

**1 SCOB [2015] HCD 73**

**HIGH COURT DIVISION**  
(Special Original Jurisdiction)

Writ Petition No. 6220 of 2007

Mr. Kazi Abdul Khalaque, Advocate  
..... for the petitioner.

**Md. Hafizur Rahman**  
... Petitioner

None appears  
..... for the respondents

-Verses -

**Secretary, Ministry of Public Works and others.**  
...Respondents

Heard on: 12.03.2014, 16.04.2014  
and Judgment on: 22.05.2014.

**Present:**

**Mr. Justice Quazi Reza-Ul Hoque**  
And

**Mr. Justice A.B.M. Altaf Hossain**

**Article 102(2) of the Constitution of the People's Republic of Bangladesh.**

***Locus Standi:***

**We find that that the petitioner Samity does not have any *locus-standi* to move the writ petition to ventilate the causes of its aggrieved members since it is not a public purpose, rather the purpose for the benefits of individual members of the samity who have individually bought the land and thereafter formed the samity, and as such, we do not find the instant Rule maintainable.**

...(Para 30)

**Judgment**

**Quazi Reza-Ul Hoque, J:**

1. The instant Rule was issued on 31.07.2007 calling upon the respondents to show cause as to why the impugned proceedings of L.A. Case No. 6/2001-2002 in respect of acquiring the land measuring 7.50 acres belonging to the members of the Rajdhani Avijat Bohumukhi Samabaya Samity Ltd. appertaining to C.S., S.A. Plot No. 297, R.S. Plots 316, 317, 318 of C.S. Khatian 525, S.A. Khatian No. 427 and R.S. Khatian No. 426, Mouza Digoon, P.S. Pallabi, District- Dhaka should not be declared to have been made without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The facts necessary for disposal of the Rule, as has been stated by the petitioner, in short, is that the petitioner is the Secretary of the Rajdhani Avijit Bohumukhi Samabaya Samity Ltd. having 1195 members is registered vide No. 463/98 under Co-operative Ordinance 1984 under the Ministry of Local Government and Rural Development and Co-Operative, Government of Bangladesh (annexure- A).

3. The Government of Bangladesh has made a policy decision to develop the country by ameliorating the condition of the people's of the country on the basis of co-operative spirit and to that necessary rules and laws have been framed and different kinds of organisations with the participation of the people on the spirit and ideals of co-operative society have been formed all over the country at the initiation and inspiration of the Government. There are numbers co-operative banks, co-operative textiles, and jute mills and many factories, co-operative fisheries samities, co-operative agricultural societies, co-operative housing & residential projects etc. were created. The Constitution of Bangladesh has outlined the spirit of co-operative in its preamble. So the society or samity of the petitioner has got its existence with its objectives and ideals rooted in the rules and laws of the country sanctioned by the Constitution of the country.

4. This Samity has got ideals and objective sanctioned by the Co-Operative Ordinance 1984, amongst others as follows:

বা) সভ্যগণের এবং সংগঠনের স্বার্থে গৃহ নির্মাণ, পরিবহন, কুটির শিল্প, হাস মুরগী ও গবাদী পশুপালন প্রভৃতি বিষয়ে প্রকল্প গ্রহণ এবং অন্যান্য যে কোন প্রকল্প প্রণয়ন ও বাস্তবায়ন। According to the above quoted objectives and ideals, this Samity has been established and have undertaken a house building residential project for the members of the samity in the year 1999 and

have arranged more or less  $7\frac{1}{2}$  acres of land and have entered into a bainapatra with the then owners of the said land with the possession of the same. This project is named as Pallabi Avijit New Nivash.

5. As the Pallabi Avijit New Nivash is not a profit making house building scheme and it has no profit making house building fund and that is why, the organization could not or did not take up double expenditure first getting registration of the বায়নাকৃত সম্পত্তি in the name of the organization Pallabi Avijit New Nivash and thereafter registering the same land have allotted plots to its members, which would have involved extra expenditure of a few crores of Taka and as such the organization have arranged registration of each plot to each allottee member through the organization from the original owners from whom the organization purchased the same through baina and got possession thereof (annexure- C, C-1 and C-2).

