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

WRIT PETITION NO. 13689 OF 2012

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Md. Moniruddin Ahmed
.....Petitioner
-Versus-
Rajdhani Unnayan Katripakkhya represented by its Chairman, RAJUK Bhaban, RAJUK Avenue, Motijheel, Dhaka-1000 and others
..... Respondents

Mr. Mohammad Mahedi Hasan Chowdhury with
Mr. A. K. M. Rabiul Hassan, Advocates
.....For the petitioner.

Mr. Delowar Hossain Somadder, Advocate
…..For the respondent no. 1.

Mr. Sk. Md. Morshed, Advocate
….For the respondent no. 4.

Heard on 18.11.2014, 09.02.2015 & 15.02.2015.
Judgment on 19.02.2015.

Present:
Mr. Justice Moyeenul Islam Chowdhury
-And-
Mr. Justice Md. Ashraful Kamal

MOYEENUL ISLAM CHOWDHURY, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the Memo No. রাজউক/নঃপঃ/অ-২/৩৬৩/১২-২০৫ স্হাঃ dated 08.10.2012 issued under the signature of the respondent no. 2 cancelling the Land Use Clearance Certificate (Annexure-'E' to the writ petition) should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

The petitioner and others purchased a piece of land situated at Mouza Joar Sahara, that is to say, C. S. and S. A. Dag No. 750, R. S. Dag No. 1355, Dhaka City Survey Dag No. 55279 by 3(three) registered deed being nos. 2814 dated 23.03.2011, 2815 dated 23.03.2011 and 7380 dated 02.08.2011. Accordingly, they mutated their names in the concerned record of the Government vide Mutation Case No. 1081 of 2011-2012 and have been enjoying the same by paying regular rent to the Government. Anyway, on 26.02.2012, they filed an application to the office of the respondent no. 1 for a Land Use Clearance Certificate and after scrutinizing all the relevant documents submitted along with the application, the respondent no. 2 being satisfied granted a Land Use Clearance Certificate in favour of them vide Memo No. রাজউক/নঃপঃ/সঃ-২/৩৬৩/১২-৪১৭ স্হাঃ dated 12.03.2012. While the petitioner and other co-owners of the case land were taking necessary steps for developing the same, the respondent no. 4 filed an application to the office of the respondent no. 1 on 23.09.2012; but

without holding any inquiry into the allegation referred to in the said application, the respondent no. 2 issued the impugned Memo No. রাজউক/নঃপঃ/অ-২/৩৬৩/১২-২০৫ স্হাঃ dated 08.10.2012 cancelling the Land Use Clearance Certificate dated 12.03.2012. In the impugned Memo dated 08.10.2012, no specific mention was made about the suppression of any facts in obtaining the Land Use Clearance Certificate from the Rajdhani Unnayan Kartipakkya (RAJUK). As the impugned Memo dated 08.10.2012 was issued behind the back of the petitioner, it is malafide. The petitioner did not violate any terms and conditions of the Land Use Clearance Certificate dated 12.03.2012. In colourable exercise of power, the RAJUK authority revoked the Land Use Clearance Certificate dated 12.03.2012 by the impugned Memo dated 08.10.2012 which is without lawful authority and of no legal effect.

In the Supplementary Affidavit dated 11.11.2012 filed on behalf of the petitioner, it has been stated that the petitioner made a representation to the Chairman of the RAJUK on 18.10.2012 requesting him to allow them to continue with the development of the case land; but the Chairman did not pay any heed thereto.

