK served a notice upon the petitioner to submit the design. Thereafter, the petitioner submitted the design on 18.03.2014 to the respondent. On perusal of the approved design and physical inspection, RAJUK found that the building was constructed in violation of the approved design. On 15.09.2014, the RAJUK served a notice upon the petitioner to show cause as to why an order should not be made to remove or dismantle the building within seven days and by final notice dated 30.11.2014 the petitioner was directed to remove or dismantle the unauthorized part of the building failing which the RAJUK would remove or dismantle the same and the costs of demolition would be realized from the petitioner following law. The petitioner did not remove unauthorized construction by dismantling the building in question within the specified time, and the RAJUK fixed a date on 30.12.2014 for the removal or eviction of the petitioner. As per the approved design, 1.82 meters setback is required on the south side of the building, but the petitioner constructed the building keeping .68 meter setback on the

south side. In the approved design, a parking space was kept on the ground floor, but there is no parking.

Learned Advocate Mr. Md. Sarowar Hossain, appearing on behalf of the petitioner submits that after constructing the building in 2006, the petitioner started residing there and no objection has been raised by the RAJUK during the construction of the building and long after 8 years of construction, without any inspection suddenly the respondent No. 2 issued a notice on 12.03.2014 to the petitioner to submit the approved design of the building and he submitted the approved design on 16.03.2014. Thereafter, the respondent No. 2 issued another notice on 15.09.2014 to show cause as to why the unauthorised construction of the building should not be demolished and he submitted the reply on 22.09.2014 to the show cause notice dated 15.09.2014 and without giving any opportunity of personal hearing to the petitioner and also without any enquiry incompliance with the provision made in section 3B(3) of the Building Construction Act, 1952, illegally issued the impugned final notice on 30.11.2014 for demolishing the building. Having drawn the attention of this Court to section 10 and sub-section 5 of section 3B(3) of the said Act, the learned Advocate submits that the impugned order has been issued without inspection of the building and there is no finding in the impugned order regarding the satisfaction of any condition stipulated in sub-section 5 of section 3B of the said Act. In support of his submission, the learned Advocate relied on a decision made in the case of Abdus Sattar Md. Vs. Bangladesh and others, reported in 1 BLC (AD) 161.

Learned Advocate Mr. Md. Imam Hasan, appearing on behalf of the Respondent No. 1, RAJUK, submits that under section 3B(3) of the Building Construction Act, 1952, the RAJUK is authorized to demolish any building constructed violating the approved design of the RAJUK, and the petitioner violated .68 metre setback to the south side of the building. Therefore, the impugned order was legally issued to demolish the building, exercising the power under section 3B(3) of the Building Construction Act, 1952. He further submits that there is a provision in section 15 of the Building Construction Act, 1952, regarding an appeal against the order directing the demolition of any building constructed in violation of the approved design, but no appeal has been filed by the petitioner. Therefore, the writ petition is not maintainable in law. He also submits that the Mobile Court is also empowered under the Mobile Court Act, 2009, to demolish any building constructed in violation of the approved design of Rajuk. In support of his submission, the learned Advocate relied on decisions made in the case of Shahabuddin Chisti vs Rajdhani Unnayan Ktripakhya, and another reported in 18 BLT (AD) 501, Government of Bangladesh and others vs Gias Uddin Chowdhury and others reported in 17 BLC (AD) 14, and SM Jahidul Islam vs Chairman, Rajdhani Unnayan Kartipakkha (RAJUK) and others reported in 23 BLC 935.

We have considered the submissions of the learned Advocate Mr. Md. Sarowar Hossain, who appeared on behalf of the petitioner, and the learned Advocate Mr. Md. Imam Hasan, who appeared on behalf of the respondent No. 1, RAJUK, perused the writ petition, affidavit-in-opposition filed by the respondent No. 1, RAJUK, and the records.

The issue involves the Rule as to whether the writ petition is maintainable in law and as to whether the Authorised Officer or the Committee, as the case may be, without personal hearing of the owner of a building and also without enquiry under section 3B(3) of the Building Construction Act, 1952 can proceed to demolish the disputed construction without arriving at any finding that the disputed construction answers any of the condition stipulated in sub-section 5 of section 3B of the said Act.