6. The Samity started registering the said lands and got 3.90 acres registered in different sub-kabala deeds. In the meantime, the Notification acquiring lands including the Samity's lands having been made and the Registry Office stopped further registration. The registered lands covers an area of 3.90 acres of land in R.S. plot Nos. 316, 317, 318 and C.S. and S.A. Plot No. 297, under C.S. Khatian 525, S.A. Khatian 527, R.S. Khatian 426, Mouza-Digoon, P.S. Pallabi, previously Mirpur, Dahka (annexure-D).

7. Thereafter the Samity earth filled the low lands, levelled the same and divided some portions into 63 plots of 3 kathas for 81 members and the rest lands are in process of being arranged for about 100 members of the Samity and for masjid, school, playground, parks etc. And the member-purchasers mutated their names in respect of their respective plots even during the recent Maha Nagar zarip and are paying Government rents. In the matter of developing these land huge expenditure had been made and the petitioner has already prepared a building construction layout plan for the whole area of 3.90 acres with the provision for masjid, madrasha, school, park, playground and wide road and streets with all modern amenities and has also prepared a common building construction layout plan for all the residential plots and also an Area of Map and these plans are more or less similar to the plans and project of the Uttara Shahar Residential Scheme following all building construction rules and regulations of Rajdhani Unnayan Kartipakha (RAJUK) and the same are in the process of being submitted to RAJUK for approval (annexure- E, E-1 and E-2).

8. In the meantime RAJUK has taken up an extension plan for the Uttara Residential Shahar and has included 7.50 acres of land of the Samity into the lands of the extension project, which are acquired along with other lands in L.A. Case No. 6/2001-2002 for “প্রস্তাবিত উত্তরা শহর সম্প্রসারিত প্রকল্পের ৩য় পর্বের ২য় অংশে”। It is found from the Map (annexure- E) that the land of this Samity and lands owned by other organization are situated on the South and on the West Bank of the khal flowing in between the case lands and the South and West side of the Uttara Shahar Extension Project. The Mirpur Cantonment and the Eastern Housing are situated on the West and South of the case land and so there is no further lands beyond the Samity's land with any scope for further extension of the Uttara Residential Shahar on that side.

9. There is also huge land belonging to the Water Development Board for their housing project for staff and land of the Eastern Housing adjacent and contiguous to the Uttara Shahar Project but the said lands of the Water Development Board and Eastern Housing, which are also on the same footing in the case lands have not been acquired and as such this action is *mala-fide*, arbitrary and against equity.

10. It is found that playgrounds, parks, khals, tanks, open space etc. are essential for healthy atmosphere of the Dhaka City and recently all the experts have opined that the existing khals and big tanks, open space, park which will serve as a window to the citizens, should be protected for overall good, sanitary sewerage, healthy living atmosphere of the Dhaka City, which is going now to be a Mega City and as such the khal, flowing on the North and East sides of the Samity's land should be protected for environmental healthy atmosphere. The same khal on its Western end falls on the Turag river through a big culvert under the Beri Badh about one mile North to the Botanical Garden and the khal flows towards the East along the North border of the case land and bends towards the South keeping the case land on the West. If the ongoing extension of the Uttara Project is allowed further across over the khal, then there is every apprehension of the khal being filled up under the camouflage of public interest for allotments of plots, which transaction bring forth monetary benefit to all persons involved in the making of extension of project, as such, the release of the case land is also essential for maintaining congenial health and well being of the citizens (annexures- F and F-1).