Both the respondent no. 1 and the respondent no. 4 have contested the Rule by filing 2(two) separate Affidavits-in-Opposition. Their case as set out in their respective Affidavits-in-Opposition, in short, runs as follows:

The petitioner and others filed an application dated 26.02.2012 before the respondent no. 1 (RAJUK) for issuance of a Land Use Clearance Certificate with reference to the case land by providing the respondent no. 1 with wrong, misleading and fraudulent information and without letting the respondent no. 1 know about the actual position of the case land, the petitioner obtained the Land

Use Clearance Certificate from the RAJUK on 12.03.2012. Thereafter they obtained a building permit for construction of a building in the case land from the RAJUK by its Memo No. রাজউক/উঃ নিঃ/৩সি-৩বি-৪৬০/১২/৭৬১ স্থাঃ dated 10.05.2012. They had been raising a building on the case land by occupying the public road and the land of the respondent no. 4. Against this backdrop, the respondent no. 4 lodged a written complaint with the RAJUK against the petitioner on 23.09.2012 and prayed for revocation of the Land Use Clearance Certificate granted in favour of the petitioner. On receipt of the complaint dated 23.09.2012, the RAJUK authority inspected the City Survey Map and an inquiry was held on the basis of the said complaint. On inquiry, the RAJUK authority found the petitioner and others guilty of providing misleading information and suppression of facts in obtaining the Land Use Clearance Certificate and also found the petitioner's encroachment on the public road and land of the respondent no. 4. By that reason, the RAJUK authority by its Memo No. রাজউক/নঃপঃ/অ-২/৩৬৩/১২-২০৫ স্থাঃ dated 08.10.2012 cancelled the Land Use Clearance Certificate granted in favour of the petitioner invoking Clause 5 of the said Certificate. As the land in question was undivided and undemarcated, the petitioner and others were not authorized in obtaining the Land Use Clearance Certificate from the RAJUK on the basis of their application dated 26.02.2012. Since there was suppression of material facts, the RAJUK authority rightly revoked the Land Use Clearance Certificate by the impugned Memo dated 08.10.2012.

At the outset, Mr. Mohammad Mahedi Hasan Chowdhury, learned Advocate appearing on behalf of the petitioner, submits that the petitioner was not afforded an opportunity of being heard prior to revocation of the Land Use

Clearance Certificate by issuing the impugned Annexure-‘E’ dated 08.10.2012 and that being so, he was condemned unheard and in this view of the matter, the impugned Annexure-‘E’ dated 08.10.2012 is without lawful authority and of no legal effect. In this connection, Mr. Mohammad Mahedi Hasan Chowdhury has drawn our attention to the decision in the case of HFDM De Silva Gunesekere…Vs…Bangladesh represented by the Secretary, Ministry of Home Affairs and others reported in 2 BLC (HCD) 179.

Mr. Mohammad Mahedi Hasan Chowdhury further submits that according to the Affidavits-in-Opposition filed by the respondent nos. 1 and 4, an inquiry was held into the written complaint dated 23.09.2012 lodged by the respondent no. 4 with the RAJUK authority; but curiously enough, no paper or document relating to the alleged inquiry has been filed or produced in the Court and in the absence of any such paper or document, a man of ordinary prudence will be loath to place his reliance upon the alleged story of holding an inquiry into the written complaint dated 23.09.2012 and consequently the alleged inquiry is a myth.

Mr. Mohammad Mahedi Hasan Chowdhury also submits that it is the definite assertion on behalf of the respondent nos. 1 and 4 that the petitioner provided wrong and misleading information to the RAJUK authority in obtaining the Land Use Clearance Certificate; but astoundingly enough, the nature of the alleged wrong or misleading information was not disclosed in the impugned Memo dated 08.10.2012 and as such the impugned order contained in Annexure-‘E’ dated 08.10.2012 is necessarily a cryptic and nebulous order which can not be sustained in law.

Mr. Mohammad Mahedi Hasan Chowdhury next submits that the RAJUK authority did not rescind the Land Use Clearance Certificate suo motu invoking Clause 5 of the Land Use Clearance Certificate, but admittedly it was rescinded on the basis of the written complaint dated 23.09.2012 lodged by the respondent no. 4 and this rescission of the Land Use Clearance Certificate being not suo motu by the RAJUK authority is not tenable in the eye of law.

