

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.129 OF 2006

(Arising out of C.P.No.510 of 2004)

(From the judgment and order dated the 26th day of October, 2003 passed by a Division Bench of the High Court Division in Writ Petition No.2718 of 1995)

Deputy Commissioner, Railway : . . . Appellant
Land and Buildings, Bangladesh
Railway, Dhaka

-Versus-

Abdul Huq, Proprietor, Haq's Bay : . . . Respondents
and another

For the Appellant : Mr. Sheikh Mohd. Murshed,
Additional Attorney General with Mr.
Mehadi Hasan Chowdhury,
Additional Attorney General and Mr.
Biswajith Debnath Deputy Attorney
General instructed by Mr. Syed
Mahbubar Rahman, Advocate-on-
Record

For the Respondent No.1 : Mr. Probir Neogi, Senior Advocate
with Ms. Anita Ghazi Rahman,
Advocate and Mr. Suvra Chakrobarty,
Advocate instructed by Mr. Haridas
Paul, Advocate-on-Record

For the Respondent No.2 : Not represented

Date of Hearing : 17th day of May, 2022 and
24th day of May, 2022

Date of Judgment : **The 21st day of June, 2022**

JUDGMENT

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 26.10.2003 passed by a Division Bench of the High Court Division in Writ Petition

No.2718 of 1995 making the rule absolute and thereby declaring the notice No.DEO/Dhaka/Eviction/Bag Mia/5162/1117 dated 30.11.1995 issued by the Deputy Commissioner, Railway Land and Buildings, Bangladesh Railway, Dhaka directing the writ petitioner to vacate plot No.97 of Mouza Kawranbazar within seven days is without any lawful authority and of no legal effect.

The facts, relevant for disposed of the appeal are as follows:

The present-respondent No.1 as writ petitioner (**hereinafter referred to as writ petitioner-respondent**) filed an application under Article 102 of the Constitution of the People's Republic of Bangladesh before the High Court Division challenging the notice bearing No.DEO/Dhaka/Eviction/BG Mia/5162/1117 dated 30.11.1995 issued by the present petitioner i.e., the Deputy Commissioner, Railway Land and Buildings, Bangladesh Railway, Dhaka directing the respondent No.1 to vacate plot No.97 of Mouza Kawranbazar within seven days as having been passed without lawful authority and of no legal effect stating, inter alia, he on 12.04.1995 applied to the Government in the Ministry of Housing and Public Works for allotment of a plot of land in the Tejgaon Industrial Area at Mouza Kawran Bazar for starting and running a reconditioning and modern car repairing workshop. The Ministry of Housing and Public Works vide Memo No.Sha Kha-6/11-7/95/2026 dated 30.07.1995 allotted more or less 13.66 Kathas of land of industrial Plot No.1 within C.S. Dag No.97 of Mouza Kawran Bazar of Tejgaon Industrial Area as per the plan of Architecture Department in favour of the writ-petitioner respondent under certain terms and conditions. As per the terms of the allotment letter the

writ petitioner paid Tk.3,41,500/- being 25% of the total price vide Chalan No.Cha-2/20 dated 02.08.1995 within one month from the date of the said allotment. Thereafter, Sub-Division Engineer, Tejgaon Public Works Sub-Division, Public Works Division-3, Dhaka handed over possession of newly created industrial Plot No.1 of Tejgaon Industrial Area in C.S. Dag No.97 measuring an area of 13.80 Kathas to the writ-petitioner respondent on 04.10.1995 and after taking possession the writ-petitioner respondent constructed structures in the said plot. The writ-petitioner respondent again paid Tk.3,500/- and Tk.10,500/- vide Challan dated 16.11.1995 and 27.11.1995 respectively as the total price for the extra 0.14 Kathas of land. The writ-petitioner respondent on 23.10.1995 wrote to the Government in the Ministry of Public Works for taking necessary steps for executing the lease deed in terms of the allotment letter stating about the payment of 25% of the price of the allotted land and about the taking over the possession of the industrial Plot No.1 of C.S. Dag No.97 at Mouza Kawran Bazar, Tejgaon Industrials Area. While the writ-petitioner respondent has been possessing and enjoying the property in question and running his business thereon, the present leave petitioner issued the impugned notice on 31.11.1995 which was received by the writ-petitioner respondent on 13.12.1995 directing the respondent to remove all his structures from the said land and further threatened to evict him from the allotted land. Upon receiving the said notice the writ-petitioner respondent immediately wrote to the present petitioner on 13.12.1995 stating the fact of ownership and lawful possession of the land in question by him. All the relevant papers such as allotment letter, handing over of possession and payment of

