

Present:
Mr. Justice A.K.M. Abdul Hakim
And
Mr. Justice S.M. Mozibur Rahman

Writ Petition No. 11585 of 2017

Ms. Musarat Islam and others
Petitioners.

-Versus-

Government of the People's Republic of
Bangladesh represented by the Secretary
Ministry of Land and others

Respondents.

Mr. Kamal-Ul-Alam, Senior Advocate with
Mr. Zahiruddin Babar, Advocate

for the petitioners

Mr. A.F.M. Mesba Uddin Ahmed, Senior Advocate with
Ms. Shimonti Ahmed, Advocate

for the respondent No.4

Mr. Hassan M.S. Azim, Advocate with
Mr. Kamal Hossain Meazi, Advocate with
Mr. Mahin M. Rahman, Advocate and
Mr. Asfaqur Rahman, Advocate

for the respondent No.12

Mr. Md. Harun-Ar-Rashid, D.A.G
Mr. Shah Abdul Hatem, A.A.G and
Mr. Md. Jahir Ahmed, A.A.G

for the respondent Nos. 1-4.

Heard on 25.01.2018, 11.02.2018 and
Judgment on 05.03.2018.

A.K.M. Abdul Hakim, J:

On an application under Article 102 of the Constitution, this rule nisi was issued calling upon the respondents to show cause as to why the allotment of plot no. 4/A, Road no. 104, Gulshan,

Dhaka-1212 measuring 4 Kathas 9 Chatak 26 Sq.Ft given to respondent nos. 7-10 vide Lease Deed No. 13288 dated 18.08.2004 issued by the respondent no.4 as evidence by Annexure-G in violation of Master Plan of Dhaka and revised lay out plan of Gulshan Model Town thereby infringing petitioners easement right of way shall not be declared to have been issued without lawful authority and is of no legal effect.

The case of the petitioners, as set out in the writ petition in short is as follows:

The respondent no.4 allotted plot no.4 in Road no. 104, Gulshan Model Town, Dhaka vide Lease Deed No. 4494 dated 05.04.1992 and Lease Deed No. 8652 dated 25.07.1993 in favour of one Mr. Abdul Mannan; that respondent no.4 delivered possession of 12 Khata 3 Chatak and 25 Sp. Ft. to the allottee by letter dated 21.07.1993. Thereafter vide letter dated 04.04.1995 further delivered 4.75 Katha to the said allottee Md. Abdul Mannan; that the said plot is lake facing when the plot was allotted there was no indication in the Master Plan and in the site plan of any plot between the plot no. 4 and Road no. 104 (east side). Subsequently, the said allottee obtained construction plan from the respondent no.4 vide Memo dated 29.08.1995 and as per said plan building

was constructed. Thereafter, RAJUK revised layout plan of Gulshan, Banani and Baridhara under Section 40(b) of the Town Improvement Act, 1953 and created some plots in 1993 by keeping intact the basic principles of Master Plan. The said revised layout plan was approved by the RAJUK in its 2/93 meeting held on 13.03.1993. The government approved the said revised layout. As per said layout plan of Gulshan Model Town dated 24.06.1993 and revised layout plan dated 02.04.1995, Road no. 104 was situated in both east and west side of the said land. So as per said approved layout dated 29.08.1995 of the said Demised Premises, the entry and exit of the said Demised Premises were constructed accordingly. The entry is through Road no. 104 situated in the west side and exit is through Road no. 104 situated in the east side of the said land. There was no plot between plot no.4 and road no.104 (east side).

It was further stated that after the death of original allottee Abdul Mannan in the year 2003 his heirs still owns flats in the said demised premises and his son, Nur Masoom Mannan is still a shareholder and Director of the Bougain Villea Limited. The petitioners have been living in the demised premises since long. The petitioners have been regularly using both the road no. 104

from both ends that is east and west side of the demised premises since long and have acquired the right of easement over road no. 104 (east and west).

It was further alleged in the writ petition although the petitioners repeatedly raised objection to the respondent and when the respondent nos.7-10 took preparation and brought bricks, sand and other construction materials to proceeded with the construction work illegally on the allotted plot thereby blocking the petitioners easement of direct approach road to the lake circular road no. 104 (east). The respondent no.4 verbally informed that allotment of plot no.4A has been given to respondent nos. 7-10 even though there was no plot 4A in the Master Plan. The petitioner kept in the dark all times regarding the illegal allotment. Such allotment was in violation of the Master Plan of Dhaka and revised layout plan of Gulshan Model Town and infringes the right of easement of way of the petitioners from the Demised Premises. That the petitioners have rightfully acquired a right of easement over road no.104 from east and west side by long use, prescription and as per approved layout plan of the said demised premises under Section 13 and 28 of the Easement Act, 1882. Accordingly, the petitioners prayed that Honøble Court may be pleased to passed an ad-interim injunction to

stop the respondent nos. 7-10 from proceeding with its construction and prevent them from blocking the said demised premises. In this backdrop, the petitioners filed this writ petition challenging the illegal allotment of plot no. 4A, Road no. 104 Gulshan Model Town, Dhaka in violation of Master Plan of Dhaka and revised layout plan of Gulshan Model Town and infringes the right of easement of way and obtained the present rule.