Mr. Mohammad Mahedi Hasan Chowdhury also submits that on receipt of the impugned Memo dated 08.10.2012 (Annexure-'E' to the writ petition), the petitioner made a representation to the RAJUK authority on 18.10.2012 for revival of the Land Use Clearance Certificate on the ground that it was not understandable as to why the Land Use Clearance Certificate was revoked; but surprisingly enough, the RAJUK authority did not respond to the representation of the petitioner dated 18.10.2012 (Annexure-'F' to the supplementary affidavit) and as the RAJUK authority did not respond thereto, the petitioner was necessarily deprived of an effective representation in that regard and that is why, the petitioner felt constrained to come up with the instant writ petition under Article 102 of the Constitution.

Per contra, Mr. Sk. Md. Morshed, learned Advocate appearing on behalf of the respondent no. 4, submits that the petitioner and others obtained the Land Use Clearance Certificate from the respondent no. 1 by suppressing the fact that the case land is undivided and undemarcated and under joint possession of the petitioner and others with the respondent no. 4 and as the petitioner and others committed fraud upon the respondent no. 1, the petitioner can not get any relief in the writ petition having come up before this Court with unclean hands.

Mr. Sk. Md. Morshed also submits that it is a settled proposition of law that fraud vitiates everything and since the petitioner and others resorted to fraud in obtaining the Land Use Clearance Certificate from the RAJUK authority, the principles of natural justice were not required to be complied with and in this perspective, it can not be said at all that the impugned Memo dated 08.10.2012 is without lawful authority and of no legal effect. In this connection, Mr. Sk. Md. Morshed adverts to the decision in the case of The State of Chhattisgarh and others…Vs…Dhirjo Kumar Sengar reported in (2009) 13 SCC 600.

Mr. Sk. Md. Morshed further submits that in this writ petition, the Rule was issued on 12.11.2012 whereas the building permit of the petitioner was revoked by Annexure-'12' dated 05.11.2012 and since no relief has been sought with regard to the revocation of the building permit of the petitioner by Annexure-'12' dated 05.11.2012, the writ petition is not maintainable.

Mr. Sk. Md. Morshed next submits that Clause 2 of the Land Use Clearance Certificate (Annexure-'D' to the writ petition) does not create any right of commencement of any construction work in favour of the petitioner; rather it is a pre-condition to the obtaining of any building permit from the RAJUK by the petitioner and as the Annexure-'D' does not create any right of commencement of any construction work in favour of the petitioner, the writ petition is not maintainable on this count as well.

Mr. Delowar Hossain Somadder, learned Advocate appearing for the respondent no. 1, virtually adopts the submissions made by the learned Advocate Mr. Sk. Md. Morshed.

We have heard the submissions of the learned Advocate Mr. Mohammad Mahedi Hasan Chowdhury and the counter-submissions of the learned Advocate

Mr. Sk. Md. Morshed and perused the Writ Petition, Supplementary Affidavit, Affidavits-in-Opposition and relevant Annexures annexed thereto.

Indisputably the principle of "Audi Alteram Partem" was not adhered to prior to revocation of the Land Use Clearance Certificate by issuing the impugned Annexure-'E' dated 08.10.2012. Now a pertinent question arises: what legal consequences will ensue for not following the principle of "Audi Alteram Partem" in this regard? This question must be answered for proper and effectual adjudication of the Rule.

The principles of natural justice are applied to administrative process to ensure procedural fairness and to free it from arbitrariness. Violation of these principles results in jurisdictional errors. Thus in a sense, violation of these principles constitutes procedural ultra vires. It is, however, impossible to give an exact connotation of these principles as its contents are flexible and variable depending on the circumstances of each case, i.e., the nature of the function of the public functionary, the rules under which he has to act and the subject-matter he has to deal with. These principles are classified into two categories-(i) a man can not be condemned unheard (audi alteram partem) and (ii) a man can not be the judge in his own cause (nemo debet esse judex in propria causa). The contents of these principles vary with the varying circumstances and those can not be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. In applying these principles, there is a need to balance the competing interests of administrative justice and the exigencies of efficient administration. These principles were applied originally to courts of justice and now extend to any person or body deciding issues affecting the rights or interests of individuals where a reasonable citizen would

have legitimate expectation that the decision-making process would be subject to some rules of fair procedure. These rules apply, even though there may be no positive words in the statute requiring their application.