receipts vide treasury challans etc. were forwarded to the present petitioner along with the said letter. But the present petitioner did not reply to the said letter of the writ-petitioner respondent. The writ-petitioner respondent also wrote a letter intimating the Secretary, Ministry of Public Works about the impugned notice of the present petitioner on 14.12.1995 but no action was taken to stop the leave petitioner from taking any action on the impugned notice, which compelled the writ-petitioner respondent to file the writ petition.

The present leave petitioner as writ respondent No.2 contested the Rule by filing an affidavit-in-opposition stating, inter-alia, that the disputed land was acquired for the Railway under its diversion project on payment of compensation vide L.A. Case No.15/59-60 and L.A. Case No.16/59-60. The disputed land along with others land were published in the Gazette Notification as Memo No.DA/36/38/359 Reqn. Dated 15.03.1960 and Gazette Notification as Memo No.DA/76/66/820 Acqn. Dated 26.05.1966. The L.A. Collector of Dhaka handed over the possession of the same to the Railway Diversion Division under the Ministry of Works on 19.12.1959 and 18.01.1960 respectively. The Bangladesh Railway was in possession of the land for more than 42 years. Some portions of the land have been used as Railway line and other portions as Railway facilities. Over some portion of land Sonargaon Hotel has been constructed. Certain portion has been used for the Pantha Path Road. Apart from the above 0.84 acres are left in the possession of the Bangladesh Railway. The Ministry of Communication issued a license in favour of Bangladesh Garments Manufacturers and Export Association (BGMEA) for fifty years vide letter No.Robi/Bhuma/113/93-

495/1(2) dated 05.11.1995. Subsequently, BGMEA deposited Tk.7,31,877/- as fees as per direction vide Memo No.DEO/Dhaka/ Hastantar/45/Sup-2/1173 dated 25.11.1995. On field verification the Railway Estate Officer found four sign boards of (1) M/s. Haq's Bay, (2) M/s. Roma Kos, (3) M/s. Abedur Garments Ltd. and (4) M/s. Bay Lits Limited Companies are hanged in the disputed land on getting lease from the Ministry of Public Works. The Divisional Engineer-3, Dhaka of Bangladesh Railway raised objection to the Executive Engineer of Works Division-3, Segun Bagicha about such activities. Subsequently, the Bangladesh Railway issued eviction notice vide the impugned Memo No.DEO/Dhaka/Uchched /Bagamia/5162/1117 dated 30.11.1995. The Bangladesh Railway being the owner of the land, it can take necessary action against the illegal trespasser as per Ordinance No.24 of 1970 and in exercise of that power notices were served upon the persons concerned in accordance with law and as such the writ petitioner is not entitled to get any relief whatsoever. The impugned notice was issued under section 5 of Ordinance No.24 of 1970 wherein the power to issue such a notice is given to the Deputy Commissioner under section 2(b) of the said Ordinance. The term 'deputy commissioner' means and includes "..... such other persons as may be appointed by the Government to perform all or any of the functions of a Deputy Commissioner under this Ordinance". The impugned notice was duly and properly issued since it was issued under the authority given under notification No.XXIV-7/81/20 dated 18.02.1981 issued by the Joint Secretary of Ministry of Land Administration and Land Records by the order of the President. Accordingly Divisional Estate Officers of Bangladesh Railway has been empowered to perform the

functions of 'Deputy Commissioner" under the said Ordinance. Thus, the Rule is liable to be discharge.

A Division Bench of the High Court Division after hearing the Rule Nisi by the impugned judgment and order dated 26.10.2003 made the Rule absolute and thereby, declared the impugned notice was issued without lawful authority and is of no legal effect.

Being aggrieved by and dissatisfied with the said judgment and order the writ respondent No.2, present appellant had preferred civil petition for leave to appeal No.510 of 2004 and eventually leave was granted which resulted the present appeal.