After issuance of the rule, one Kazi Kamrun Nahar Hoque filed an application for addition of party and this court by order dated 12.10.2017 added Kazi Kamrun Nahar Hoque wife of K.M. Mozibur Hoque of House no. 16, Flat no. D-2, Road no. 141, Gulshan-1, Dhaka-1212 in the instant writ petition as respondent no. 12.

It appears that the matter was pending before another Division Bench, subsequently, Honøble Chief Justice by order dated 03.01.2018 sent this matter to be heard and disposed of by the Division Bench presided over by Justice A.K.M Abdul Hakim.

The Chairman of the RAJUK as respondent no.4 entered appearance and filed affidavit-in-opposition dated 16.01.2018, two supplementary affidavit-in-opposition dated 04.02.2018 and 11.02.2018 controverting the statement made in the writ petition

and other supplementary affidavit filed by the petitioners thereto. The main contention of the respondent, inter alia, are that the writ petition is not maintainable as it involves a disputed question of facts. The petitioners are not allottees of plot no.4, Road no. 104 and their names were not recorded in RAJUK. Further contention of respondent no.4 is that the said plot no.4A is not a newly created plot, it is a vacant plot of RAJUK visible in the layout plan of Gulshan Model Town dated 24.07.1993 and also in the revised layout plan dated 02.04.1995 (Annexure-D and D-1) to the writ petition). RAJUK in its 05/2003 Board Meeting held on 09.06.2003 passed a resolution for allotment and numbering of the said vacant plot and accordingly the said vacant plot was numbered as plot no.4A. The plot No.4 is an adjacent plot of a vacant plot which is exactly located on the east side of plot no.4 and road no. 104 shown in the layout plan of Gulshan Model Town dated 24.07.1993 and revised layout plan dated 02.04.1995 (Annexure-D and D-1) to the writ petition. It would be evident that a vacant plot is very much in existence there from before in between plot no.4 Road no. 104 (east side) RAJUK never executed any lease agreement or anything else whatsoever with allottee of plot no.4 allowing him/them to use the said vacant plot as approach road for entry and exit purposes to plot

no.4. It is also contended that one Abdul Mannan is the original lessee of plot no.4, upon his application Bougain Villea Limited was appointed as his attorney. After death of the said Abdul Mannan his heirs namely Nur Bahar, Mannan and others inherited the said plot and same was mutated in the names of the said heirs. After mutation, the said heirs of Abdul Mannan submitted an application to RAJUK seeking permission to appoint Bougain Villea Limited as their lawful attorney for the said plot. However, RAJUK has not yet accorded the said permission because RAJUK received several complaints that the lessees of plot no.4 are illegally occupying land measuring 447 Square feet of plot no.4A and also illegally possessing land measuring land 297 square feet from north side. Lessees of plot no.4 were requested on repeated occasions by RAJUK to vacate the illegal possession of the said land measuring total area of 7441 square feet. However, despite such requests, they miserably failed to vacate the same till date. That the lessees of plot no.4 cannot legally use east side of road no.104 for entry and exit purposes to their plot. If they attempt to use the east side of road no.104 it would be encroachment of plot no.4A which is a separate adjacent plot of RAJUK as it would be evident from the layout plan of Gulshan Model Town dated 24.07.1993 and also revised layout

plan dated 02.04.1995. It is also stated that Bougain Villea Limited, the appointed attorney of Abdul Mannan, who is original lessee of plot no.4 had information and knowledge about allotment and numbering of the adjacent vacant plot being plot no. 4A. Since the lessees of plot no.4 were illegally possessing part of plot no.4A measuring 447 square feet, RAJUK issued several notices on 14.10.2004, 18.10.2004 and 07.04.2005 and also on 28.08.2017 directing the said lessees to vacate the illegal possession. In reply to the notice dated 07.04.2005, Managing Director of Bougain Villea Limited namely, Dr. S.M. Huq gave letter dated 13.04.2005. As such, the assertions made in paragraph no.12 to the writ petition that the petitioners had no knowledge about plot no.4A is out and out false and they devised the said story to file the instant writ petition and also for an ulterior purpose to continue with illegal possession of land measuring 447 square feet of a separate plot being plot no.4A and 297 square feet from north side plot.

It is further stated that RAJUK allotted a plot measuring an area of 5(five) Khata to one Amir Hossain on 04.02.1987 being Plot no. 28, Road no. 8, Gulshan Model Town, Dhaka. Upon allotment as such, the said Amir Hossain paid all installments in favour of RAJUK. Thereafter, the said Amir Hossain died on 09.11.1994.

