

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 10224 OF 2015

In the matter of:

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

And

In the matter of:

Syed Ziad Rahman, son of late Sayed Habibur
Rahman and late Anwara Begum of 24/25,
Mohammad Ali Road (ICI Banglo), Bloosm
Garden, CDA Avenue, Dampara, Chittagong
City Corporation, Police Station- Kotwali,
District- Chittagong.

... Petitioner

-Versus-

Chittagong Development Authority (CDA)
represented by its Chairman, CDA Bhaban,
Chittagong and others.

... Respondents

Mr. Mohammad Ziaul Hoque with
Mr. Md. Kamal Parvez, Advocates

...For the petitioner

Mr. Muhammad Huzzatul Islam Khan,
Advocate

...For the respondent no. 1

Heard on 19.10.2025 and 20.10.2025.

Judgment on 20.10.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the office order vide Memo No. সচিব/এ্যাঃ অর্থঃ/৯৬/৩৬০ dated 16.08.2015 passed by the respondent no. 2 rejecting appeal filed by the petitioner on 19.10.2009 under section 15 of the Building Construction Act, 1952 (E.B Act, 1953) (as amended in 1987) and thereby confirming the notices dated 11.10.2009 (Annexure-‘F’ and ‘F-1’ to the writ petition) for removing unauthorized construction of the petitioner (Annexure-‘A’ to the writ petition) should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned Memo No. সচিব/এ্যাঃ অর্থঃ/৯৬/৩৬০ dated 16.08.2015 and also restrained the respondents by an order of injunction from constructing any building over the suit property for a period of 6(six) months which was subsequently extended from time to time.

The short facts leading to issuance of the instant rule are:

The petitioner erected a commercial building which belonged to *khas mahal*, Sadar, Chittagong and one, Shamsuzzoha took lease from the government by *patta* dated 01.07.1933 and while he was in possession, he transferred the same that is, leasehold land to one, Saleh Ahmed by registered sale deed dated 15.03.1935 who in his turn also transferred the same to one, Nurul Islam by registered sale deed dated 27.03.1942. Subsequently, Nurul Islam sold the self-same property to one, Imperial

Chemical Industries (Export) Ltd. (shortly, ICI), a company registered and incorporated under the provision of English Company's Law having its registered office in the U.K. by registered sale deed dated 03.05.1949 which was followed by a deed of rectification dated 30.12.1960. Since purchase, the said ICI had been in possession and under P.O. No. 16 of 1972, the said property was declared as abandoned property whereupon, ICI raised question about the validity of steps taken by the government for declaring the property as abandoned property. Then the government having been satisfied about the genuineness of the claim of ICI released the same in favour of the claimant. Thereafter, ICI expressed its desire to sell half portion of the said land to the petitioner. Accordingly, both the parties entered into an agreement for sale on 19.02.1997. In the meantime, the price of the land went high and the ICI out of greed, adopted dilly-dally tactics to register sale deed showing different pleas. Being compelled, the petitioner filed a suit being Title Suit No. 253 of 2005 for specific performance of contract before the 3rd court of Joint District Judge, Chittagong. In that suit, the petitioner made an application under order XXXIX, rule 1 and 2 of the Code of Civil Procedure for injunction restraining the defendants from giving any sale deed to any other person. However, upon hearing the parties, the trial court was pleased to pass an order on 26.05.2010 directing the parties to maintain status quo till disposal of the suit and the suit is still pending for disposal before the learned Joint District Judge, 3rd court, Chittagong. The petitioner then by annexing necessary documents and a sketch map planned to construct a 3-semi-pucca commercial building and filed B.S Case No. 555 of 1994.

Thereafter, the Chittagong Development Authority (shortly, CDA) after holding proper inquiry and following prescribed procedure under Building Construction Act gave approval on 13.11.1994 and the same was intimated to the petitioner by its authorized officer vide letter dated 13.11.1994. The petitioner then constructed 2(two) semi-pucca buildings as per the approved plan of CDA by investing huge amount of money on taking bank loan under constant supervision of the CDA where there was no deviation from the approved plan in such construction.