Mr. Mehadi Hasan Chowdhury, learned Additional Attorney General, appearing for the appellant submits that the High Court Division has failed to consider that section 2(b) read with section 5 of Ordinance No.XXIV of 1970 and the Notification No.XXIV-7/81/20 dated 18.02.1981 issued by the Joint Secretary of the Ministry of Land Administration and Land Records empowers the appellant to issue notice for eviction under the aforesaid Ordinance and thereby, erred in holding the impugned notice to have been issued without lawful authority.

He further submits that, in view of the certificate of possession and official gazette notification clearly showing that the land was acquired for Railway and possession of the same has been given to Railway, the High Court Division erred in holding that the impugned notice is without lawful authority and of no legal effect.

The learned Additional Attorney General further submits that in view of the provision of 2(f) of the Ordinance No.XXIV of 1970 i.e., the writ-petitioner respondent is an

illegal and 'unauthorized occupant' in the land in question and as such the competent authority, accordingly to the provision of 2(b) of above mentioned Ordinance, the present appellant rightly and legally issued the impugned notice under section 5 of the said Ordinance of 1970.

Per contra, Mr. Probir Neogi, learned Senior Advocate, appearing for the writ-petitioner respondent, submits that where under the provision of Article 145 of the Constitution of the Peoples Republic of Bangladesh a lease deed has been executed and registered in respect of the land in question on behalf of the Hon'ble President of the People's Republic of Bangladesh in favour of Haq's Bay on receipt of the entire consideration money, and the plot has been mutated in the name of Haq's Bay who is running business activities on payment of regular rent and taxes etc., it cannot be an "unauthorized occupant" as defined in section 2(f) of the Ordinance No.24 of 1970, and the alleged eviction notice issued against Haq's Bay treating it as an 'unauthorized occupant' is illegal and without lawful authority. He further submits that documents show (additional paper book dated 04.11.2018) that the Railway Department has no right and title whatsoever in the land leased out to Haq's Bay i.e. the writ petitioner.

Mr. Neogi also submits that, the Government as a composite body cannot take two different stands in two different capacities, one, in the Ministry of Housing and Public Works, and another in the Department of Railway. Moreover, in case of any dispute between two ministries, it can be resolved in an appropriate forum, and until the said issued is resolved the issuance of eviction notice to a lessee of the Government by virtue of registered lease deed

is a colourable exercise of power, and this principle of law has been clearly laid down in the judgment of the Appellate Division dated 30.10.2002 in Civil Petition for leave to appeal No.2020 of 2001.

We have considered the rival submissions of the learned Advocates for the parties, perused the impugned judgment and the documents placed before us by them.

Upon perusal of the impugned judgment it reveals that the High Court Division made the rule absolute with the finding, inter-alia, that;

“From a close reading of section 5 it appears that power has been given to the Deputy Commissioner and it is only the Deputy Commissioner who on being satisfied upon information received from lawful authority may issue a notice directing such person to remove structure and face eviction. Admittedly the Railway is the legal authority but there is no paper to or anything that shows the respondents have ever approached the Deputy Commissioner or sent any information to act under section 5 for eviction of the petitioner. Further it appears that the Ordinance referred to has not given any power to the Deputy Commissioner, Railway respondent No.2 to issue such notice. Therefore the notice as per Annexure-F is unauthorized, illegal and without sanction of law and is liable to be declared as illegal and having been issued without any lawful authority. It has been further submitted that there is no other ordinance other than this Ordinance No.24 of 1970 and there was an earlier ordinance which is about Cotton Amendment Act,

therefore the respondents have no other authority otherwise than section 5 of 1970 and we have already held that section 5 as quoted above has not given any power to the respondents to issue notice. The learned Advocate has placed unreported copy of the judgment passed by a Division Bench of this Court in writ petition No.61 of 1996 in support of his contention that a notice as Annexure-F cannot be issued by any authority other than the Deputy Commissioner.”

In the instant case from the leave granting order it transpires that two legal issues have to be addressed. Firstly, whether under the Ordinance No.24 of 1970 the Divisional State Officer of Bangladesh Railway has been empowered to perform the function of 'Deputy Commissioner' and he has the authority to issue the impugned notice under section 5 of the said Ordinance; secondly, whether the writ-petitioner respondent is an 'unauthorized occupant'.