After his death, the said plot was mutated in the names of his heirs i.e. the respondent nos. 7-10 in the instant writ petition. Afterwards, the said heirs of the deceased Amir Hossain appointed one Mujibur Rahman Khan, the Managing Director of Trust Builders Limited, as their lawful attorney for carrying out all activities in relation to the said plot. However, upon survey by RAJUK, the said plot was not found to be in existence. Hence, an alternative plot being Plot no. 51, Road no. 27, Banani was allotted in favour of heirs of the said Amir Hossain vide allotment letter dated 14.01.2001. Subsequently, pursuant to a direction by the Ministry of Housing and Public Works, the allotment of the said Plot no. 51, Road no. 27, Banani was cancelled.

Thereafter, the said Mujibur Rahman Khan applied for allotment of alternative plots in area of Gulshan Model Town, RAJUK in its 5/2003 Board Meeting held on 09.06.2003 came up with a decision that the adjacent vacant plot of Plot no. 4, Road no. 104 would be allotted in favour of heirs of Amir Hossain. As per said decision, the plot in question was allotted and the same was numbered as Plot no. 4A. After allotment, heirs of the said Amir Hossain cancelled power of attorney of Mujibur Rahman Khan vide Deed No. 1504 and appointed one Md. Muzibul Haque as their new

attorney vide Deed No. 1505. RAJUK gave permission for such cancellation and appointment of new attorney on 26.06.2004. Md. Muzibul Haque, the newly appointed attorney of heirs of Amir Hossain, was handed over possession of the Plot no. 4A measuring 4 Khata, 9 Chatak 26 Square Feet on 30.06.2004 by RAJUK. Upon application by the said attorney, a lease deed being Deed No. 13288 dated 22.08.2004 was executed and registered in favour of the said heirs being represented by attorney Md. Muzibul Haque.

Subsequently, the said attorney Md. Muzibul Haque submitted an application to RAJUK on 15.02.2005 for further allotment of a partial vacant land adjacent to Plot no. 4A. Pursuant to such application, RAJUK allotted land measuring 9 Chotak 42 Square Feet on 11.04.2005 and handed over possession of the same to the said attorney on 21.06.2009. After allotment, the said Mujibul Haque sought permission of RAJUK for transfer of Plot no. 4A in favour of his wife Ms. Kazi Kamrun Nahar Haque. RAJUK accorded permission to the said transfer. Pursuant to such permission, heirs of Amir Hossain through their appointed attorney Md. Muzibul Haque transferred Plot no. 4A measuring total area of 5 Khata 3 Chotak 23 Square Feet in favour of the said Kazi Kamrun Nahar vide Deed No. 770 dated 30.01.2012. Now, Kazi Kamrun

Nahar Haque is the present lessee of plot no. 4A as per record of RAJUK.

It may be mentioned that the allottee of plot no.4 never applied to RAJUK seeking easement right over plot no.4A and as such no question arose from making any such application to RAJUK because nowhere in lease deeds of plot no.4, Plot no.4A was shown as entry and exit and nowhere in the said deeds eastern side of plot no.4 was shown as road for entry and exit purposes to plot No.4, entry and exit of plot no.4 was shown on the western side.

That upon perusal of the facts as regards allotment of Plot no. 4A in favour of the respondent nos. 7-11 it would be evident that the same was allotted pursuant to a decision of RAJUK as per its Board Meeting No. 05 of 2003 held on 09.06.2003, however, neither the petitioners nor any allottee of the Plot no. 4 raised any objection questioning the said allotment in last 14 years and, as such, the petitioners have filed the instant writ petition after lapse of 14 years claiming easement right over Plot no. 4-A for an ulterior purpose in order to perpetuate their illegal possession of land measuring 447 square feet of the plot in question being Plot

no. 4-A and 297 square feet from north side plot. So, the writ petition is liable to be discharged for ends of justice.

The respondent no.4 also filed supplementary affidavit on 04.02.2018 and 11.02.2018 stating that the alleged approved construction plan showing site map annexed by the petitioner as (Annexure-C and C-1) to the writ petition do not correspond to the relevant notes of the office file of RAJUK for plot no.4. On perusal of the entire office file it appears that nothing has been mentioned in the relevant office notes of plot no.4 regarding obtaining the required no objection certificate and sanction for the construction plan with regard to the building constructed in plot no.4.

That RAJUK extensively searched for the file of approved construction plan issued by the RAJUK under Memo No. রাজউক/নঅথ/ওসি-২০৯২/৯৫/১৯৭১ dated 29.08.1995 (Annexure-C and C(1) to the writ petition, but no file was found in Town Planning Department of RAJUK under the said memo. As such the reference of the said memo dated 29.08.1995 has got no basis. The said Memo dated 29.08.1995 appears to fake and has been created for an ulterior purpose. That the layout plan dated 24.07.1993 and revised layout plan dated 02.04.1995 (Annexure-D and D-1) to the writ petition are approved by RAJUK. The allegedly approved site map

shown in (Annexure-C) to the writ petition have no nexus with the said approved layout plan of RAJUK.