It has further been stated that after long lapse of time, the Authorized Officer-2, CDA, the respondent no. 3 vide letter dated 15.02.2009 issued a show cause notice to the petitioner under section 3B of the Building Construction Act, 1952, Annexure-‘C’ to the writ petition on the back of the complaint made by one, Sajed Bin Amin Chowdhury asking the petitioner to stop all kind of constructions till hearing of the dispute and to give reply within 7(seven) days as to why unauthorized constructions made, should not be demolished though the same was received by the petitioner long after expiry of the stipulated time of giving explanation by 7(seven) days mentioned in the notice. It has also been stated that the respondent no. 3 issued another notice to the petitioner on 09.04.2009 asking him to submit required documents in support of the ownership of the disputed land within 7(seven) days (Annexure-‘D’ to the writ petition). In response to that the petitioner by his letter dated 19.04.2009 submitted several documents in support of his ownership over the suit property (Annexure-‘D-1’ to the writ petition). It has further been stated that the respondent no. 3 again issued letter to the petitioner dated

24.09.2009 with reference to the allegations made to him by one, Mr. Syed Bin Amin Chowdhury and another Ms. Fatema Akter asking him to remove all unauthorized constructions built without approval of CDA else legal action would be taken against him (Annexure-‘E’ to the writ petition). The authorized officer-2, respondent no. 3 further issued a notice to the petitioner on 11.10.2009 directing him to remove all unauthorized construction within 18.10.2009 otherwise, it was stated therein the notice that action would be taken under rule 7(1) of the Building Construction Act, 1952 and on the same day similar notice was issued under section 6(1) of the said Act asking the petitioner to remove unauthorized building within 7(seven) days else the authority would evict him from the premises under section 6(2) of the Building Construction Act. Against those very letters issued against the petitioner asking him to remove unauthorized construction, the petitioner on 13.10.2009 filed an application to the authorized officer-2, respondent no. 3 requesting it from taking any step in evicting him (the petitioner) from the disputed land (Annexure-‘G’ to the writ petition). Regardless, the petitioner then preferred an appeal before the Chairman, CDA under section 15 of the Building Construction Act against the notices dated 11.10.2009 issued under section 3B(3) and 6(1) of the Act of 1952 on 19.10.2009 (Annexure-‘H’ to the writ petition) for setting aside those notices and to stay the operation of those notices till disposal of the said appeal. However, the said appeal was rejected on 16.08.2015 and thereby affirmed the notices dated 11.10.2009 challenging which the instant writ petition was filed.

It is worthwhile to mention here that the petitioner challenging the notices dated 11.10.2009 had earlier filed a Writ Petition being No. 8093 of 2009 before this court and this court issued rule and stayed the operation of the impugned notices dated 11.10.2009. However, upon hearing, this court ultimately discharged the rule vide judgment and order dated 19.08.2010 on the point of maintainability however directing the authority to dispose of the appeal within 60(sixty) days.

However, being aggrieved by the said order, the petitioner preferred Civil Miscellaneous Petition No. 738 of 2010 before the Appellate Division and upon hearing, the Hon'ble Judge-in-Chamber vide order dated 25.08.2010 was pleased to stay the operation of the judgment and order dated 19.08.2010. Thereafter, the petitioner filed Civil Petition for Leave to Appeal No. 906 of 2012 against the order dated 19.08.2010 passed in Writ Petition No. 8093 of 2009 and ultimately the said Civil Petition for Leave to Appeal was dismissed as being time barred vide judgment and order dated 02.04.2015. Ultimately, the appeal so preferred by the petitioner (Annexure-'H' to the writ petition) was rejected vide impugned order dated 16.08.2015.

Mr. Mohammad Ziaul Hoque, the learned counsel appearing for the petitioner upon taking us to the writ petition and all the documents appended therewith at the very outset submits that on the basis of two allegations so have been made by one, Sajed Bin Amin Chowdhury on 15.02.2009 and Ms. Fatema Akter dated 17.09.2009, 2(two) show cause notices were issued against the petitioner asking him to demolish unauthorized building alleged to have constructed by the petitioner on the

disputed property. But in view of the allegation so have been made by Sajed Bin Amin Chowdhury dated 15.02.2009, the authorized officer upon physical inspection in the property in question, in presence of the complainant and the petitioner, directed him (the petitioner) to submit relevant documents in support his ownership. As per the said direction dated 09.04.2009 (Annexure-‘D’ to the writ petition), the petitioner on 19.04.2009 supplied relevant documents which has been annexed as of Annexure- ‘D-1’ to the writ petition and thereby the complaint made by one, Sajed Bin Amin Chowdhury was ended there as no action has further been taken by the authority against the petitioner.