Let us now look into the provision of section 5 of Ordinance No.24 of 1970, which runs as follows:

“5.(1) If the Deputy Commissioner, on his own motion or on the complaint of or upon information received from anybody or a Local Authority, is satisfied after making such inquiry as he thinks fit, that a person is an unauthorized occupant, he may issue, in the prescribed manner, a notice directing such person to vacate the land, building or part thereof in his occupation within a period of thirty days from the date of service of the notice” [:

Provided that the Deputy Commissioner may, where he is satisfied that thirty days' notice will not be in public interest, reduce the period of such notice to not less than seven days.]

(2) If the person, against whom an order under subsection (1) has been made, refuses or fails to vacate the land, building or part thereof in his occupation within the time fixed, then, notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the Deputy Commissioner to enter upon such land, building or part thereof and recover Khas possession of the same by evicting such person and by demolishing and removing structures, if any, erected or built by that person.”

It appears from the notification No. XXIV-7/81/20 dated 18.02.1981 issued by the Joint Secretary of the Ministry of Land Administration and Land Reforms that Divisional State Officer of Bangladesh Railway has been empowered to perform function of Deputy Commissioner under the Ordinance of 24 of 1970.

The said notification runs as follows:

“Government of the people’s republic of Bangladesh Ministry of Land Administration and Land Reforms

Section-XXIV

Notification

No.-XXIV-7/81/20

Dated: 18.02.1981

In Exercise of the power conferred by clause (B) of Section-2 of the Government and Local Authority Lands and Building (Recovery) of possession ordinance 1970 (Ordinance-XXIV) of 1970, the Government is pleased to appoint the Divisional Estate Officer of Bangladesh Railway to perform of the function of a Deputy commissioner under the said ordinance only in their respective jurisdiction. (underlines supplied)

By Order of the President,

SD/-

Sanwar Hossain Khan

Joint Secretary.”

If we consider the above notification coupled with the provision of section 5 of Ordinance No.24 of 1970 then we have no hesitation to hold that the Divisional Estate Officer of Bangladesh Railway has been empowered by the Government to perform the function of the Deputy Commissioner under the said Ordinance.

Thus, the High Court Division has committed serious error in holding that the under section 5 of the Ordinance No.24 of 1970 the Divisional Estate Officer of Bangladesh Railway has no authority to issue the impugned notice. The impugned notice has been issued by present petitioner having legal authority.

Let us now decide the second issue whether in view of section 2(f) of the Ordinance No.24 of 1970 the petitioner is an 'unauthorized occupant' in the land in question.

It is the case of writ petitioner-respondent that the Government in the Ministry of Housing and Public Works vide Memo No. Sha Kha-6/1/-6.7/95/2026 dated 30.07.95 allotted

13.66 Katha (more or less) land of Plot No.1 of C.S Dag No. 97 of Mouza Kawran Bazar of Tejgaon Industrial Area as per the Plan of Architecture Department in favour of the writ petitioner-respondent under certain terms and condition. In terms of the allotment letter the writ petitioner-respondent paid Tk. 3,41,500/- being 25% of the total price vide Chalan No. Gha-2/20 dated 02.08.95 within one Month from the date of allotment. Thereafter, Sub-Divisional Engineer, Tejgaon Public Works Sub-Division, Public Works Division-3, Dhaka, handed over possession of newly created Industrial Plot No.1 of Tejgaon Industrial Area in C.S Dag No. 97. Measuring an area of 13.80 Katha to the writ petitioner-respondent on 04.10.1995. After taking possession the writ petitioner-respondent constructed structures in the said plot. The writ petitioner-respondent again paid Tk. 3,500/- and 10,500/- Vide Challan dated 16/01/1995 and 27.11.1995 respectively as the total price for the extra 14 Kathas of land. Eventually, the writ petitioner-respondent got registration of the property in question pursuant to the judgment and order dated 26.10.2003 passed by a Division Bench of the High Court Division in Writ Petition No.2718 of 1995 and thereafter, writ-petitioner respondent mutated his name.