In the present writ petition the added respondent no.12 before filing affidavit-in-opposition dated 16.01.2018 filed an application for vacating the order of injunction dated 20.08.2017 passed by this court stating the facts that there is no exit road in the eastern side of plot no. 4 as shown in the layout plan and revised layout plan of Gulshan Model Town Annexure-D and D-1 to the writ petition. In fact there is a vacant plot on the eastern side of plot no.4 both in the original and revised layout plan of Gulshan Model Town.

Thereafter, the respondent no.12 contested the writ petition by filing affidavit-in-opposition dated 16.01.2018 denying the material allegations made in the application and contending, inter alia, that pursuant to the said allotment letter vide memo dated 14.08.2003, though RAJUK allotted a 5 katha plot in favour of the respondent nos. 7-10, yet at the time of handing over possession of the said plot on 30.06.2004, only 4 katha 9 chatak 26 sft land was available in the said plot. Subsequently, vide another memo dated 11.04.2005, RAJUK allotted an additional 447 sft land in favour of the said allottees and possession of the same was also handed over regarding the said 447 sft land on 21.06.2009. Thus, by the said two

allotments dated 14.08.2003 and 11.04.2005, RAJUK handed over possession of plot no. 4A in question measuring in total area of 5 katha 3 chatak 23 sqft land in favour of the respondent nos. 7-10.

That it is further stated that the plot in question i.e. plot no. 4A consists of 5 katha 3 chatak 23 sqft land and the same was leased out by RAJUK in favour of the respondent nos. 7-10 vide 2 (two) separate lease deeds in two phases being registered lease Deed No. 13288 dated 18.08.2004 in respect of 4 katha 9 chatak 26 sft land and vide registered lease Deed No. 1377 dated 11.02.2010 in respect of 447 sft land in favour of the respondent nos. 7-10. Thus, pursuant to the said two lease deeds respondent nos. 7-10 got lease of a total area of 5 katha 3 chatak 23 sft land appertaining to plot no. 4A in question. That, subsequently, respondent nos. 7-10 through their attorney i.e. the respondent no. 11, transferred the said land i.e. plot no. 4A in favour of the added respondent no. 12 vide registered Sale Deed No. 770 dated 30.01.2012 registered with the Gulshan Sub-Registrar, Dhaka (Annexure 1) to the application for addition of party filed by the added respondent no. 12, on 09.10.2017.

That after obtaining ownership of the plot in question, the present added respondent no. 12 mutated her name in respect of the

said plot both in the office of RAJUK vide memo dated 13.02.2012 and in the office of Assistant Commissioner of land (A.C. land) vide Mutation Case No. 2397/11-12 dated 28.06.2012 and obtained DCR and rent receipts. The present applicant has been paying the land development taxes and other taxes in the concerned offices of the government regularly. (Photocopies of the said memo dated 13.02.2012 and DCR are annexed and marked as (Annexure 2 & 3 respectively) to the application for addition of party filed by the added respondent no. 12.

That it is categorically stated that the petitioners have suppressed the material fact that the respondent no. 4-RAJUK had been issuing several notices against the developer company namely, Bhougainvillea Ltdø being the attorney of Mr. Abdul Mannan, the original Lessee of the Plot no. 4 in Road no. 104, Gulshan Model Town, Dhaka directing the said company to vacate the northern side of Plot no. 4 measuring an area of 297 sqft belonging to a different plot owned by some other person as well as the western side of Plot 4A measuring an area of 447 sqft which the said company had been illegally possessing. As such, RAJUK vide notices dated 14.10.2004, 18.10.2004 and 07.04.2005 directed the said developer company, among others, to vacate the said 447 sqft

area of Plot 4A which the said company was possessing illegally and forcefully. (Photocopies of the said notices dated 14.10.2004, 18.10.2004 and 07.04.2005 are annexed and marked as (Annexure 4 series) to the application for vacating the ad interim order of injunction dated 24.10.2017.

That it is also stated that admittedly the writ petitioners are directors of the said developer company namely Bhougainvillea Ltd as evident from the minutes of the company dated 18.11.1998 (Annexure E series) to the writ petition. Thus, the dispute regarding unlawful possession of additional land measuring 447 sft belonging to Plot no. 4A was within the knowledge of the petitioners since 2004. The attorney of the petitioners namely, Mr. Serajul Islam also submitted a reply dated 13.04.2005 (Annexure- 5) against the letter dated 18.10.2004 issued by the RAJUK (Annexure 4 series). In the said letter dated 13.04.2005 (Annexure- 5) a sketch map of Plot no. 4 was attached which clearly shows that the entry and exit road of Plot no. 4 is on the western side of Plot no. 4 as opposed to the eastern side of the said plot. Thus, despite having knowledge about the allotment of Plot no. 4A in favour of the respondent nos. 7-10 at least since 2004, the petitioners had suppressed the said fact and lied on oath before the Court.