The learned counsel next contends that in view of another complaint made by one, Fatema Akter dated 17.09.2009 on which notice which was issued on 24.09.2009, the petitioner gave his reply on 13.10.2009. But in regard to those two notices issued by the respondent dated 15.02.2009 as well as dated 09.04.2009 (Annexure-‘C’ and ‘D’ to the writ petition), the petitioner was not given any opportunity of being heard as per the provision of section 3B(3) of the Building Construction Act, 1952 and therefore, mandatory provision of law has been violated in regard to giving effect to the show cause notices issued on the basis of complaint made by one, Fatema Akter and Sajed Bin Amin Chowdhury. However, in view of the notice issued on 09.04.2009 though the petitioner submitted several documents vide letter dated 19.04.2009 yet in respect of the above notices, no hearing has been taken from the petitioner and therefore, the order dated 16.08.2015 passed in the appeal preferred by the

petitioner under section 15 of the Building Construction Act cannot be sustained in law.

The learned counsel by taking us to the provision of section 15 of the Building Construction Act also contends that though there has been no provision provided in that section that the appellant should be heard but it is the universal proposition that if any decision is to be given to any parties, the said party should be heard which has been settled by a Latin principle *audi alterem partem*. So, in spite of not having any provision for giving opportunity to hear the appellant in section 15 of the Act yet without hearing the appellant enabling him in taking defence against the allegation levelled, the appellate authority cannot pass the impugned order.

The learned counsel by taking us to the impugned order dated 16.08.2015 (Annexure-‘A’ to the writ petition) also contends that on the face of the impugned order for the first time it has been mentioned therein that the suit property has been located in ‘সংরক্ষিত পাহাড়’ but in the notices issued to the petitioner nothing sort of such fact has ever been asserted nor it has been mentioned that the property in question falls within the area of DAP of CDA, so such allegation have nothing to do with the approval given to the petitioner for constructing building as per Annexure-‘B’ to the writ petition. With those submissions, the learned counsel finally prays for making the rule absolute.

On the contrary, Mr. Muhammad Huzzatul Islam Khan, the learned counsel appearing for the respondent no. 1 very robustly opposes the contention taken by the learned counsel for the petitioner and very strenuously contends that there has been no illegality ever committed in

passing the impugned order because the provision provided in section 3B of the Building Construction Act has been complied with.

The learned counsel by taking us to the Annexure-‘C’ to the writ petition also contends that since the petitioner was allotted only Plot No. 3202 but it has been found by the inspection team that the petitioner by encroaching that very specific plot started constructing building in plot nos. 3201, 3204 and 3205 and the quantum of land, the petitioner has encroached has also been specified in the notice which has been annexed as of Annexure-‘C’ to the writ petition and for that obvious reason, the petitioner was asked to demolish unauthorized structure by giving him 7(seven) days show cause notice and since the petitioner did not reply the said notice, so the respondent has rightly passed the removal order vide its letter dated 24.09.2009 as well as 11.10.2009.

The learned counsel further contends that though on the basis of the allegation so have been made by one, Sajed Bin Amin Chowdhury, the notice was issued on 15.02.2009 but from Annexure-‘D’ to the writ petition, it has been found that the petitioner was asked to submit the documents on the basis of the letter issued dated 02.02.2009 which has got no nexus with the notice issued on 15.02.2009 vis-à-vis the documents submitted by the petitioner dated 19.04.2009 vide Annexure-‘D-1’ to the writ petition.

The learned counsel by giving reference to Annexure-‘E’ to the writ petition also contends that though on the basis of the complaint so have been made by one, Fatema Akter dated 17.09.2009, a show cause notice was also issued on 11.10.2009 under section 3B(3) and 6(1) of the

Act to the petitioner and even though compliance of section 3B(2) and (3) has not been made in issuing such notice but only for that, the petitioner will not get any benefit out of that technical defects since in the earlier notice dated 15.02.2009, the petitioner was given 7(seven) days time to give reply asking him as to why unauthorized building he built will not be demolished so mere not mentioning the time limit, for reply in the show cause notice will not *ipso facto* debar the respondents to take impugned action which has been taken very legally.