Mr. Mehedi Hasan Chowdhury, learned Additional Attorney General, has tried to convince us that since the land in question was acquired for Railway, the Ministry of Public Works had no authority to lease out the same to the writ petitioner-respondent, as it has no right and interest on the same and as such, the alleged letter of allotment and the lease deed, executed by the Ministry of Housing and Public Works in respect of the land in question in favour of the writ petitioner-respondent is illegal and done without lawful

authority and thus, the possession of the writ-petitioner-respondent pursuant to those illegal documents is illegal and thus he is an 'unauthorized occupant' and the Railway Department being the rightful owner, the present appellant, issued the impugned notice within its authority and jurisdiction.

On this issue, in particular conflicting claim of the two departments of Government, court asked Mr. Sheikh Md. Morshed, learned Additional Attorney General, to inform and assist the Court with regard to the stand of the Ministry of Housing and Public Works and Mr. Morshed has submitted a summary duly attested by concerned officers of the Ministry of Housing and Public Works, which is as follows:

সার-সংক্ষেপ

“বিষয়ঃ তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং-ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার ডিসিসি হোল্ডিং নং-২২/৪ কারওয়ান বাজারলেন ঢাকা হক্স বে এর অনুকূলে বরাদ্দ এবং তার পূর্ববর্তী প্রেক্ষাপটের সার-সংক্ষেপ।