Lord Atkin in R. Vs. Electricity Commissioners ([1924] 1 KB 171) observed that the rules of natural justice applied to 'any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially'. The expression 'having the duty to act judicially' was used in England to limit the application of the rules to decision-making bodies similar in nature to a court of law. Lord Reid, however, freed these rules from the bondage in the landmark case of Ridge…Vs... Baldwin ([1964] AC 40). But even before this decision, the rules of natural justice were being applied in our country to administrative proceedings which might affect the person, property or other rights of the parties concerned in the dispute. In all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting the person or property or other right of the parties concerned. In this context, reliance may be placed on the cases of The University of Dacca and another…Vs…Zakir Ahmed, 16 DLR (SC) 722; Sk. Ali Ahmed…Vs…The Secretary, Ministry of Home Affairs and others, 40 DLR (AD) 170; Habibullah Khan…Vs…Shah Azharuddin Ahmed and others, 35 DLR (AD) 72; Hamidul Huq Chowdhury and others…Vs…Bangladesh and others, 33 DLR 381 and Farzana Haque….Vs…The University of Dhaka and others, 42 DLR 262.

In England, the application of the principles of natural justice has been expanded by introducing the concept of 'fairness'. In Re Infant H (K) ([1967] 1 All E.R. 226), it was held that whether the function discharged is quasi-judicial

or administrative, the authority must act fairly. It is sometimes thought that the concept of 'acting fairly' and 'natural justice' are different things, but this is wrong as Lord Scarman correctly observes that the Courts have extended the requirement of natural justice, namely, the duty to act fairly, so that it is required of a purely administrative act (Council of Civil Service Union…Vs...Minister for the Civil Service [1984] 3 All E.R. 935). Speaking about the concept, the 'acting fairly' doctrine has at least proved useful as a device for evading some of the previous confusions. The Courts now have two strings to their bow. An administrative act may be held to be subject to the requirements of natural justice either because it affects rights or interests and therefore involves a duty to act judicially, in accordance with the classic authorities and Ridge…V... Baldwin; or it may simply be held that in our modern approach, it automatically involves a duty to act fairly and in accordance with natural justice. The Indian Supreme Court has adopted this principle holding "….this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands" (Swadeshi Cotton Mills…V... India, AIR 1981 SC 818).

The English Courts have further expanded the horizon of natural justice by importing the concept of 'legitimate expectation' and holding that from promise or from established practice, a duty to act fairly and thus to comply with natural justice may arise. Thus the concepts of 'fairness' and 'legitimate expectation' have expanded the applicability of natural justice beyond the sphere of right. To cite a few examples, not only in the case of cancellation of licence which involves denial of a right, but also in the case of first-time grant of licence and renewal of licence, the principle of natural justice is attracted in a limited way in consideration of legitimate expectation. An applicant for registration as a

citizen, though devoid of any legal right, is entitled to a fair hearing and an opportunity to controvert any allegation levelled against him. An alien seeking a visa has no entitlement to one, but once he has the necessary documents, he does have the type of entitlement that should now be protected by due process, and the Government should not have the power to exclude him summarily.

In the case of Chingleput Bottlers…Vs...Majestic Bottlers reported in AIR 1984 SC 1030, the Indian Supreme Court has made certain observations which create an impression that the rules of natural justice are not applicable where it is a matter of privilege and no right or legitimate expectation is involved. But the application of the rules of natural justice is no longer tied to the dichotomy of right-privilege. It has been stated in "Administrative Law" by H.W.R. Wade, 5th edition at page-465: "For the purpose of natural justice, the question which matters is not whether the claimant has some legal right, but whether the legal power is being exercised over him to his disadvantage. It is not a matter of property or of vested interests, but simply of the exercise of Governmental power in a manner which is fair …" In the American jurisdiction, the right-privilege dichotomy was used to deny due process hearing where no right was involved. But starting with Gonzalez…Vs...Freeman (334 F. 2d 570), the Courts gradually shifted in favour of the privilege cases and in the words of Professor Schwartz, "The privilege-right dichotomy is in the process of being completely eroded" ("Administrative Law", 1976, Page-230). Article 31 of our Constitution incorporating the concept of procedural due process, the English decisions expanding the frontiers of natural justice are fully applicable in Bangladesh.