It is further stated that the petitioners managed to obtain the present rule by misleading this court stating the facts that plot no.4 is a lake facing plot and there was no indication to any plot on the eastern side of plot no.4 and road no.104 as per the revised layout plan dated 02.04.1995. It would be evident from Annexure-D and D-1 that there has always been a vacant plot on the eastern side of plot no.4. In the said layout plan of 1995 no number was allotted to the said vacant plot. However, the petitioners have suppressed the material fact that the said vacant plot was subsequently numbered as plot no.4A as per decision of RAJUK taken in its 5/2003 Board Meeting held on 09.06.2003. Thereafter, RAJUK revised the earlier layout plan of 1995 by inserting the plot no.4A vide layout plan dated 31.07.2003 (Annexure-8) to the application for vacating the order of injunction dated 20.08.2017. It is also stated that the present added-respondent no.12 has already obtained a construction permission from RAJUK vide memo dated 19.10.2016 for erecting a 9(nine) storied-building on the said plot. The present respondent also invested huge amount of money for purchasing construction materials for the said development work in the said plot. Respondent no.12 also stated that instant writ petition is liable to be discharged since the petitioners have alleged disputed question of

fact and suppressed the material facts. The writ petition will be discharged since the issues of alleged easement right can not be adjudicated under writ jurisdiction and same may be decided by adducing evidence in a properly framed civil suit.

The matter was taken up for hearing on 10.01.2018, on that date Mr. Ahmed Naquib Karim, learned Advocate appearing on behalf of the petitioners along with Mr. Zahir Uddin Babar, Advocate. Mr. Naquib after placing the writ petition and other materials on record submits that the allotment of plot no.4A is in violation of Master Plan of Dhaka. He further submits that the revised layout plan of Gulshan Model Town was prepared by RAJUK without complying the mandatory provision of Town Improvement Act, 1953. He next submits that by allotting plot no.4A to the added respondent no.12, the petitioners right of easement to use of road 104 (east side) has been infringed.

Subsequently, on 25.01.2018 Mr. Kamal-ul-Alam, the learned Senior Advocate appeared on behalf of the petitioners frankly concede that he will not press the rule about infringing the petitioners easement right of way in the disputed plot and he only based his submission on the point that the open space adjacent eastern side of the plot no.4 is illegally allotted to the respondent

nos. 7-10 violating the layout plan as shown in (Annexure-C and C-1) to the writ petition. In support of his submissions learned Advocate for the petitioners has relied upon the decision reported in *53 DLR (AD) 79*.

On the contrary, Mr. Hassan M.S. Azim, the learned Advocate appearing on behalf of the added-respondent no.12, submits that the petitioners filed this misconceived writ petition claiming easement right admitting the respondent no.4 ownership in the disputed plot no.4A. He further submits that admittedly there is a vacant plot in the eastern side of plot no.4 as evident in (Annexure-D and D-1) to the writ petition. He further submits that the writ petitioners and the added-respondent no.12 admittedly are lessees under respondent no.4, RAJUK. He next submits that narrow strip of vacant of land as shown in (Annexure-D and D-1) and revised layout plan which is being converted into plot no.4A is only extend/addition of Gulshan Model Town by altering layout plan as approved in RAJUK Board Meeting No. 5/2003 and there has been no change of either Master plan or revised Layout plan of RAJUK. He also submits that the present writ petition is not maintainable on the ground that serious disputed question of facts has been raised in the writ petition and suppression of facts is also

there. He also submits that writ petition is not in form since the petitioner did not annexed the Master Plan, but obtained rule that allotment of plot no.4A is clear violation of Master Plan of Dhaka. He further submits that since the added-respondent no.12 and the petitioners are admittedly lessees under the RAJUK as such the petitioners cannot challenged the allotment of respondent no.12. He finally submits that that the petitioners did not pray for lease of the plot no.4A rather petitioners were well aware about the allotment of plot no.4A to the respondent no.12. Accordingly, the learned Advocate for the added-respondent no.12 prayed for discharge of the rule with costs.

In support of his contentions the learned Advocate has cited two decisions namely 7 *BLC (AD) 167* and one unreported decision in the case of *Mir Kashem and others Vs. Government of the Peoples Republic of Bangladesh* represented by the Secretary Ministry of Land and others pronounced in Writ Petition No. 3383 of 2010 by judgment dated 26.02.2017.