১।	প্রেক্ষাপট:	<p>এল.এ কেস নং-১৫/৫৯-৬০ এর মাধ্যমে কাওরান বাজার মৌজার সি,এস ৯৭ দাগের আংশিক এবং এল, এ কেস নং-১৬/৫৯-৬০ এর মাধ্যমে সি, এস ৯৭ দাগের আংশিক জমি অধিগ্রহণ করা হয়। রেকর্ডপত্র অনুযায়ী দেখা যায় এল, এ কেস নং-১৫/৫৯-৬০ এর মাধ্যমে অধিগ্রহণকৃত সম্পত্তি গৃহায়ণ ও গণপূর্ত মন্ত্রণালয় কর্তৃক সি,এস ৯৭ দাগের বরাদ্দকৃত সম্পত্তির সহিত সংশ্লিষ্ট নয়। এল, এ কেস নং-১৬/৫৯-৬০ এর মাধ্যমে অধিগ্রহণকৃত সম্পত্তি গৃহায়ণ ও গণপূর্ত মন্ত্রণালয় কর্তৃক সি,এস ৯৭ দাগের বরাদ্দকৃত সম্পত্তির সহিত সংশ্লিষ্ট।</p> <p>তেজগাঁও শিল্প এলাকার সাবেক কাওরান মৌজার সি,এস দাগ নং-৯৭ এর আংশিক জমি অর্থাৎ ০.৯৪ একর জমিসহ আরও অন্যান্য সি,এস দাগের সর্বমোট ২.৭২ একর জমি (পাছপথের জমিসহ) এবং অন্যান্য মৌজার জমিসহ সর্বমোট ২৬.৮৫ একর জমি রেলওয়ে প্রকল্প মাটিকাটা জোনের জন্য এল,এ কেইস নং-১৬/৫৯-৬০ এর মাধ্যমে জেলা প্রশাসক, ঢাকা অধিগ্রহণ করেন। অধিগ্রহণকৃত জমি ও উক্ত এল, এ কেইসের অন্যান্য মৌজার সি.এস দাগের জমিসহ জেলা প্রশাসক ঢাকার সংশ্লিষ্ট শাখা গত ১৮/০১/৬০ খ্রিঃ তারিখে গণপূর্ত বিভাগের</p>
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		<p>নিকট দখলভার হস্তান্তর করেন। উক্ত জমি গত ২৮/৩/৬৮ খ্রিঃ তারিখের ঢাকা গেজেট হিসাবে চূড়ান্তভাবে নোটিফিকেশন জারী হয়েছে। এছাড়া উক্ত এল.এ কেইসের সম্পত্তি দখলভার গ্রহণকারী তৎকালনি গণপূর্ত রেলওয়ে ডাইভারশন বিভাগ (পরবর্তীতে রেলওয়ে ডাইভারশন উপ-বিভাগ, ঢাকা গণপূর্ত বিভাগ-৪) কর্তৃক উক্ত সি.এস ৯৭ নং দাগের ০.৯৪ একর জমিসহ অন্যান্য মৌজার ২৬.৮৫ একর সম্পত্তি ঢাকা গণপূর্ত বিভাগ-৩ এর নিকট গত ১০/০৭/১৯৯৩ খ্রিঃ তারিখে দখলভার হস্তান্তর করেন। এল.এ কেইস নং-১৬/৫৯-৬০এর মাধ্যমে অধিগ্রহণকৃত আলোচ্য সি.এস. ৯৭ নং দাগের জমিসহ আরও অন্যান্য দাগের জমির উপর দিয়ে পাহুপথের সড়ক নির্মাণ হওয়ার ফলে উভয় পার্শ্ব খন্ড খন্ড জমি অবশিষ্ট থেকে যায়। এল.এ কেইস নং-১৬/৫৯-৬০ এর মাধ্যমে অধিগ্রহণকৃত ২৬.৮৫ একর জমির মধ্যে পাহুপথের দক্ষিণ পার্শ্বের জমিসমূহ হতিরঝিল প্রকল্পের জন্য সরকারি কাজে ব্যবহৃত হচ্ছে এবং পাহুপথের উত্তর পার্শ্বের জমিসমূহ গত ০৭/০৩/৯৬ খ্রিঃ তারিখে স্থাপত্য অধিদপ্তর কর্তৃক স্থাপত্য নক্সা প্রস্তুত করে শিল্প প্লট সৃষ্টি করে গৃহায়ণ ও গণপূর্ত মন্ত্রণালয় কর্তৃক বিভিন্ন প্রতিষ্ঠানের নিকট বরাদ্দ প্রদান করে এবং যা বর্তমানে গণপূর্ত অধিদপ্তরের নিয়ন্ত্রনাধীন। উল্লেখ্য যে, রেকর্ড মোতাবেক গৃহায়ণ ও গণপূর্ত মন্ত্রণালয় কর্তৃক সি.এস. ৯৭ দাগের বরাদ্দকৃত সম্পত্তি প্লট নং-ক/১ এর ১৩ কাঠা ১৩ ছটাক, প্লট নং-ক/২ এর ১২ কাঠা, প্লট নং-ক/৩ এর ৭ কাঠা ৮ ছটাক এবং প্লট নং-ক/৪ এর ৫ কাঠা ১০ ছটাক সর্বমোট ৩৮ কাঠা ১৫ ছটাক জমি বরাদ্দ প্রদান করা হয়েছে।</p>
২।	ভূমি বরাদ্দ কমিটির সভা:	২২/০৫/১৯৯৫ তারিখে ভূমি বরাদ্দ কমিটির সভায় হকস্ বে এর অনুকূলে তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং-ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার এর ১৩.৬৬ কাঠা জমি বরাদ্দের সিদ্ধান্ত হয়, ক্রমিক নং-২ (কার্যবিবরণী)। শিল্প প্লট বরাদ্দ কমিটি গঠনের প্রজ্ঞাপন।
৩।	কোম্পানীর নাম:	হকস্ বে, স্বত্বাধিকারী: জনাব আবদুল হক, পিতা-মরহুম মুন্সী জিন্নাত আলী
৪।	বরাদ্দপত্র:	হকস্ বে, স্বত্বাধিকারী: জনাব আবদুল হক এর অনুকূলে তারিখ: ৩০/০৭/১৯৯৫, স্মারক: শাখা-৬/১এল-৭/৯৫/২০২৬ মূলে তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং- ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার এর ১৩.৬৬ কাঠা জমি বরাদ্দ প্রদান করা হয়।
৫।	দখলভার হস্তান্তর:	হকস্ বে, স্বত্বাধিকারী: জনাব আবদুল হক এর অনুকূলে ০৪/১০/১৯৯৫ তারিখে তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং- ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার এর ১৩.৮০ কাঠা জমি দখলভার হস্তান্তর করা হয়।
৬।	Writ	Petitioner: Abdul Haque, Respondents:

	petition No.4108 of 1997 এর ২৬/০৬/২০০৪ তারিখের রায়:	Bangladesh Represented by the Secretary Ministry of Housing and public works. "-In the result, the Rule is made absolute but without any order as to costs. Respondent No.1 is directed to execute and register the lease deed in respect of plot No.Ka(1) of the site plan as evidence from annexure-D, to this petition without a (Four) weeks from the date of receipt of this order"
৭।	ইজারাচুক্তি দলিল:	তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং- ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার এর ১৩.৮০ কাঠা জমি হকস্ বে, স্বত্বাধিকারী: জনাব আবদুল হক এর অনুকূলে ০৪/১১/২০০৪ তারিখে, ৬৮৫৩ নং লীজ দলিল সম্পাদন করা হয়। লীজকৃত জমির পরিমাণ ১৩.৮০।
৮।	বন্ধক অনুমতি:	এ মন্ত্রণালয়ের ২৪/০৪/২০০৬ তারিখের স্মারক নং-শাখা-৭/১ এল-তেজ-৭/৯৫ (অংশ)/৮৫১ এর মারফত তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং-ক/১ এর ১৩.৮০ কাঠা জমি ইসলামী ব্যাংক বাংলাদেশ লিমিটেড, ভি আই পি রোড, ঢাকা-১০০০ এর অনুকূলে বন্ধকের অনুমতি প্রদান করা হয়।
৯।	সর্বশেষ:	হকস্ বে, স্বত্বাধিকারী: জনাব আবদুল হক এর অনুকূলে তেজগাঁও শিল্প এলাকার নবসৃষ্ট শিল্প প্লট নং- ক/১ সিএস দাগ-৯৭, মৌজা কারওয়ান বাজার এর ১৩.৮০ কাঠা জমি এ মন্ত্রণালয়ের ৩০/০৩/২০২১ খ্রি: তারিখের ২৫.০০.০০০০.০৪৯.৩২.০৩১.১৮-৬৫ নম্বর স্মারকের শিল্প হতে বাণিজ্যিক শ্রেণীতে রূপান্তরের অনুমতি প্রদান করা হয়।

These factual aspect have not been denied by the appellant.

From the above, it transpires that the Housing and Public Works Department has supported the case of the writ petitioner respondent that it allotted the land in question to the writ petitioner-respondent on 30.07.1995, handed over the possession of the same on 04.10.1995 and executed the lease deed on 04.11.2004 being lease deed No.6852 and ultimately on 03.03.2021, i.e., during pendency of this

appeal classified the said property as industrial commercial plot.

Further, from a certificate of possession dated 10.7.1993 (additional paper book dated 04.11.2018, filed by the writ petitioner-respondent) we find supports that the possession of the land in question was handed over to the Public Works Department-3, on 18.01.1960 by the Additional Land Acquisition Office, Dhaka. Further, after getting lease the writ petitioner-respondent has mutated his name and has been paying rent to the Government regularly.

In view of the above undisputed facts, it is very difficult to come into a definite conclusion that the writ petitioner-respondent is an '*unauthorized occupant*' in the land in question.

It also reveals from the documents submitted by the writ petitioner-respondent that with regard to the adjacent plot of the writ petitioner-respondent, i.e., plot No.3 when the present appellant issued notice under section 5 the Ordinance No.24 of 1970 on the same plea the owner of the said property challenged the said notice before the High Court Division vide writ petition No.61 of 1976 and High Court Division after hearing the Rule declared the impugned notice of the said writ petition is illegal and without jurisdiction; against which the present appellant filed civil petition for leave to appeal No.2020 of 2011 and said petition was dismissed on merit. In deposing the said civil petition for leave to appeal this Division has held that:

"It appears that the respondent No.1 has been allotted the land as an industrial plot setting up a garments and has been put into possession by the allotting authority on

receipt of 25% of the total price fixed by the government and as such the respondent No.1 is not an unauthorized occupant liable to be issued with the notice directing to vacate the land in possession of the respondent No.1 by constructing structures.

The dispute as to whether the Ministry of Housing and Public Works had the right or authority to allot the land in question to the petitioner could be adjudicated in an appropriate forum and until the said issue is resolved the petitioner could not be evicted in colorable exercise of power by issuing a notice under section 5 of the said Ordinance, 1970 except in due process of law.” (underlines supplied)”

In view of the above observations made by this Division in a similar situation like the present case, we have no other option but to agree with the above findings of this Division and we are also of the view that there is no scope to evict the writ petitioner-respondent by issuing a notice under section 5 of the Ordinance 24 of 1970.

Having discussed and considered as above, we find no merit in the appeal.

Accordingly, the appeal is dismissed.

C.J.

J.

J.