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

Present:

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Sheikh Md. Zakir Hossain

SUO MOTU RULE NO. 19 OF 2010.

IN THE MATTER OF :

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

A N D

IN THE MATTER OF :

The State.

. ... Petitioner

-Versus-

Government of Bangladesh and others.

... Respondents

Mr. D.H.M. Munir Uddin, Advocate

In support of the Rule

Mr. Rokanuddin Mahmud, Advocate

... For the Respondents

Mr. Mahbubey Alam, Attorney General, with
Mr. Murad-E-Reza, Additional Attorney General, and
Mr. ABM Altaf Hossain, DAG

... For the State

Mr. Akhtar Imam and
Mr. Fida M. Kamal
Mr. Mansurul Haque Chowdhury
Mr. Anisul Huq
Mr. Manzil Murshed
Ms. Syeda Rizwana Hasan
Mr. M. Iqbal Kabir, Advocates

. . . . . As Amicus Curiae.

Heard on: 22.02.2011, 13.03.2011 15.03.2011 and 20.03.2011 and Judgment on: 03.04. 2011.

A.H.M. Shamsuddin Choudhury,J:

The Rule under adjudication, issued suo motu, on 03-10-2010, was in following terms:

"Let a Suo Motu Rule issue to show cause as to why the respondents, namely (1) Government of Bangladesh represented by the Secretary Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka (2) Chairman, Rajdhani Unnayan Kartripakkha (RAJUK), 1 RAJUK Avenue, Dilkusha Commercial Area, Dhaka 3) President, Bangladesh Garments Manufactures and Exports Association (BGMEA), Hatirjheel, Dhaka 4) Authorized Officer (Building Construction), RAJUK, Dhaka 5) Deputy Commissioner, Dhaka and Commissioner, Dhaka Metropolitan Police, Park Avenue, Dhaka should not be directed to take necessary and appropriate steps in accordance with law to demolish the BGMEA Building located at Hatirjheel, Dhaka, being an unauthorized construction, and as to why they should not be directed to take appropriate steps against the concerned officials for failing to discharge their respective duties in accordance with law and/or pass such other or further order or orders as to this Court may seem fit and proper."

As clippings from an English vernacular daily, named, New Age, published a feature under the caption, "No Plan to Demolish Unauthorised BGMEA Building Soon", was brought to the attention of a differently constituted Bench of this

Division. The said Bench issued a Suo Motu Rule, requiring the respondents to show cause in terms as stated above.

The Newspaper feature, referred to above, which was attributable for the issuance of the Rule under review, is reproduced below, verbatim in the interest of clarity;

"The government has no plans to immediately demolish the unauthorised BGMEA Building, obstructing the ongoing city beautification work surrounding the Hatirjheel-Begunbari lake, said the state minister for housing and public works.

The 15 storey building stands defying the law as a tall and odd Monumental structure to eclipse the main lake, at least partially, said citizens' and environmental groups.

The state Minister, for Housing and public works, Abdul Mannan Khan, told New Age that he would wait and see whether or not the Bangladesh Garments Manufactures and Exporters Association leaders voluntarily demolish the building.

As it creates a chaotic situation, whenever the government demolishes a structure, we expect a change in the mindset of the BGMEA functionaries and at the same time we want the project work to proceed, he said.

If we see that the building is obstructing the project, we will fix the problem through consultations with the BGMEA leaders,' he said.

Hopefully, they would realise the problem, he said.

The Tk. 1,480 crore project of Rajdhani Unnayan Kartripakkha, was planned long ago to restore and preserve as much as possible the remnants of the Hatirjheel and Begunbari lakes, with the Moghbazaar-Tejgaon section of the Tongi Diversion Road, dividing them.

The project envisages construction of circular roads around the two lakes, once part of a long canal, which had taken off and fell into rivers, passing by the city.

Environmentalist recalled many of the 78 canals that once criss-crossed through the historic Dhaka City, now only live in the memory of senior citizens as land grabbers virtually took them all for personal gains.

One can see the unmistakable impact of the grabbing, they said, whenever the city suffers water logging after rains.

The Hatirjheel-Begunbari project suffered setbacks due to irregularities as well as grabbers swallowing much of the lake areas.

BGMEA built its building without caring to take approval from Rajuk, the city development authority under the Ministry of housing and public works.

Rajuk chairman told New Age that it's a matter of political decision whether or not the unauthorised BGMEA Building would be demolished.

Rajuk will demolish the "illegal" structure only after it gets the green signal from the government", he said.

The prime minister, Sheikh Hasina, inaugurated the construction of BGMEA in her first tenure in November 1998.

Subsequently, on its completion, the then prime minister Khaleda Zia inaugurated the building in October, 2006.

During the two years the military backed emergency caretaker government ran the country, Rajuk fined BGMEA a nominal penalty of taka 12.5 lakh for building the structure without obtaining its approval.

The law empowers and requires Rajuk to demolish all unauthorised structures.

Rajuk Chairman, however, said that payment of a fine does not mean BGMEA got an approval for its unauthorised building.

BGMEA vice president Saiful Islam Mohiuddin told New Age that the incumbent government can demolish the building only if it considered the lake to be more important than BGMEA.

He also said that Rajuk took fine for not being able to build a bridge on the lake, adjacent to the BGMEA Building, during that tenure of the emergency caretaker government.

Citizens' groups and environmentalists have been demanding that the unauthorised building at a vantage point of the city be demolish without further delay.