On perusal of the records, it is revealed that the respondent No. 2, authorized officer-4, RAJUK, issued a notice on 12.03.2014 (Annexure-2) directing the petitioner to submit an approved design of his building within seven days, and the petitioner submitted the approved design on 18.03.2014. Thereafter, the respondent No. 2 issued a show cause notice on 15.09.2014 to show cause as to why an order for removal of the illegally constructed part of the building should not be demolished within seven days. The petitioner replied to the said show cause notice on 22.09.2014, stating that the petitioner constructed the building in 2006 following the approved design, keeping an additional setback to the south side of the building, and no violation was made by the petitioner at the time of construction of the building. After that, the respondent No. 2 issued the final notice on 30.11.2014 for demolishing the disputed construction.

At this stage, it is relevant here to quote section 3(B) of the Building Construction Act, 1952, which runs as follows;

> “3B. (1) Where it appears to the Authorised 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 reconstruction 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 re-construction 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).

(3) Where, after considering the cause shown, if any, within the time mentioned in the notice and giving the person showing the cause a reasonable opportunity of being heard, or where no cause is shown within such time, the Authorised Officer or the Committee, as the case may be, after such enquiry as he or it deems fit, is satisfied that the building has been, or is being, constructed or re-constructed, or addition or alteration to the building has been, or is being, made, or the tank has been, or is being, excavated or re-excavated without obtaining the sanction under section 3, or in breach of any of the terms and conditions subject to which sanction was granted under that section, he or it may, by an order in writing stating reasons therefore, direct the owner, the occupier and the person in-charge of the building or the tank to remove or dismantle the building or any portion thereof or to fill up the tank or any portion thereof as specified in the order within such time as may be fixed by him or to stop further construction or re-construction, addition or alteration or excavation or re-excavation, as the case may be; and otherwise shall make an order vacating the notice.

(4) Where further construction or re-construction of, or addition or alteration to, any building, or excavation or re-excavation of any tank has been stopped under sub-section (2) and cause is shown within the time mentioned in the notice against the stoppage of such further

construction or re-construction, addition or alteration, excavation or re-excavation, as the case may be, the Authorised Officer or the Committee, as the case may be, shall make his or its order under sub-section (3) within fifteen days from the date the cause is shown.

(5) No order under this section shall be made directing any person to remove or dismantle any building or part thereof or to fill up any tank or part thereof unless it is found that-

(a) such building or part thereof has been constructed, or re-constructed, or such tank or part thereof has been excavated or re-excavated at a place or in a manner which is contrary to the master plan or development plan, if any, of the area in which the building or the tank is situated, or

(b) such building or part thereof cannot be re-constructed, or altered or such tank, or part thereof cannot be re-excavated, in accordance with the terms and conditions of the sanction alleged to have been breached, or

(c) such building or part thereof or such tank or part thereof causes any undue inconvenience in respect of use or occupation of any land or building or road or passage in the area adjacent to it, or

(d) sanction, if prayed for, could not be granted for the construction or reconstruction of, or addition or alteration to, the building or excavation or re-excavation of the tank:

Provided such person-

(i) pays, within the time specified by the Authorised Officer or the Committee, as the case may be, a fine of an amount, which shall not be less than TK. 5,000 and more than TK. 50,000 to be determined by that Officer or the Committee,

(ii) makes necessary addition or alteration to the building, or makes the excavation or the filling up of the tank as may be directed by the Authorised Officer or the Committee within the time specified by that Officer or the Committee, and

(iii) obtains the necessary sanction on payment of a fee which shall be ten times the amount of the fee prescribed.

(6) If a person fails to pay the fine or make the addition or alteration or excavation or filling or obtain the sanction as mentioned in sub-section (5) within the time specified by the Authorised Officer or the Committee, as the case may be, under that sub-section, the said officer or the Committee may, by an order in writing, direct the owner, the occupier and the person in-charge of the building or the tank to remove

> or dismantle the building or any portion thereof or to fill up the tank or any portion thereof as specified in the order within such time as may be fixed by him or it.
>
> (7) A notice or an order under this section shall be served in the prescribed manner."