In English law, the rules of natural justice perform a function, within a limited field, similar to the concept of procedural due process as it exists in the

American jurisdiction. Following the English decisions, the Courts of this sub-continent have held that the principle of natural justice should be deemed incorporated in every statute unless it is excluded expressly or by necessary implication by any statute.

The basic principle of fair procedure is that before taking any action against a man, the authority should give him notice of the case and afford him a fair opportunity to answer the case against him and to put his own case. The person sought to be affected must know the allegation and the materials to be used against him and he must be given a fair opportunity to correct or contradict them. The right to a fair hearing is now of universal application whenever a decision affecting the rights or interest of a man is made. But such a notice is not required where the action does not affect the complaining party.

It is often said that malafides or bad faith vitiates everything and a malafide act is a nullity. What is malafides? Relying on some observations of the Indian Supreme Court in some decisions, Durgadas Basu J held, “It is commonplace to state that malafides does not necessarily involve a malicious intention. It is enough if the aggrieved party establishes: (i) that the authority making the impugned order did not apply its mind at all to the matter in question; or (ii) that the impugned order was made for a purpose or upon a ground other than what is mentioned in the order.” (Ram Chandra…Vs…Secretary to the Government of W.B, AIR 1964 Cal 265)

To render an action malafide, “There must be existing definite evidence of bias and action which can not be attributed to be otherwise bona fide; actions not otherwise bona fide, however, by themselves would not amount to be malafide unless the same is in accompaniment with some other factors which would

depict a bad motive or intent on the part of the doer of the act" (Punjab…Vs… Khanna, AIR 2001 SC 343).

The principle of reasonableness is used in testing the validity of all administrative actions and an unreasonable action is taken to have never been authorized by the Legislature and is treated as ultra vires. According to Lord Greene, an action of an authority is unreasonable when it is so unreasonable that no man acting reasonably could have taken it. This has now come to be known as Wednesbury unreasonableness. (Associated Provincial Picture…Vs… Wednesbury Corporation [1948]1 KB 223)

Reverting to the case in hand, it is an indubitable fact that the principle of "Audi Alteram Partem" was not adhered to prior to rescission of the Land Use Clearance Certificate by issuing the impugned Annexure-'E' dated 08.10.2012. From our above discussions, it is manifestly clear that the petitioner was entitled to a fair hearing before cancellation of the Land Use Clearance Certificate by the RAJUK authority. In other words, the RAJUK authority did not act fairly by not affording the petitioner an opportunity of being heard before issuance of the impugned Annexure-'E' dated 08.10.2012.

In the decision in the case of HFDM De Silva Gunesekere…Vs…Bangladesh represented by the Secretary, Ministry of Home Affairs and others reported in 2 BLC (HCD) 179 relied upon by Mr. Mohammad Mahedi Hasan Chowdhury, it was held in paragraph 7 that the black-listing of the petitioner without an opportunity of being heard was illegal and for the same reason, the impugned order deporting him from the country by 27.07.1995 without giving him an opportunity of being heard was violative of natural justice, and must be held to have been made illegally and without lawful

authority. So it is seen that in this decision, the black-listing of the petitioner by the authority and the consequent deportation order of the authority were found to be without lawful authority for violation of the principle of natural justice.

In the decision in the case of The State of Chhattisgarh and others…Vs…Dhirjo Kumar Sengar reported in (2009) 13 SCC 600 referred to by Mr. Sk. Md. Morshed, it was held in paragraphs 19, 20 and 21:

> "19. The respondent keeping in view the constitutional scheme has not only committed a fraud on the Department, but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.
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> 20. Mr. Gupta has relied upon a large number of decisions of this Court viz. Inderpreet Singh Kahlon…Vs…State of Punjab, ((2006) 11 SCC 356); Mohd. Sartaj…Vs…State of U. P., ((2006) 2 SCC 315); Jaswant Singh…Vs…State of M. P., ((2002) 9 SCC 700) and State of M. P….Vs…Shyama Pardhi, ((1996) 7 SCC 118) to contend that audi alteram partem doctrine should have been complied with.
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> 21. In these cases, requirement to comply with the principles of natural justice has been emphasised. The legal principles carved out therein are