11. The petitioner has approached the RAJUK, Ministry of Works, the Ministry of L.G.R.D. and Co-operative and other concerned authority repeatedly with the prayer to keep the Samity's land out of the Uttara

Shahar Extension Plan stating that the Uttara Shahar is a residential area and its Extension Plan is also residential, the petitioner Samity's project is also a residential project, the purpose of both the project is the same and similar, that is, for residential accommodation because the future allottees of the Uttara Shahar Extension Project will construct residential buildings as approved by RAJUK, so is the case with the Samity's members also, and there is no basic difference between the two accommodation plans, more so, the Samity has already filled up the low lands and divided some portion of the lands into 63 plots measuring 3 kathas each for 81 members and a layout plan for construction of residential building with a layout plan of the whole area of 3.90 acres and an area of map of 7.50 acres has been prepared and the rest portions of the land is being arranged for further 100 members and for masjid, school, playground, parks, etc. and the same is in the process of being submitted to RAJUK for approval, if approved, building for accommodation for accommodation will be constructed within 6 to 12 months but the authority concerned did not consider the lawful claim of the Samity and have not taken any step to release the same (annexures -G, G-1 and G-2).

12. On the other hand Uttara Shahar Extension Plan is only proposed and only notice is given for acquisition and much will be required to finalize the project. Furthermore, if these 7.50 acres land of the Samity are released, the extension purpose of the Uttara Shahar Extension Project will not at all be hampered whereas on the other hand the ready and finalized accommodation for the members of the Samity with so much cost and expenditure, their hope for better life and living all will be washed away at the cost of an extension project to Uttara Shahar and these members of the Samity have invested all their hard earnings of the whole life, for the purpose of the land, developing the same, finalizing all activities short of getting approval of the RAJUK, and upon approval, buildings for their living will be ready within 6 to 12 months and unless the land is released these 81 members will be doomed forever. The acquisition of the Samity's land for extension of Uttara Shahar is obviously shown for the interest of the general public to be more specific, in the interest of some 81 probable allottees to be selected by the RAJUK, so also the same public interest that is, interest of 81 members of the Samity, both interest standing on the same footing.

13. It is further to state that RAJUK has neither taken possession of the Samity's land, nor paid any compensation, and as such, there will be no legal or other hurdles for release and in such facts and circumstances the Samity is entitled to get back their lands by way of release by RAJUK.

14. The Government of Bangladesh is always been sympathetic towards the right and lawful claims of the public and recently the Government released by an order published in News Paper Dainik Khabar on 05.05.01993 about 175.283 acres of land under Mouza- Vatara and Joar Sahara within Gulshan Police Station, Dhaka, which were acquired in L. A. Case. No. 138/61-62 and in the light of such benevolent attitude the refusal of release of only 7.50 acres of land of the Samity without disturbing the Uttara Shahar Residential extension Scheme will be an act of benefit of such concept of benevolence already shown to the other citizens (annexure-H). The housing scheme of the petitioner society for construction of dwelling house as per common plan and campus as shown in the map made in accordance with RAJUK's rules and regulation under the Master plan of Dhaka City for those Members of a Co-Operative Society who have no house or land in Dhaka City shall serve a public purpose and while the Co-operative Society of the petitioners has already taken up a housing scheme for its members on the same basis of public purpose of housing project as taken up by the RAJUK, the acquisition of the Co-operative Society land for the same purpose is redundant, unnecessary, *mala-fide* and illegal and without lawful authority, killing another public purpose.

15. Mr. Kazi Abdul Khalaque, the learned Advocate appearing for the petitioner submits that the impugned proceedings in respect of acquiring the land of the members of the Samity of the petitioner having been made under the camouflage of the public interest but in fact and against the general interest of more or less 81 owners of similar number of plots is arbitrary, *mala-fide* and illegal.

16. He further submitted that the land of the Samity having been demarcated and bounded by a khal flowing in between the last border of the South Western side of the Uttara Shahar Extension Plan and the Samity's land having been situated on the other side of the khal and there being no land beyond the Samity's land with any scope of further extension of the Uttara Shahar, release of the Samity's land will not hamper the interest of execution of the Uttara Shahar plan and as such refusal of the release of the concerned land, as well as, the L.A. Case proceedings are arbitrary, illegal and *mala-fide*.