When we pose a question to the learned counsel for the respondent no. 1 why the petitioner was not heard in the appeal, the learned counsel then contends that section 15 of the Building Construction Act does provide any provision to hear the appellant, even though from the impugned order it is found that six years after preferring the appeal, the impugned order was passed in the appeal, so certainly the petitioner had been given ample time to make his argument in the appeal and yet since the respondent no. 2 has considered all the documents which has been reflected in the impugned order, so there has been no illegality in the impugned order and the same is thus liable to be sustained and the rule be discharged.

We have considered the submission advanced by the learned counsel for the petitioner and that of the respondent no. 1. We have also very meticulously gone through all the correspondences taken at the instance of the respondent nos. 1-3 with the petitioner including notices issued under section 3B and 6(1) of the Act of 1952. Together, we have perused the provision provided in sections 3, 6 and 15 of Building

Construction Act, 1952. On going through the documents appended with the writ petition, we find that on the basis of the allegations levelled by two individuals namely, Sajed Bin Amin Chowdhury and Fatema Akter, notices were issued upon the petitioner both under section 3B as well as section 6(1) of the Act. We find that two sorts of allegations have been made by Sajed Bin Amin Chowdhury basing on which on 15.02.2009 show cause notice was issued upon the petitioner asking him as to why unauthorized construction would not be demolished as it was alleged by the complainant that the petitioner had constructed a semi-pucca building unauthorizedly in hill land apart from his allotted plot no. 3202 and secondly, the petitioner also constructed a high-rise wall (উঁচু সীমানা দেয়াল) in the site.

However, on going through Annexure-‘E’ to the writ petition, we find that one, Fatema Akter also made allegation to the CDA that without the approval of the said authority, the petitioner also constructed a high-rise establishment unauthorizedly causing threat of land sliding. In any view of the matter, in disposing of the rule, we would examine as to whether the provision of law through which the petitioner is guided to construct his building as per approval (অনুমতিপত্র) annexed as of Annexure-‘B’ to the writ petition has ever been violated or not.

Now only question remains, whether the provision of section 3B(2), (3) as well as section 6(1) of the Building Construction Act, 1952 has been complied with by the respondent is passing the impugned order.

On going through the letter dated 15.02.2009 (Annexure-‘C’ to the writ petition) issued upon the petitioner, we find that the petitioner was

given 7(seven) days time to explain the show cause as why his unauthorized building will not be demolished. It is the contention of the learned counsel for the respondent no. 1 that since 7(seven) days time was given to explain cause by the petitioner, for demolishing unauthorized building so the provision of section 3B (2) of the Act has been complied with. But we find that upon issuance of the said notice, the petitioner was asked by the authority also to submit relevant documents (Annexure-‘D’ to the writ petition) which he complied with through Annexure-‘D-1’ to the writ petition. It is the contention of the learned counsel for the respondent no. 1 that the very documents which was asked for was vide letter dated 02.02.2009 not vide letter dated 15.02.2009. But we don’t find any substance to the said submission because on the basis of the allegation made by one, Sajed Bin Amin Chowdhury on 15.02.2009, the notice cannot be issued on the very date dated 15.02.2009 when inspection was found to have been conducted on 12.02.2009, 13.02.2009, 14.02.2009 as well as 15.02.2009 that is, on the very date of issuance of the notice. So certainly, the alleged encroachment has not be made on 15.02.2009 rather the alleged construction was made on 02.02.2009 as we find from Annexure-‘D’ to the writ petition. Therefore, the petitioner was asked to submit required documents supporting of his ownership in presence of the petitioner and complaint and accordingly, by Annexure-‘D-1’, the document was submitted by the petitioner. However, after submitting the documents, we don’t find any action has ever taken in respect of allegation so have been made by one, Sajed Bin Amin Chowdhury dated 15.02.2009. So we can easily find that the complaint so have been made

by one, Sajed Bin Amin Chowdhury has been dropped soon after submitting the documents by the petitioner as of Annexure-‘D-1’ to the writ petition.