Mr. A.F.M. Mesba-Uddin Ahmed, the learned Senior Advocate appearing on behalf of the respondent no.4 RAJUK besides adopting the submissions of the learned Advocate for the added-respondent no.12 submits that the present writ petition is

not maintainable since the petitioners did not implicate neither the original lessee nor his heirs in the present writ petition. He further submits that admittedly RAJUK allotted plot no. 4A to respondent nos.7-10 on 09.06.2003 and subsequently respondent no.7-10 through their attorney respondent no.4 transfer the said plot to added respondent no.12 vide registered sale deed dated 30.01.2012 and same was mutated in the office of the RAJUK on 30.12.2012 and this plot was shown in the revised layout plan prepared by RAJUK on 31.07.2003 as per decision of RAJUK Board Meeting No. 05/2003 held on 09.06.2003. He next submits that although the plot no. 4A allotted to the present respondent nos.7-11 on 09.06.2003, but neither the petitioners nor any allottee of plot no.4 raised any objection against such allotment in the last 14 years and filed the instant writ petitioners after lapse 14 years claiming easement right through illegal possession of land measuring 447 Sft being plot no.4A and 29 Sft from north plot. He lastly submits that the petitioners based their claim on the basis of the construction plan showing Site Map of the plot (Annexure-C and C-1) which shows that the alleged plan was approved by the RAJUK vide Memo No. রাজউক/নঅথ/ওসি-২০৯২/৯৫/১৯৭১ dated 29.08.1995 issued by the Authorized officer, RAJUK but no such memo was available in

the file or record in the RAJUK and same is fake and has been created for an ulterior purpose. Thus the petitioners did not come with clean hands and obtained the present rule and order of injunction by misleading the court.

We have heard the submissions of the learned Advocates, perused the writ petition, supplementary affidavits, affidavit-in-opposition filed by the respondent no.4, RAJUK and added respondent no.12, application for vacating the order of injunction dated 24.10.2017 and application for addition of party dated 09.10.2017 filed by added-respondent no. 12 and relevant annexures, annexed thereto.

It appears that admittedly the RAJUK respondent no.4 is the Lessor and one Abdul Mannan, respondent nos. 7-10 and added respondent no.12 are lessees under respondent no.4. The petitioners as owners of the six storied Residential building situated at plot no.4 road no. 104, Dhaka challenging the illegal allotment of plot no.4A allotted to respondent nos.7-10 and subsequently transfer the same to added respondent no.12. It further appears that the disputed plot no.4A which was shown in the revised lay out plan of RAJUK dated 31.07.2003 (Annexure- 8) to the application for vacating the order of injunction dated 20.08.2017 filed by the

respondent no. 12 are outside the schedule of the lease deed between RAJUK and the original Lessee, Abdul Mannan. It also appears that lay out plan was not part of the lease deed and that the development of the Gulshan Model Town within the domain of the respondent no.4 in discharge of the responsibility provided under the Town Improvement Act, 1953. However, the petitioners had no legal right under the lease deed. The road of the Lessee were confined to the terms of the lease deed in respect of the property covered under plot no.4 as such it was not a subject to be adjudicated under Article 102 of the Constitution. It further appears that the present petitioners filed this writ petition mainly on the basis of the Memo No. রাজউক/নঅথ/ওসি-২০৯২/৯৫/১৯৭১ dated 29.08.1995 which clearly shows that the alleged construction plan showing site map for plot no.4 allotted to the original lessee Abdul Mannan and the said approved plan was sanctioned by the RAJUK as per provision of Building Construction Act, 1952 and Rules thereto and the said Building Construction Act and Rule have no nexus with the layout plan of Gulshan Model Town duly approved by the RAJUK. Moreover, the petitioners failed to give or annexed any building construction permission/ approval issued by the Authorised officer, RAJUK infavour of the petitioners under the

Building Construction Act, 1952 as annexed in (Annexure-C and C-1) to the writ petition. In this respect, RAJUK, respondent no. 4 by filing supplementary affidavit denied that there was no existence of said Memo No. রাজউক/নঅথ/তসি-২০৯২/৯৫/১৯৭১ dated 29.08.1995 in the file of RAJUK and which was an act of forgery and has been created by the petitioners for ulterior purpose to grab vacant strip land shown in site map in the so-called construction plan of their building in plot no.4. Against this vital statement made by the RAJUK in paragraph no. 2 in their supplementary affidavit-in-opposition dated 11.02.2018 but the petitioners did not controvert by an Affidavit-in-reply, which shall deemed to have been admitted. This is a glaring act of forgery because no Memo dated 29.08.1995 (Annexure- C and C(1) was found in the original file of RAJUK. Admittedly, the petitioners are the beneficiary of the so-called approved construction plan. It has even dared to use such a forged approval plan before the highest court of the country to suit their purpose. Therefore, it can not escape from legal consequences for using such forged construction plan as evidence before the court. It further appears that allegedly approved plan as appears in (Annexure-C and C-1) to the writ petition has no nexus with the layout plan and revised layout plan of the RAJUK (Annexure-D and

D-1) dated 24.07.1993 and 02.04.1995, as such construction of the building by the petitioners with alleged approved plan cannot be a ground for stopping RAJUK from converting vacant large strip of land into plot No.4A to east side of the plot no.4 is only an extension/addition of Gulshan residential plots by altering the layout plan and lease out to the respondent nos.7-10 and subsequently transferred to the added-respondent no.12. Thus we find that the writ petitioners being the owners of the Flat situated in the adjacent plot no. 4 had no legal right to resist creation of new plot no.4A and allotting the same to respondent nos. 7-10 and subsequently transfer to added-respondent no.12. In this respect reliance is placed on the decision reported in the case of *Chairman, RAJUK and others-Vs-Parvin Akhter* reported in 7 BLC (AD) (2002) 167 and another decision reported in 53 DLR (AD) (2001) 106.