On a bare reading of section 3B of the Building Construction Act, 1952 reveals that if any building has been constructed or re-constructed, or any addition or alteration to any building has been made, before or after the commencement of the Building Construction (Amendment) Ordinance, 1986 (Ordinance No. LXXII of 1986) and any building is being constructed, or re-constructed, or any addition or alteration to any building is being made without obtaining the sanction under section 3, or in breach of any of the terms and conditions of the approved design, the Authorised Officer or the Committee, as the case may be, shall issue a show cause notice upon the owner, the occupier and the person-in-charge of the building to show cause within seven days, as may be specified in the notice, as to why the disputed construction should not be removed or dismantled, and during the pendency of the reply, he or it is also empowered to direct the owner of the building to stop the construction.

After showing cause, if any, the Authorised Officer or the Committee, as the case may be, shall consider the reply to the show cause notice and hear the owner, the occupier, and the person in charge of the building in person. After considering the cause shown and personal hearing, if he or it is not satisfied, shall make an enquiry regarding the disputed construction and after enquiry, if the authorized officer or the committee found that disputed building is constructed in violation of the approved design, he or it shall issue a notice stating reason thereof directing the owner, the occupier and the person-in-charge of the building to remove or dismantle the building or any portion thereof as specified in the order within the specified him or to stop further construction, or re-construction, addition, or alteration, as the case may be. Otherwise shall make an order vacating the notice. The power of the Authorised Officer or the Committee to demolish any part of the disputed construction is subject to compliance with the provisions made in section 3B(3) and (5) of the said Act. No absolute power is given to the Authorised Officer or the Committee, as the case may be, to demolish any disputed construction or part thereof unless an opinion has been arrived at by the Authorised Officer or the Committee, following the procedures laid down in section 3B(3) of the said Act that the disputed construction answers any of the pre-condition stipulated in clause (a) or (b) or (c) or (d) of sub-section 5 of section 3B of the said Act.

On perusal of the writ petition, it appears that the petitioner obtained the approved design in 2005 and constructed a three-storied building thereon in 2006, and has been residing there since 2006. The notice dated 12.03.2014 (Annexure-2) was

issued long after 8 years of the construction of the three-storied building. In the notice dated 12.03.2014 (Annexure-2), it has been mentioned that under section 10 of the Building Construction Act, 1952 (Amended in 2006) at the time of construction/re-construction of the building an approved plan is required to be kept at the building site to show authorized officer of the RAJUK at the time of inspection but he could not show any approved plan of the RAJUK during inspection by the authorized officer. A scrutiny of Annexure-2 reveals that no date of inspection has been mentioned in the said notice dated 12.03.2014. Therefore, we are of the view that without any inspection of the building, the respondent No. 2 issued the notice dated 12.03.2014 (Annexure-2) directing him to submit the approved design.

It is true that at the time of construction or reconstruction of the building, the owner of the land/building would keep an approved design of the building to show it at the time of inspection by an Authorised Officer or the Committee, as the case may be. In the instant case, three storied building was constructed in 2006, and thereafter, further construction was not started by the petitioner. Furthermore, no notice was given under section 10(b) of the said Act to the owner or occupier of the building before the alleged inspection. Therefore, there was no reason to keep the approved design of the RAJUK on the building site to show the authorized officer or the committee during inspection.

On perusal of the impugned final notice dated 30.11.2014 (Annexure-F), it reveals that nothing has been mentioned in the said notice, which part of the building is required to be demolished. In the impugned notice (Annexure-F), it has been mentioned that the building was constructed in violation of the provisions of Section 3B of the Building Construction Act, 1952. Before issuance of impugned final notice dated 30.11.2014 (Annexure-F) no finding has been arrived at by the respondent No. 2 that the disputed construction answers any of the condition stipulated in clause (a), or (b), or (c) or (d) of sub-section 5 of section 3B of the Building Construction Act, 1952.

After issuance of the notice dated 12.03.2014 (Annexure-2), the petitioner submitted the approved design of the building on 18.03.2014, and thereafter, another show cause notice was issued on 15.09.2014, and on 22.09.2014, the petitioner gave a reply to the said show cause notice denying the alleged illegal construction of the building. On scrutiny of the writ petition and the affidavit-in-opposition, we found that no opportunity of personal hearing was given to the petitioner and no enquiry was held by the authorized officer or the committee in compliance with the provision made in sub-section 3 of section 3B of the Building Construction Act, 1952. Therefore, we are of the view that the impugned final notice (Annexure-F) was issued mala fide in violation of the provision made in section 3B(3) and (5) of the Building Construction Act, 1952.