Another allegation has been made by one, Fatema Akter vide her letter dated 17.09.2009. It is the contention of the learned counsel for the petitioner that in that notice, there has been no mention of any show cause upon the petitioner which is the condition precedent provided in section 3B(2) of the Act. However, we find that, the petitioner replied the said notice on 13.10.2009 as evident from Annexure-‘G’ to the writ petition. But moment a reply is given, then it is incumbent upon the respondent no. 1 to give hearing to the petitioner on the notice issued, which has clearly been provided in section 3B(3) of the Act. So in that sense, violation has also been made in issuing impugned notices of removal of structure dated 11.10.2009 (Annexure-‘F’ and ‘F-1’ to the writ petition). So those very notices dated 11.10.2009 has got no legal basis since issuance of such notices violation has been made of the provision of section 3B(2) and 3B(3) of the Act.

Now let us examine whether any illegality has been committed in dismissing the appeal which has been preferred by the petitioner against the notices issued by the respondent no. 3 dated 11.10.2009. For that obvious reason, we have gone through the provision provided in section 15 of the Building Construction Act. For our ready reference, we reproduce the same here:

“15. An appeal, if presented within thirty days from the date of the order appealed against, shall lie to such

officer or authority as may be prescribed against every order under section 3 or section 3A [or section 3B or section 3C or section 3D] or section 4 or section 5 or section 6 or section 9, and the decision of such officer or authority on such appeal shall be final and shall not be called in question in any Civil Court”

On going through the provision of section 15 of the Act, we find that though there has been no stipulation in that section that the appellant is to be heard but it is the universal proposition that when a decision will be given to a party preferred appeal, he/she should be given opportunity of being heard but in the instant case, that very settled proposition has clearly been violated.

Furthermore, on going through the impugned order through which the appeal preferred by the petitioner was dismissed vide impugned order dated 16.08.2015, we find that a third case has been made out therein. Let us revisit the relevant part of the same which runs as follows:

“দাখিলকৃত আপীল সংক্রান্ত যাবতীয় নথি ও কাগজপত্র দীর্ঘ পর্যালোচনার পর ইহা প্রতীয়মান হয় যে আপীলকারীর দরখাস্তে কোন রকম বাস্তবসম্মত ও আইনী বক্তব্য নাই। উল্লেখ্য, চউকের DAP এ উক্ত ম্যনোলা পাহাড় ‘সংরক্ষিত পাহাড়’ হিসেবে চিহ্নিত বিধায় কোনরকমের নতুন অনুমোদনের সুযোগ নাই।”

But on going through paragraph ‘dha(ঢ)’ to the memo of appeal, we clearly find that the petitioner has clearly asserted that he has not

encroached any land other than he made construction in his allotted land so mentioned in the permission letter (Annexure-‘B’ to the writ petition).

Furthermore, whether the property allotted to the petitioner falls within DAP or ‘পাহাড়ী এলাকা’ has not been mentioned in the permission letter (Annexure-‘B’ to the writ petition) nor it has ever mentioned in the notices issued upon the petitioner.

Last but not the least, though in the initial show cause notice that is, Annexure-‘C’ to the writ petition, it has been mentioned that apart from allotted plot no. 3202, the petitioner was going to construct building to other 3(three) plots but in the four corners of notices both dated 11.10.2009, we don’t find anything to that effect nor any inspection has been conducted by the respondent nos. 1-3 to find that the petitioner has constructed building apart from plot no. 3202 allotted to him.

All in all, we don’t find any iota of substance in the impugned notices as well as the impugned order dated 16.08.2015 through which the appeal of the petitioner was dismissed.

As a result, we find merit in the rule.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned office order vide Memo No. সচিব/এ্যাঃ অর্থঃ/৯৬/৩৬০ dated 16.08.2015 passed by the respondent no. 2 (Annexure-‘A’ to the writ petition) rejecting appeal filed by the petitioner on 19.10.2009 confirming the notices dated 11.10.2009 (Annexure-‘F’ and ‘F-1’ to the writ petition) is thus set aside.

The interim orders granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.