

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice Sk. Tahsin Ali

First Misc. Appeal No. 290 of 2018

With

Civil Rule No. 326 (FM) of 2022

Globe Construction Limited

.... Plaintiff-appellant

-VERSUS-

Rajdhani Unnayan Kartipakkha (RAJUK) and others

.... Defendant-respondent

Mr. Shahjada Al-Amin Kabir, Advocate

.... For the appellant

Mr. Md. Imam Hasan, Advocate

.....For the respondent Nos. 1 and 2

Mr. Niaz Murshed, Advocate

.....For the respondent Nos. 4 to 19

Heard on: 12.08.2026 and 19.08.2026

Judgment on: The 31st of August, 2026

Abu Taher Md. Saifur Rahman, J

This appeal is directed against Judgment and Order No. 11 dated 07.03.2018 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 424 of 2017 whereby the plaintiff-appellant's application for temporary injunction was rejected.

At the time of admission of the appeal, this Court, upon an application filed by the appellant, was pleased to pass an ad-interim order of injunction restraining the respondents-opposite parties from demolishing the structure standing on the suit premises or otherwise disturbing the appellant's peaceful possession thereof till disposal of the appeal.

It further appears from the record that after a lapse of about four years, the appellant filed a fresh application for injunction before this Court. Upon hearing the said application, this Court issued Civil Rule No. 326(FM) of 2022 on 26.04.2022 in the following terms:

“Let a Rule issue calling upon the respondent-opposite parties to show cause as to why an order of injunction restraining them from demolishing the structure constructed on the land described in the schedule to the application and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court granted an ad interim order of injunction for a period of six months, which was not extended thereafter.

For disposal of the instant appeal and the connected Civil Rule No. 326(FM) of 2022, the relevant facts, in brief, are set out below:

The appellant, as plaintiff, instituted the suit seeking a declaration that the RAJUK-approved plan dated 19.01.1999 in respect of the suit property is valid and that the notice dated 08.05.2011, issued by RAJUK vide Memo No. RAJUK/1/Ovi-224/09/167, is null, void, illegal, invalid ab initio and without legal effect. Along with the suit, the plaintiff filed an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure seeking a temporary injunction restraining defendant Nos. 1–3 from demolishing or otherwise interfering with the building during pendency of the suit.

The plaintiff's case, in substance, is that the owners of the scheduled property obtained RAJUK approval on 19.10.1999 for construction of a 16-storied residential building and thereafter appointed the plaintiff as developer under a Joint Venture Agreement dated 20.12.2000. Pursuant thereto, the plaintiff commenced construction and completed the building up to the 4th floor. Subsequently, RAJUK issued a notice dated 08.05.2011 threatening demolition of the said building. The plaintiff contends that the construction was made in accordance with the duly approved plan and that the said notice

was illegal and without lawful authority. It was, therefore, asserted that the plaintiff had a prima facie case, the balance of convenience lay in its favour, and demolition would cause irreparable loss and injury.

Upon hearing the learned Advocates for the parties, the learned Court below, by the impugned Order No. 11 dated 07.03.2018 rejected the application for temporary injunction. Aggrieved thereby, the plaintiff preferred the instant appeal.

Mr. Shahjada Al-Amin Kabir, learned Advocate for the appellant-petitioner submits that the learned Court below erred in law in rejecting the application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure without properly considering the materials on record. He submits that the appellant had already constructed four floors pursuant to the RAJUK-approved plan and that the demolition notice dated 08.05.2011 was issued without lawful authority. He further submits that, being the authorized developer under the Joint Venture Agreement dated 20.12.2000, the appellant was entitled to construct the building notwithstanding that it was not the owner of the land, and that the subsequent agreement did not invalidate the earlier RAJUK approval. He also submits that the filing and subsequent non-pressing of Writ Petition No. 4233 of 2011 did not operate as a bar to the present suit. According to him, the appellant has a prima facie case and demolition during pendency of the suit would cause irreparable loss and injury. He, therefore, prays for setting aside the impugned order.

In reply, Mr. Md. Imam Hasan, learned Advocate for respondent Nos. 1 and 2, submits that the landowners admittedly entered into a Joint Venture Agreement with Globe Construction Limited on 20.12.2000 for construction of a 16-storied building on 8.15 kathas of land at Holding No. 15/2, Hatkhola Road, Sutrapur, Dhaka. Clause 5 required the developer to obtain RAJUK approval within two months, while Clause 28 provided that the agreement would stand void if approval for the proposed 16-storied building was not obtained. Thus, there was no valid RAJUK-approved plan at the time of execution of the agreement.

He submits that the landowners thereafter executed Power of Attorney No. 4899 dated 21.12.2000 in favour of the appellant, which was subsequently revoked by registered Deed No. 244 dated 19.02.2009 for failure to comply with the terms of the agreement. Upon being informed that the appellant was undertaking unauthorized construction, RAJUK inspected the premises and found no valid approved plan, whereupon notices dated 26.07.2009, 03.08.2009 and 12.10.2009 were issued directing removal of the unauthorized construction, as evidenced by Annexure Nos. 4, 4/1, 4/2, 4/3, 4/4 and 5 to the counter-affidavit of respondent No. 2.