17. He again submitted that the acquisition of this land will not serve better public interest than the interest of the members Samity because the purpose of both the organizations that is Uttara Shahar Extension and the Samity is residential and interest of both parties are similar and stands on the same footing and there is no

cogent lawful reason to merely extend a proposed similar project by abolishing a similar established project, therefore the impugned proceedings is arbitrary misconceived *mala-fide*, illegal and against better public interest and as such the order is liable to be declared to have been made without lawful authority and of no legal effect.

18. He again submitted that the Samity has finalized all activities towards construction of residential buildings for its members, by fill in up the low lands by levelling the same, by dividing the same into 63 plots by registering the plot in the name of the members who have mutated their names and are paying rents to the Government and construction layout plan and a general plan for the whole area of the Samity have been made ready in full compliance with the rules and regulation of RAJUK and the same are in the process of being submitted to it for approval, and if approved, works of construction of residential building will be completed within 6 to 12 months whereas the proposed plan of the Uttara Shahar Extension will take unlimited time for its final shape for construction of buildings by the future allottees, and as such, the benefits and fruits of the Samity's project will be enjoyed by the public (members of the Samity) much before its final shape for construction of building by the future allottees and as such the benefits and fruits of the Samity project will be enjoyed by the Public (member of the Samity) many years earlier to those arising out of the proposed extension, in this view of the matter the respondents shall be deemed performing duties of public interest in releasing the concerned land rather than stopping ongoing project of the Samity for a similar proposed project, which will take indefinite period for its final shape and as such the acquisition of this land is misconceived, arbitrary, illegal, *mala-fide* and against the public interest and so with the refusal by RAJUK to release the same.

19. Mr. Khalaque, again submitted that the Samity's members have invested their hard earned money of whole life in the expectation of being owner of a living place and they have nearly completed the project short of getting approval of RAJUK for starting construction and upon approval by RAJUK will be able to complete and construction of their buildings and under such positions the refusal to release this land thereby stopping and destroying the almost nearly completed residential project will be completed within a period of 6 to 12 months at the altar of the merely proposed extension project of similar nature will require indefinite period for its final shape is against the public interest and is *mala-fide*, arbitrary and illegal and the same is liable to be set aside.

20. He further submitted that the Samity has lawful existence sanctioned under Co-operative Society Ordinance, 1984 and approved by the Ministry of L. G. R. D. and Co-operative by way of registering the same vide Registry No. 463/93, which is also within the principles of social justice, equity and maintenance of social equilibrium as outlined in the Constitution of Bangladesh and as such the members of the Samity has got a vested right of life and property guaranteed in the Constitution, which should not be affected adversely by way of acquisition of the Samity's land.

21. He further submitted that the Government has accepted the lawful and reasonable claims of the public and released 175.283 acres of land in Mouza- Vatara and Joar Sahara in Gulshan Police Station, Dhaka from acquisition in L. A. Case No. 138/61-62, and the claims of the Samity are reasonable, lawful and considerable since purpose of both the organizations is similar and same and the project of the Samity is nearly completed, whereas the completion of the proposed extension project of Uttara Shahar will require indefinite years and in such position public interest will be better served by the Samity's project than by the proposed extension project.

22. He again submitted that the right of property of the members of the Samity in the lands having been acquired under the camouflage of public interest for about the same number of future allottees of the proposed extension project at the cost of the same number of members of the Samity who are nearly completing their project. There are lands for residential purpose belonging to Eastern Housing on the South side of the river with Water Development lands on the same side of the river contiguous to the Uttara extension plan but the same have not been acquired though those are on the same footing with the lands of the petitioners and as such the petitioner Samity has been discriminated in the matter of acquiring the lands, which being in violation of law of equity guaranteed under the Constitution, L.A. proceedings in respect of the case lands are illegal, arbitrary, whimsical, and against public interest .