We have examined the layout plan and revised layout plan of Gulshan Model Town, Dhaka dated 24.07.1993 and 29.08.1995 annexed with writ petition as (Annexure- D and D1) which clearly evident that the plot no.4 is situated in the western side of the road no.104. In the eastern side of road no.104 shown in the layout plan there was a vacant land and subsequently the RAJUK by a resolution in its Board Meeting No. 52003 dated 09.06.2003

marked the said vacant land and numbered as plot no. 4A and revised lay out plan, which was allotted to respondent nos. 7-10, then transferred to added-respondent no. 12 which was clearly evident from the revised layout of RAJUK dated 31.07.2003 (Annexure- 8) to the application for the vacating the order of injunction dated 20.08.2017 filed by respondent no. 12. It was therefore clear that the petitioners had no access to the eastern side of Lake Circular Road no. 104. Direct access of the petitioners is to the road no. 104 towards the west. Respondent no. 4 did not make any change of the leasehold property of the petitioners rather redelineated and redesigned the area for better use and for accommodation of another allottee. Moreover, the Respondent no.4 is legally competent to revise the layout plan under Section 40 of the Town Improvement Act, 1953. Further, under clause 6 of the Deed of Lease executed between the Lessor RAJUK and original Lessee Abdul Mannan (Annexure-A and A-1) of the writ petition clearly stipulates that the Lessee was stopped from raising any objection to any change in the layout plan in any area beyond the demised property. The relevant portion of the said clause reads as under:

õ6 That the said house and appurtenances shall be constructed in accordance with

such plans, elevations and specifications as shall be approved in writing by the LESSOR or by any Officer duly authorized by the LESSOR but such approval in any way absolves the LESSEE from the responsibility of complying with all rules, regulations and by-laws as are in force for the time being and as may be made from time to time by the LESSOR or by any other Authority having jurisdiction over the area regarding the regulation, construction, control etc. of building. The LESSEE will have no right to object to any change of plan or any construction according to duly approved plan in any area beyond the demised property.ö

It appears that the petitioners obtained the present rule on the ground of violation of Master Plan of Gulshan Model Town, Dhaka but they failed to file any Master Plan of Dhaka. The original Master Plan of Dhaka City was formulated as back as 1959 and there is no Master Plan for Gulshan Model Town, Dhaka nor there has been any Master Plan of its own. The object of the Master Plan is to establish planning principles rather than to lay down a detailed inflexible scheme. A residential model town is developed according to the detail area plan commonly known as layout plan prepared to

cater to the requirements of the time, when it is prepared. The said layout plan contains itself scope of change and modification from time to time to scope with and cater to the needs of a fast growing metropolitan capital city.

There is nothing in the lease deed of the Lessees to show that the Lessee was allowed to use of the eastern side Lake Circular Road no. 104, rather it is the positive case of the RAJUK as well as the respondent no.12 that the Lessees has been in illegal possession of 447 Sft of plot no.4A. On going through the respective lease deed, we do not find any assurance on the part of the lessor RAJUK, respondent no.4 allowing the Lessees to use the said eastern road or access thereto and as such construction of the respondent no.12 building with approved plan cannot be a ground for stopping construction work of the building made by the added-respondent no. 12 in plot no. 4A.

It further evident from the revised layout plan filed by the respondent no.12 (Annexure-8) series that RAJUK allotted the said plot adjacent to plot no. 4, road no. 104, Gulshan Residential Area to the respondent nos. 7-10, as per decision of the RAJUK Board Meeting No. 05/2003 dated 09.06.2003. It further appears that the RAJUK subsequently revised its earlier layout plan prepared in

1995 by inserting plot no. 4A in layout plan dated 31.07.2003 invoking its jurisdiction under Section 40 of the Town Improvement Act. Subsequently, the respondent nos. 7-10 transferred the said plot no. 4A to the added-respondent no.12. Since the respondent no. 4 has lawfully taken action provided under Town Improvement Act, 1953 by allotting the plot no. 4A of the Gulshan Model Town to respondent nos. 7-10 in its Board meeting dated 09.06.2003 and further revised the earlier lay out plan of 1995 by inserting plot no. 4A in the new lay out plan dated 31.07.2003 (Annexure- 8) series. Thus the petitioners has no locus-standi to invoke writ jurisdiction under Article 102 of the constitution in the form of Mandamus or in any manner whatsoever as they have no legal right which can be said to have been infringed.

It is pertinent to note here that the petitioners or their predecessor or the original Lessees are well aware about converting the said vacant land as plot no.4A, and allotted the same to respondent nos. 7-10 which is admitted by the petitioners by annexing a letter dated 31.08.2003 addressed to the respondent no. 4 (Annexure- J) filed by the petitioners in their supplementary

affidavit dated 24.01.2018, urging respondent no. 4 to cancel the allocation of plot no. 4A.

