

LEX/BDAD/0012/2018

Equivalent Citation: 15ADC(2018)550

IN THE SUPREME COURT OF BANGLADESH (APPELLATE DIVISION)

Civil Petition for Leave to Appeal No. 4669 of 2017

Decided On: 14.05.2018

Appellants: **Kazi Ahasan Habib**
Vs.

Respondent: **Rajdhani Unnaan Kartipakkha (Rajuk) and Ors.**

Hon'ble Judges:

Syed Mahmud Hossain, C.J., Muhammad Iman Ali, Hasan Foez Siddique and Mirza Hossain Haider, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Rokanuddin Mahmud, Senior Advocate instructed by Bivash Chandra Biswas, Advocate-on-Record

For Respondents/Defendant: Mahbub Alam, Senior Advocate instructed by Shahanara Begum, Advocate-on-Record

JUDGMENT

Muhammad Iman Ali, J.

1. This civil petition for leave to appeal is directed against the judgment and order dated 02.08.2017 passed by the High Court Division in writ petition No. 2122 of 2016 discharging the Rule Nisi.

2. The facts, relevant for disposal of the case in brief, are that the writ-petitioner is an Advocate of the Supreme Court of Bangladesh and is one of the owners of plot No. 50 (Gulshan South Commercial Area). The writ-petitioner previously filed writ petition No 6155 of 2004 challenging the allotment letter dated 01.11.2004 issued by RAJUK having allotted 3 kathas, 5 chhataks land adjacent to plot No. 50. The High Court Division by judgment and order dated 31.08.2005 disposed of the Rule Nisi with certain observations. Civil petition for leave to appeal No. 1483 of 2005 was filed by present respondent No. 8 against the judgment dated 31.08.2005, but the same was dismissed. Civil Review petition No. 76 of 2008 was filed, but that was also dismissed as barred by limitation. It is alleged that writ-respondents, despite the judgment of the High Court Division and this Division, allotted 1 katha 12 chhatak of land creating plot No. 33 (A), to the silver Line Associate (writ respondent No. 8) by order dated 21.09.2005 and entered into a lease deed on the same date. The write-respondent also approved the plan by the memo dated 23.09.2013 for constructing a multi level car park on the said plot No. 33(A) which will obstruct the access to the writ-petitioner as well as other to enter plot No. 50 from Road No. 133. Hence the writ-petitioner filed writ petition No. 2122 of 2016 and obtained the Rule Nisi.

3. Writ-respondent No. 8 contested the Rule Nisi by filing affidavit-in-opposition contending, inter alia, that earlier writ-respondent No. 8 was allotted 3 kathas 5 chhatak 15 square feet land in plot No. 33 (A), situated on the west side of Road No. 133, adjacent to the back side of plot Nos. 50, 52, 33 and 6 contained in commercial layout plan of Gulshan South Commercial Area, Gulshan vide sanction letter dated 01.11.2004 pursuant to a decision taken in Meeting No. 06/2004 of RAJUK held on

05.08.2004, subsequently, in compliance of the direction given in Writ Petition No. 6155 of 2004 given on 31.08.2005, as affirmed by the appellate Division, RAJUK modified the said allotment and allotted 1 katha 8 chhatacks of the land remaining in plot No. 33 (A) as the pathway known as continuation of Road No. 133 which ends at the building of writ-petitioner situated in plot No. 50. Thus it does not in any way create any obstruction/hindrance to access the write-petitioner's building in plot No. 50 from road No. 133. It is further stated that the said allotted land measuring 1 katha 12 chhatacks is unused land and there is no reason to create any obstruction thereon to the write-petitioner or others if construction is made as per plan. Hence the Rule Nisi is liable to be discharged.

4. In due course, after hearing both the parties, the Rule Nisi was discharged by the impugned judgment and order. Hence, the writ-petitioner filed the instant civil petition for leave to appeal before this Division.