23. Mr. Khalaque, again submitted that the up-keeping and protection of khal, tanks, parks, open space, playgrounds are all essential for healthy ecosystem for health and well being and longevity of the citizens and to that end the petitioner has made provision for a plot of 7 decimals for a mosque, 10 decimal for children park,

20 decimal for a school and wide road similar to those of the Uttara Shahar and as such there cannot be any public interest for residential purpose better and more congenial by the Uttara Project than by the Samity's purpose, therefore, the proceedings in L. A. Case in respect of case land is liable to be set aside.

24. He further submitted that there is every apprehension that in case the ongoing extension of Uttara Project is further allowed, then the khal itself and open space on either bank of the khal will be converted into residential plots thereby blocking the open air space, degrading the quality of the environment in the area and its neighbourhoods, which are necessary for health and well being of the citizens.

25. He again submitted that due to heavy rainfall and due to floods occurring almost every year, the Dhaka City is inundated under water and also water logged and for rescue from such eventuality, the experts opine that all the khals and rivers across the city should be reclaimed and shall be protected for exit and excretion of the flood and rainfall water, which will also open up scope for widows for open air space congenial health atmosphere for the well-being and longevity not only of the petitioner and his member but for all of the Dhaka City dwellers and these essential scope for life are also vested rights guaranteed under the Constitution and if the case of the lands are not released and Uttara extension is allowed then the river will be filled up and the above vested rights of the petitioner and the citizen of the Dhaka City will be infringed.

26. He further submitted that the Appellate Division of the Supreme Court of Bangladesh in 7 BLD (AD) 95 observed that "Any purpose which benefits the public or a section of the public is a public purpose."

27. He also referred to the observation made in Mohammad Mansur Rahman vs. Prov. of East Pak. and others, 14 DLR 604, wherein it was observed that:

The nature of the purpose, namely whether it is in public or private, will depend upon the fact whether it will serve the general interest of the community or the particular interest of individuals. It is not necessary that the entire community must be benefited. In circumstances, even benefit to a class, such as coolies, can be said to serve public interest, ... Requisition of land for such Societies undoubtedly, will be for public purpose.

The main purpose is to lessen congestion in towns and bring into existence houses with due regard to sanitary arrangements and other amenities of life.

The reason for requisition was not to benefit the members only but to further a public cause, in the execution of which some benefit will accrue to them ....

28. None one appears for the respondents when the matter is taken up for hearing.

29. On perusal of the submission of the learned Advocate for the petitioner, the petition and the annexed documents it is quite apparent to note that the instant petitioner has obtained the present Rule as and on behalf of the Rajdhani Avijat Bohumukhi Samabaya Samity Ltd. (Reg.), as its Secretary. It is quite pertinent to note that as per observations made in 43 DLR (AD) 126, the meaning and dimension of person aggrieved means:

In our Constitution the petitioner seeking enforcement of a fundamental right must be a person aggrieved. Our Constitution is not at *pari materia* with the Indian Constitution on this point. The decisions of the Indian jurisdiction on public interest litigation are hardly apt in our situation. The petitioner is not acting pro bono public but in the interest of its members. The real question in this case is whether the petitioner has the right to move the writ petition in a representative capacity. The High Court Division has rightly relied upon the case of 29 DLR 188 where the question has been answered in the negative. The petitioner may represent the employers in the Wage Board but its *locus-standi* to act on behalf of its members in an application under Art. 102 of the Constitution is just not there.

30. So, we find that the petitioner Samity does not have any *locus-standi* to move the writ petition to ventilate the causes of its aggrieved members since it is not a public purpose, rather the purpose for the benefits individual members of the samity who have individually bought the land and thereafter formed the samity, and as such, we do not find the instant Rule maintainable.

31. In the result, the Rule is discharged.

32. There is no order as to cost.