> unexceptional. But, in this case, we are concerned with a case of fraud. Fraud, as is well known, vitiates all solemn acts. (Ram Chandra Singh…Vs…Savitri Devi reported in ((2003) 8 SCC 319), Tanna & Modi…Vs…CIT reported in ((2007) 7 SCC 434) and Rani Aloka Dudhoria…Vs…Goutam Dudhoria reported in ((2009) 13 SCC 569). The High Court, therefore, must be held to have committed a serious error in passing the impugned judgment."

Coming back to the case before us, we must say that the facts and circumstances of the case are quite distinguishable from those of the case reported in (2009) 13 SCC 600. Besides, in our opinion, in the instant case, the alleged perpetration of fraud by the petitioner upon the RAJUK authority was not proved at all in view of the fact that the petitioner and others jointly obtained the Land Use Clearance Certificate from the RAJUK and a reference to Annexure-'D' clearly indicates that the Land Use Clearance Certificate sought for was in respect of a part of the case land, though it was not specifically mentioned that the land is undivided and undemarcated. Over and above, by invoking Clause 5 of Annexure-'D', that is to say, "কোন তথ্য গোপন করিলে বা ভুল তথ্য প্রদান করিলে প্রদানকৃত ছাড়পত্র বাতিল বলিয়া গণ্য হইবে," the RAJUK authority did not revoke the Land Use Clearance Certificate suo motu; rather on the basis of the written complaint dated 23.09.2012 lodged by the respondent no. 4, the Land Use Clearance Certificate granted in favour of the petitioner and others was rescinded behind their back in an arbitrary fashion.

Precisely speaking, it was all the more necessary to hear the petitioner before cancellation of the Land Use Clearance Certificate by the impugned Annexure-'E' dated 08.10.2012 when there was a specific complaint dated 23.09.2012 against the petitioner and others lodged by the respondent no. 4 in black and white. It does not stand to reason and logic as to why and how the RAJUK authority could shut its eyes and act blindfold at the instance of the respondent no. 4 alone. On this point, we are at one with Mr. Mohammad Mahedi Hasan Chowdhury that had the RAJUK authority revoked the Land Use Clearance Certificate of the petitioner suo motu invoking Clause 5 of the said Certificate, then the question of malafides or bad faith on their part would not have arisen. We have already observed that the failure to adhere to the principle of "Audi Alteram Partem" results in a jurisdictional error. As the RAJUK authority committed a jurisdictional error by not giving any hearing to the petitioner prior to cancellation of the Land Use Clearance Certificate, the impugned Annexure-'E' dated 08.10.2012 must be held to be without lawful authority and of no legal effect.

It is true that in the Affidavits-in-Opposition filed by the respondent nos. 1 and 4, it has been specifically, unambiguously, clearly and unmistakably stated that the RAJUK authority held an inquiry into the written complaint dated 23.09.2012 lodged by the respondent no. 4 relating to the suppression of some material facts in obtaining the Land Use Clearance Certificate from the RAJUK authority by the petitioner and others; but funnily enough, no paper or document relating to the alleged inquiry has been filed or produced in the Court. In the absence of any such paper or document, we are inclined to hold that the RAJUK authority did not make any inquiry into the written complaint dated 23.09.2012

at all. What is strikingly noticeable is that the RAJUK authority acted at its sweet will at the instance of the respondent no. 4 without caring a fig for the principle of "Audi Alteram Partem." This exercise of the RAJUK authority is, no doubt, unconscionable and as such it is deprecated.