At this stage, it is relevant here to rely on a decision made in the case of Md. Abdus Satter vs Government of Bangladesh and others, judgment dated 08.01.1995, Writ Petition No. 2595 of 1994, in which a division bench rejected the writ petition summarily, holding that;

> "In reply to this show cause notice, the petitioner showed cause on 22-12-94 (Annexure E) wherein he admitted that there was a slight deviation from the approved plan due to change of the boundary. On the same date, the Building Construction Committee of RAJUK took a decision to cancel the plan of the petitioner on the ground of his failure to comply with the earlier directions of RAJUK to demolish unauthorised construction and according to this decision the impugned order as contained in annexure F was issued, As the petitioner was given opportunity to explain his position, it cannot be said that by issuing the impugned order, the principle of natural justice was violated. We also examined the provision of law under which the Rajuk is authorised to cancel approved Layout plan for construction of the building and we are satisfied that the grounds upon which it has been done so in the case of the petitioner, do not call for any interference inasmuch as the authority does not lack in power in making such an order impugned before us."

The petitioner of the Writ Petition No. 2595 of 1994 obtained leave against the said judgment and order in the Appellate Division in Civil Appeal No. 27 of 1995, and, our Apex Court by judgment and order dated 28.08.1995 allowed the appeal, which has been reported in 1 BLC (AD) 161, in which, our Apex Court (Mr. Mustafa Kamal, J) held that;

> "By the impugned order, the Authorised Officer also directed the appellant to demolish/remove the unauthorised construction, or else necessary steps would be taken to demolish the same, but no order of demolition can be passed under sub-section (5) of section 3B of the said Act unless a finding is given that the disputed construction answers the description contained in clause (a) or (b) or (c) of sub-section (5). The disputed building, in fact, does not fit in with the descriptions given in the said clauses (a) or (b), or (c)."

In the case of Shahabuddin Chisti vs Rajdhani Unnayan Ktripakhya and another, reported in 2010 (XVIII) BLT (AD) 501, para 12, judgment dated 28.07.2008 (Mr. Mohammad Fazlul Karim, J as his Lordship was then) it has been held that;

> "The Act has provided an ouster of jurisdiction of the Civil Court under the provision of Section 14 of the Building Construction Act, which is bar to maintain any suit against the order passed by RAJUK under the

> Act, providing provision for an appeal therein. In the instant case, the appellant has not availed the said provision of appeal; instead, filed the suit which is not maintainable as the special provision provides a special remedy for the purpose, and the person being satisfied with any order of RAJUK could prefer an appeal in the special forum for the purpose."

Subsequently, in the case of Government of Bangladesh and others vs Gias Uddin Chowdhury and others reported in 17 BLC (AD) 14, para 25, judgment and order dated 15.05.2011 (Mr. SK Sinha, J as his Lordship was then) it has been held that;

> "The High Court Division erred in directing the appellants to set their lands demarcated by filing a partition suit in failing to notice that the statutory provisions have authorized the Government or RAJUK or Kartipakkha to evict the unauthorized encroachers, and therefore, the direction as given by the High Court Division is misconceived. The Court cannot direct the Government to recover its land resorting to a partition suit, inasmuch as, in such circumstances, the statutory provisions for recovery of possession of public property will be rendered nugatory. The writ petitioners cannot have any right to restrain the public authority in the performance of its statutory duty and to compel it to file a partition suit for the recovery of public property. No consideration should be shown to persons where the construction is unauthorized. The dicta is almost bordering on the rule of law."

In the case of SM Jahidul Islam vs Chairman, Rajdhani Unnayan Kartipakkha (RAJUK) and others reported in 23 BLC 935, para 13, judgment dated 04.04.2018, (Mr. Md. Badruzzaman, J) it has been held that;

> "In view of the above, we are of the view that this writ petition is not maintainable. Since the writ petition is not maintainable, we are not inclined to go into its merits. However, the petitioner is allowed to prefer an appeal under section 15 of the Building Construction Act 1952, if so advised, within 30 (thirty) days from the date of receipt of the copy of this judgment in accordance with law."

When any judgment and order is passed on a point of law by our Apex Court, in view of the provision made in Article 111 of the Constitution, this Court is bound to follow the judgment and order passed by our Apex Court.