5. Mr. Rokanuddin Mahmud, learned Counsel, appearing on behalf of the petitioner, submitted that the High Court Division failed to appreciate the direction given in the earlier judgment dated 31.08.2005 passed in writ petition No. 6155 of 2004 that allotment should be made "excluded the path from the plot of the petitioner leading to Road No. 133 enabling the petitioner to use his garages which were constructed with approval of RAJUK at the back of the house" and not merely by maintaining access to the writ petitioner's plot. Thus the High Court Division failed to consider whether the impugned allotment, lease deed and building plan approval maintained such access to the garages of the writ-petitioner. He further submitted that the High Court Division failed to consider the plan of the ground floor of the petitioner's building as constructed on plot No. 50 showing the location of the garages, and they layout plan showing the location of the newly created plot No. 33A which impeded access from Road No. 133 to the garages of the petitioner and hence the impugned allotment, lease deed and building plan derogated from and defied the earlier judgment dated 31.08.2005 passed in writ petition No. 6155 of 2004 which explicitly directed for such access to be maintained. He further submitted that the High Court Division failed to appreciate that the impugned allotment was made without following any transparent process of competitive bidding although the petitioner could have participated having been the owner of the plot adjacent to the proposed plot.

6. Mr. Mahbubey Alam, learned Senior Advocate, appearing on behalf of respondent No. 1 made submission in support of the impugned judgment and order of the High Court Division.

7. Mr. Shah Monjurul Haque, learned Advocate, on behalf of respondent No. 8 also submission in support of the impugned and order of the High Court Division.

8. We have considered the submission of the learned Advocates for the parties concerned and perused the impugned judgment and other materials on record.

9. From the findings of the High Court Division, it appears that the petitioner in this case is that lessee and as such he is in possession of the plot No. 50, Gulshan Avenue. The said plot is on the corner of Gulshan Avenue and South Avenue and therefore has access from both of those roads. In addition, the said plot has access to the back of the plot through Road No. 133 which is a cul de sac starting from Road No. 134 and ending at plot No. 50. Plot No. 50 is adjacent to plot No. 33 on the eastern side and plot No. 52 on the northern side. There is a small parcel of land in between plot No. 50 and plot No. 33 adjacent to Road No. 133 which has been marked as plot No, 33A and was allotted to the owner of plot No. 52. The petitioner claim that the owner of plot No. 52 upon obtaining allotment of plot No. 33A is

making construction on his two plots in such a manner that Road No. 133, which divides plot No. 52 and plot No. 33A is being encroached as a result the petitioner's access to his plot via Road No. 133, is being obstructed.

10. We find from the earlier judgment dated 31.08.2005 passed in writ petition No. 6115 of 2016 that RAJUK was categorically directed to modify its lease in respect of plot No. 33A ensuring that Road No. 133 leading to plot No. 50 of the petitioner is excluded from the lease. In other words, the clear message was that Road No. 133 leading to the petitioner's plot No. 50 would remain as a road for access to that plot. In view of such direction in the earlier writ petition, the High Court Division in the instant writ petition noted as follows: "It is clear from the approved plan that even if construction work is completed on plot No. 33A, the petitioner would have access to plot No. 50. The petitioner can enter plot No. 50 through the front side and also from the back side through Road No. 133.

11. The crux of the petitioner's claim is that he wants access to his plot No. 50 via Road No. 133 to remain intact and apprehends that respondent No. 8, M/s. Silver Line Associate, less of plot No. 52 as well as plot No. 33A will make construction connecting the two plots, i.e. plot No. 52 and plot No. 33A, thus blocking the access of the petitioner from Road No. 133.

12. From the maps which have been supplied by the petitioner, in particular, the sketch maps appearing at pages 165 and 166 of the present petition, we do not find any connectivity between plot No. 542 and plot No. 33A. These two plots are clearly separated by road No. 133 which ends at the rear boundary of plot No. 50.

13. In view of the above discussion, we find that the petitioner has and will continue to have access to his plot No. 50 by means of Road No. 133 and that no development works shall take place to obstruct Road No. 133 leading to the petitioner's plot.

14. Accordingly, with the above observation, the civil petition for leave to appeal is disposed of.

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