He further submits that the appellant thereafter relied upon a purported sanction plan bearing Memo No. 3C/2019/99 dated 19.10.1999. Upon verification, RAJUK found that no such approval had been granted in favour of Globe Construction Limited for a 16-storied building; rather, the said memo related to an approval granted in favour of Mr. A.B.M. Siddique of Rupnagar Residential Area for construction of a one-storied building. The purported sanction plan was, therefore, alleged to be forged and fabricated.

He further submits that, finding the construction unauthorized, RAJUK issued the notice dated 08.05.2011 directing Globe Construction Limited to demolish the building within seven days, failing which action would be taken in accordance with law. Challenging the said notice, the appellant filed Writ Petition No. 4233 of 2011 before the High Court Division, wherein the respondents specifically disputed the validity of the purported sanctioned plan. Subsequently, the Rule issued in the said writ petition was discharged as not pressed.

Finally, he submits that the Courts below, upon proper consideration of the materials on record and the applicable law, rightly rejected the appellant's claim and that the impugned order, therefore, calls for no interference.

Mr. Niaz Murshed, learned Advocate appearing for the respondents, adopts the submissions advanced on behalf of respondent Nos. 1 and 2.

We have heard the learned Advocates for the respective parties and perused the materials on record, including the impugned order.

In view of the rival submissions, the point that falls for determination in this appeal is whether the learned Joint District Judge, 1st Court, Dhaka, committed any error of law in rejecting the appellant's application for temporary injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure.

It appears from the record that the appellant, Globe Construction Limited, instituted Title Suit No. 424 of 2017 seeking a declaration that Plan dated 19.10 1999, allegedly approved by RAJUK for construction of a 16-storied building on the suit property, was valid and that RAJUK's notice dated 08.05.2011 directing demolition of the structure was illegal and without lawful authority. During pendency of the suit, the appellant sought temporary injunction restraining RAJUK from demolishing or interfering with the building, which was rejected by the trial Court.

For obtaining an injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, the applicant must establish a prima facie case, balance of convenience and likelihood of irreparable injury. These conditions must be considered cumulatively.

In the present case, it is admitted that the landowners entered into a Joint Venture Agreement with the appellant on 20.12.2000 for construction of a 16-storied building. Clause 5 required the developer to obtain RAJUK approval within two months, while Clause 28 stipulated that the agreement would become null and void if such approval was not obtained. Thus, no RAJUK sanction for the proposed 16-storied construction existed at the time of execution of the agreement. The developer was subsequently authorized by a registered Power of Attorney dated 21.12.2000, which was revoked by the landowners by a registered deed dated 19.02.2009. Consequently, the appellant had no subsisting authority from the landowners to continue the construction.

It further appears that, upon inspection, RAJUK found no valid approved plan supporting the construction. The plan relied upon by the appellant was, upon verification of RAJUK records, found to relate to another person and to a one-storied building, and not to the appellant or the suit property as evident from Annexure-4/4 to the Counter Affidavit filed by respondent No.1 to 2. RAJUK accordingly issued notices for removal/demolition of the unauthorized construction, culminating in the notice dated 08.05.2011.

The appellant had earlier challenged the said notice by filing Writ Petition No. 4233 of 2011, but subsequently did not press the same and thereafter instituted the present suit seeking substantially the same relief. Be that as it may, on the materials presently available, the appellant has failed to establish a prima facie lawful sanction for the existing construction. An unauthorized multi-storied structure cannot claim equitable protection merely to preserve an allegedly unlawful construction. The balance of convenience also does not lie in favour of continuing such construction, particularly where public safety and statutory building regulations are involved.

In the circumstances, the learned trial Court, upon proper consideration of the materials on record, rightly refused the discretionary relief of temporary injunction. We find no illegality or infirmity in the impugned order warranting interference by this Court.

Accordingly, the appeal is dismissed and the connected Civil Rule 326(FM) of 2022 is also hereby discharged.

The impugned Order No. 11 dated 07.03.2018 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 424 of 2017 is hereby affirmed

It appears that Title Suit No. 424 of 2017 has remained pending for about 10 (ten) years, which is highly undesirable. The learned trial Court is, therefore, directed to dispose of the suit expeditiously, preferably within 06

(six) months from the date of receipt of this judgment and order, without granting unnecessary adjournments to either party.

Let a copy of this judgment and order be transmitted to the learned Court below at once.

Sk. Tahsin Ali, J:

I agree

As against this Mr. Surojit Bhattacharjee, the learned Advocate for the opposite parties submits that the findings arrived at by the both Courts below are based on materials on record and also on a correct and proper analysis of the legal aspects involved in the instant case which does not called for any interference by this Court under the revisional jurisdiction