In Writ Petition No. 2595 of 1994, the petitioner filed the writ petition challenging the order of Rajuk for demolition of the alleged unauthorized construction of the building which has been summarily rejected by the High Court Division against which the leave was granted and the Hon'ble Appellate Division after hearing the

appeal declared the impugned order of demolition of the building illegal, without lawful authority and is of no legal effect even though no appeal under section 15 of the Building Construction Act, 1952 was preferred against the order of demolition of the disputed construction. We are of the view that the issue involved in the instant Rule has already been decided by our Apex Court in the case of Abdus Sattar Md. Vs. Bangladesh and others reported in 1 BLC (AD) 161, which is equally applicable in the instant case. There is no scope to depart from the ratio decidendi adopted by our Apex Court in the said case. The facts and circumstances of the cases, relied on by the learned Advocate Mr. Md. Imam Hasan on behalf of respondent No. 1, are quite different from the facts and circumstances of the instant case. Therefore, those judgments and orders are not applicable in the instant case.

Furthermore, in the case of Rajdhani Unnayan Kartripakshya (RAJUK), Dhaka and others vs Water Front Apartment Ltd and others, the writ petitioner filed the Writ Petition No. 2280 of 1998 during the pendency of appeal filed under section 15 of the Building Construction Act, 1952, challenging the impugned memo dated 27.05.1998 cancelling the plan. The High Court Division made the Rule absolute, and the Hon'ble Appellate Division, by judgment and order dated 09.03.2002, reported in 56 DLR (AD) 16 affirmed the judgment and order passed by the High Court Division, holding that;

> "It appears that in the instant case after obtaining the sanction from RAJUK to construct three multistoried buildings the respondents have invested huge amount of money for construction of those buildings. We are of the view that after two years from the date of sanction and investment of huge amount of money by the respondents a vested right has accrued in latter's favour. RAJUK cannot now cancel the sanction in such an arbitrary manner without giving notice claiming that due to mistake and misrepresentation the building plans were sanctioned and permission was given for construction."

In the case of Bangladesh Bank vs. Zafar Ahmed reported in *56 DLR (AD) 175 judgment dated 24.04.2004 at para 7, our Apex Court opined that;*

> *"The principle of law laid down ... is the principle in which the aggrieved person, instead of availing the appellate forum, could avail the writ jurisdiction in spite of alternative remedy by way of appeal which is not likely to be equally efficacious and effective in the facts and circumstances of the case…"*

In the case of Assessing Officer, Narayanganj Range vs. BE Officer reported in *1981 BLD (AD) 450, it has been held that;*

> *'As we have found the impugned action without jurisdiction, the question of availing a statutory alternative remedy does not arise. …'*

In the case of Nagina Silk Mill vs. Income Tax Officer reported in *15 DLR (SC) 181 judgment dated 07.04.1963, para 7 (S.A. Rahman, J), it has been opined that;*

> *"…. At the same time, it was held that in cases of absence or excess of jurisdiction or where the impugned order suffers from illegality on the face of the record, a certiorari may be granted, even though the right of statutory appeal had not been availed of."*

At this stage, it is also relevant here to rely on a few passages from "An Administrative Law Remedy," written by Syed Istiaq Ahmed, which is quoted below;

> *'7.25. The jurisdiction for issuance of writ of certiorari in the public law domain could not have been the same as the jurisdiction under Section 115 of the CPC of our country in the domain of private law. Yet, Kaikaus, J has the analogy of section 115 before him and justified the view by saying that the language in paragraph (ii) of Article 98(2)(a) is "without lawful authority and is of no legal effect". According to him, if the language was only "without lawful authority" there would have been no difficulty. But those words do not stand by themselves but is followed by the words "is of no legal effect" which mean a "nullity" and further according to him, a determination of a Tribunal acting within its jurisdiction cannot be said "to be of no legal effect" but it is only an act "without jurisdiction" or "excess of jurisdiction" which can be said to be "of no legal effect".*
>
> *7.26. It is submitted that this said nothing new but followed precedents established by English Courts without being mindful of the fact that there were specific historical and casuistic reasons for making this difference in England in the exercise of the non-entrenched power of the judicial review beset by ouster "no-certiorari" clauses. These were not the right precedents to support the codified language of Article 98. Firstly, the word 'jurisdiction' nowhere appears in that Article and secondly, why an action "without lawful authority" of itself should not be a nullity. An action "without lawful authority" whether within or without jurisdiction is a nullity. Any contrary view can be possible only when one admits of degrees of nullity, when in law there can be no degree of nullity.*
>
> *...*
>
> *7.28. In Bangladesh, the same codified language is used in Article 102 as in Article 98 of the Constitution of Pakistan, 1962. However, the language has not been interpreted, and it is submitted that it was about time that it was done in light of the developments in England, now that English courts have freed themselves from jurisdictional and non-jurisdictional fetters which they put around them. Our courts exercising in this field an entrenched constitutional jurisdiction should no longer hesitate to hold that any illegality, whether within or without jurisdiction, substantially affecting a decision is a 'nullity'. The High Court Division and the Appellate Division should no longer be haunted*