From the schedule of the respective lease deeds filed by the petitioners it appears that plot no.4 was allotted to the original allottee Abdul Mannan. It has already been noticed from the respective lease deeds that there was no mention of lake circular road no. 104 rather at the time of execution of the lease deed and in the layout plan there was a strip of vacant strip land. It was also noticed in the respective lease deeds that there was no mention of lake circular road no.104 in the eastern side of plot no. 4A. The said road was not contiguous east of the concerned plot no. 4 but in between the said west and eastern road there is a strip of vacant land. It was therefore clear that Lessee of plot no. 4 had no accesses to eastern side to lake circular road no.104. Direct excesses of the Lessee is to the road no. 104 towards the west.

In view of the same, we, therefore find no merit in the contention of the learned Advocate for the petitioners that accesses to the road towards the east had been blocked by creation of plot no.4A to the east side of the petitioners building or plot in question. We also find that there was nothing in the lease deeds of the petitioners to show that Lessee was allowed use of the eastern side

of Lake Circular road no. 104. There was no assertions on the part of the lessor RAJUK respondent no. 4 allowing the Lessee to use of the said eastern side road or access thereof and as such construction of building with the approved plan filed by the petitioners as (Annexure-C and C-1) to the writ petition has no nexus with layout and revised layout plan to the writ petition prepared by the RAJUK (Annexure-D and D-1).

Learned advocate for the petitioners in support of their contention submits that the allotment of plot no. 4A to the respondent nos. 7-10 is in violation of Master Plan of Dhaka as well as revised layout plan of Gulshan Model Town, Dhaka should not be declared to have been made without any lawful authority and infringing the petitioner easement right of way. In support of his contention learned Advocate for the petitioners cited a decision in the case of *Rajdhani Unnayan Kartipakhya nad another-Vs-Mohshinul Islam and another* reported in 53 DLR (AD) 79. We have meticulously gone through the decision cited by the learned Advocate for the petitioners but it appears that the cited decision have no manner of application in the facts and circumstance of the present case. In the said decision it was held by our appellate

Division that conversion of park and open space enjoyed by the allottee of the plan township cannot be converted as residential plot.

We have already discussed elaborately that in the present case no park of open space has been allotted to the present respondent no.7-10 subsequently transferred to the respondent no.12, rather RAJUK is competent to revise/alter the layout plan any time under Section 40(b) of the Town Improvement Act, 1953 and in the present case the lay out plan was revised converting large strip of vacant land into plot no. 4A and therefore there was no illegality in altering the lay out plan in such manner. Further, under clause 6 of the lease deed the Lessee was stopped from raising any objection to any change in the layout plan in any area beyond the demised property. It further appears that the petitioners in the camouflage showing site Map in the alleged approved construction plan of their building in plot no.4, filed this writ petition on the ground that by revising the layout plan of Gulshan Model Town thereby infringing the petitioner easement right of way in the eastern side filed the present writ petition is totally misconceived and raised some disputed question of fact as well as filed the present writ petition claiming easement right on the disputed land

which cannot be adjudicated under the writ jurisdiction except by filing civil suit before the competent court of jurisdiction.

The petitioners have obtained the present rule and order of injunction from making any construction work on the plot no. 4A, road no.104 Gulshan Model Town, Dhaka by suppressing some material facts which was also been admitted by the writ petitioners in their supplementary affidavit dated 24.01.2018. We find that the respondent no. 12 after obtaining approved construction plan from RAJUK dated 19.10.2016 (Annexure- 6) for erecting 9 storied building on the plot in question and invested huge amount of money by purchasing raw materials like brick, cement etc. and other materials for the said development work on the said plot, but due to the injunction order from this court, she could not proceed with the construction work for long time and has really suffered huge financial loss and injury for not being able to construct her building due to motivated action of the petitioners. She is therefore, entitled to get cost from the petitioners. We have already decided that the alleged easement right cannot be adjudicated in the writ jurisdiction since the petitioners are admitting the ownership of RAJUK-respondent no. 4 in the plots of land and the petitioners had raised serious disputed question of fact and suppressed material

fact. Further, the petitioners are not the legal heirs of original allottee Abdul Mannan as such they have no locus-standi to file this writ petition.

From the foregoing discussions and having regard to the facts and circumstances of the case and decisions by our apex court we do not find any merit in this rule and having regard to the facts and circumstances of the case we are inclined to impose cost of Taka 5,00,000/- (Five lacs) only.

In the result, the rule is discharged with cost which is assessed at Taka 5,00,000/- (Five lacs) to be paid to the respondent no. 12 by the petitioner.

The petitioner is directed to pay of Taka 5,00,000/- (Five lacs) to the respondent within 3(three) months from date.

The order of injunction granted at the time of issuance of the rule is hereby vacated.

Let a copy of the judgment and order be communicated to the respondents at once.

S.M. Mozibur Rahman, J:

I agree.