Mr. Mohammad Mahedi Hasan Chowdhury has rightly contended that the impugned Annexure-'E' dated 08.10.2012 does not specifically refer to any materials on the basis of which the Land Use Clearance Certificate was rescinded by the RAJUK authority. From Annexure-'E' dated 08.10.2012, it transpires that the RAJUK authority revoked the Land Use Clearance Certificate granted in favour of the petitioner and others on the ground— "সঠিক তথ্য উপস্থাপন না করায়". What we are driving at boils down to this: the RAJUK authority did not apply its mind to the matter in question and as a natural corollary, it issued the impugned Annexure-'E' dated 08.10.2012 which is a classic case of bad faith.

There is another dimension of the case. It is an admitted fact that on receipt of the impugned Annexure-'E' dated 08.10.2012, the petitioner made a representation to the RAJUK authority on 18.10.2012 (Annexure-'F' to the supplementary affidavit) and the prayer incorporated in Annexure-'F' ran like this: "কি কারণে উক্ত ছাড়পত্র বাতিল করা হলো তা আমাদের বোধগম্য নয়। বিষয়টি উদ্ধর্তন কর্তৃপক্ষের মাধ্যমে দলিল দস্তাবেজ সহ সরজমিনে তদন্ত সাপেক্ষে আমাদের ভূমি ব্যবহারের ছাড়পত্র পুর্নবহালের জন্য বিনীত অনুরোধ জানাচ্ছি।" So it appears that by this Annexure-'F' dated 18.10.2012, the petitioner urged the RAJUK authority to hold an on-the-spot inquiry into the matter and he was not aware as to why the Land Use Clearance Certificate was revoked and also requested the RAJUK authority for restoration of the Land Use Clearance Certificate subject to the on-the-spot inquiry. But the RAJUK

authority did not respond to this Annexure-‘F’ dated 18.10.2012 and this was left unanswered to the grave prejudice of the petitioner. The upshot of the above discussion is that the petitioner was in the dark about the cause of revocation of the Land Use Clearance Certificate by the RAJUK authority and that is why, he could not file any effective representation thereagainst. As found earlier, no inquiry was held into the matter prior to cancellation of the Land Use Clearance Certificate. Having failed to get his grievances remedied, the petitioner eventually came up with the instant writ petition under Article 102 of the Constitution.

It is true that the Land Use Clearance Certificate (Annexure-‘D’ to the writ petition) does not create any right of commencement of any construction work by the petitioner; rather it is a pre-condition to the obtaining of any building permit from the RAJUK authority. It goes without saying that the petitioner was adversely affected by the cancellation of the Land Use Clearance Certificate. He was not given any chance of countering the complaint dated 23.09.2012 made by the respondent no. 4. The principle of fair play, or for that matter, fair procedure was made a casualty in the present instance. Anyway, undeniably after obtaining the Land Use Clearance Certificate, the petitioner and others obtained a building permit from the RAJUK authority and thereafter they started erecting a building on the case land. It is undisputed that by issuing Annexure-‘12’ dated 05.11.2012, the building permit was cancelled consequent upon the cancellation of the Land Use Clearance Certificate and that was specifically referred to in Annexure-‘12’. In other words, in consequence of the revocation of the Land Use Clearance Certificate, the building permit was rescinded and that is why probably the petitioner did not challenge the

Annexure-‘12’ dated 05.11.2012 in this writ petition. As the Annexure-‘12’ dated 05.11.2012 was issued by the RAJUK authority on the basis of the revocation of the Land Use Clearance Certificate, the petitioner, as we see it, is not required to challenge the same specifically in the writ petition.

In view of what have been discussed above and regard being had to the facts and circumstances of the case, we are led to hold that the writ petition is maintainable and the impugned Annexure-‘E’ dated 08.10.2012 revoking the Land Use Clearance Certificate dated 12.03.2012 issued in favour of the petitioner and others can not be sustained in law. So we find merit in the Rule. The Rule, therefore, succeeds.

Accordingly, the Rule is made absolute without any order as to costs. The impugned Annexure-‘E’ dated 08.10.2012 is declared to be without lawful authority and of no legal effect. However, the RAJUK authority is at liberty to dispose of the complaint dated 23.09.2012 lodged by the respondent no. 4 in accordance with law after affording the petitioner an opportunity of being heard.

MD. ASHRAFUL KAMAL, J:

I agree.