by older English precedents, established in exercise of a much lesser non-entrenched jurisdiction of judicial review. Also our superior courts should cast aside the fetters out around them by pre-liberation Pakistan precedents begun with Jamal Shah."

We have already found that the authorize officer issued the final notice dated 30.11.2014 (Annexure-F) without giving any opportunity of personal hearing and without any enquiry as provided in section 3B(3) of the said Act and also without arriving at any finding that the disputed construction answers any of the condition stipulated in clause (a) or (b) or (c) or (d) of sub-section 5 of section 3B of the Building Construction Act, 1952. The impugned notice is invariably found to be ultra vires section 3B(3)(5) of the said Act. Therefore, we are of the view that the impugned notice has been issued without any lawful authority and is of no legal effect.

When any authority passes any order without compliance with any provision of law provided in the statute or in violation of any statutory provision of law, the said order is considered as without jurisdiction. It is a settled proposition that when the administrative authority issues any order without any jurisdiction, the same is amenable to the writ jurisdiction. In the instant case, the impugned order was issued to demolish the building within seven days in violation of the provision made in section 3B(3) and (5) of the Building Construction Act, 1952. We are of the view that the remedy provided in section 15 of the Building Construction Act, 1952, is not efficacious, and finding no other efficacious remedy, the petitioner legally filed the writ petition. Therefore, the writ petition is maintainable in law.

It is found that the disputed building was constructed in 2006, and the impugned notification was issued long after 8 years in 2014. No explanation has been given by the respondent No. 2 as to why the respondent No. 2 or the committee or any person authorised by him or it did not inspect the building following the provision made in section 10 of the said Act during the construction of the building, and as to why he issued the impugned notice after 8 years of the construction of the building. The authorized officer or the committee, as the case may be, is empowered to approve the design of the building. At the same time, the authorized officer or the committee or any person empowered by him or it is responsible for the inspection of the building during the construction. Any failure of the inspector/authorized officer regarding the inspection of the construction site during construction is misconduct. Therefore, if any authorised officer or inspector discharging duty under the authorized officer entrusted with the supervision of the building during construction fails to discharge his/their duty in accordance with the law, he/they are liable to be proceeded for misconduct.

As regards the submission of the learned Advocate Mr. Md. Imam Hasan that the Mobile Court is legally empowered to demolish any building constructed in violation of the approved design, we hold the view that no additional power has been

given in the Mobile Court Act, 2009, to the Mobile Court regarding the demolition of the disputed construction. Only, if the authorized officer or the committee, as the case may be, after compliance of the procedures provided in section 3B(3) and 10 of the said Act opined that the disputed construction answers any of the condition stipulated in clause (a) or (b) or (c) or (d) of sub-section 5 of the section 3(B), the authorised officer or the committee may refer the disputed construction to the Mobile Court for demolition. In that case only, the Mobile Court is empowered to demolish the disputed construction, failing which the whole scheme of the Building Construction Act, 1952, will be frustrated. Therefore, we find little substance in the submission of the learned Advocate Mr. Md. Imam Hasan engaged on behalf of the respondent No. 1 (Rajuk).

We find substance in the Rule.

With the above finding and observation, the Rule is made absolute.

The impugned notice dated 30.11.2014 issued under the signature of respondent No. 2 (Annexure-F) is hereby declared to have been issued without lawful authority and is of no legal effect.

However, there will be no order as to costs.

Md. Sagir Hossain, J.

I agree.