They say that there was no scope whatsoever, to save the building, built on government land in gross violation of two laws, including the Environment Wetland Protection Act, 2000.

BGMEA, they said, built the building filling up a part of the lake.

Dhaka Metropolitan Development Plan (DMDP) prohibited any change in the character of Begunbari, the remnant of a natural canal, and designated it as a flood flow zone of the city.

Rajuk must immediately demolish the unauthorised structure, said Bangladesh University of Engineering and Technology Professor Mujibur Rahman, also the leader of the

team which studied the feasibility of the Hatirjheel-Begunbari project.

After enjoying and enormous advantage from the government, BGMEA should respect public interest and demand, said, Dhaka University Teacher Muntasir Mamun, a campaigner against grabbing of water bodies.

Allowing this unauthorised building to stand, he said, would mean that the law is not equally applied for all.

It would, he said, obviously give birth to questions about the intentions of the government.

Rajuk must demolish buildings in the list of unauthorised structures it had prepared without any discrimination, said Abdullah Abu Sayeed, the founder of Biswa Shahitya Kendra.

"It stands, defying the law in the heart of the city', he said.

He described the BGMEA Building as an unmistakable symbol of unauthorised construction to inspire others to violate the law.

University Grants Commission Chairman, Nazrul Islam, said in the best interest of the Hatirjheel Beautification Project, the BGMEA building should be demolished.

Bangladesh Environmental Lawyers Association executive director Syeda Rezwana Hasan said that the law required Rajuk to demolish the building without waiting for a political decision.

If law is subject to politics, justice can never be ensured, she commented."

The allegations as figured in the reproduced Article, in the succinct form, divulges that Bangladesh Garments Manufacturers and Exporters' Association, BGMEA for short, erected a sky scrapper (henceforth the building), barren of Rajdhani Unnayan Kartripakhya's (RAJUK) approval in the location which used to be a canal, named, Begun Bari Canal, in the olden days, through which water flew to rivers and thereby kept the part of the city free from water logging and impurities. The reproduced feature also suggests that the unauthorised erection of the building also stands as a major stumbling block in implementing ambitious Hatirjheel Project. It is claimed that RAJUK appears to be emasculated in purging the illegalities that has been perpetrated by BGMEA: it went no further than imposing a meager amount of fine.

Following the issuance of the Rule, BGMEA, which had been impleaded as the respondent No. 3, filed its pleading, stating inter alia, that the subject building is not liable to be

demolished as the same was erected in compliance with all the dictates of law, inclusive of what the Building Construction Act 1952, stipulates. According to this respondent's claim, an application was duly tabled before an Authorised Officer of RAJUK, seeking approval for its plan to erect a 15 storied building on 0.66 acres of land at 23/1 Panthapath Link Road at the Karwan Bazar Area of the city, which land is owned by the said respondent as being an allottee from the Export Promotion Bureau (EPB), an offshoot of the Ministry of Commerce. An approved site plan of BGMEA for the construction of a multistoried building was issued under the signature of RAJUK's secretary on 14th July 2003, pursuant to a decision taken in one of RAJUK's general meetings.

The approval was, however, accorded subject to certain covenant.

BGMEA also successfully applied for clearances and authorisation from other concerned authorities.

By a communication dated 27th January 2004, RAJUK intimated BGMEA that the Building Construction Committee had accorded approval to the earlier's plan and requested it to submit further documents and BGMEA obliged.

By another communication, dated 20th August 2006, RAJUK asked BGMEA for an undertaking to remove certain structures from such spaces which were meant to remain vacant as per the approved plan and to pay a sum of Tk. 12,50,000 as penalty for having commenced construction work before procuring approval.

By a letter dated 29th August 2006, RAJUK informed BGMEA that the plan had been approved, yet, delivering the same would be delayed pending receipt of a dossier from the Bangladesh University of Engineering and Technology (BUET) on Hatirjheel Project. In the face of RAJUK's indolence even after it received BUET's dossier, BGMEA approached the earlier, seeking delivery of the approved plan, stating that it had already kept 2.41 kathas of land vacant as per the earlier's dictate for the proposed lake.

By another memo dated 27th March 2007, RAJUK intimated BGMEA of its approval for the 2 level basement and 15 storied building and that the latter would be required to build an aesthetically spectacular bridge over the canal in front of the building and to pay a sum of Tk. 1250000 as penalty. BGMEA obliged and informed RAJUK that it had taken steps to construct the said bridge and had submitted plans to RAJUK

and the Water and Sewage Authority (WASA) and repeated the request for the delivery of the approved plan.

BGMEA, through its said pleading, continued to say that the Export Promotion Bureau (EPB for short), upon approval of the Ministry of Commerce, allotted the subject land to BGMEA to enable it to construct its building.

BGMEA went on to say that RAJUK never issued any notice upon it alleging any breach of any provision of the Building Construction Act 1952 (henceforth the Act) or requiring BGMEA to remove its building or any part thereof. No other authority labeled any aspersion as to any violation either.

BGMEA subsequently filed yet another affidavit in opposition in supplementation to its original pleading, tabling such assertions which run as follows;

BGMEA was allotted .66 acres of land from several dags of Mouzas Boramoghbazar and Begunbari, pursuant to an agreement sealed between itself and the EPB, dated 7th May 2001. Clause 2 of the said covenant stipulates that in the event of any dispute on the title to the land, the responsibility shall lie on EPB.

BGMEA has in fact been vested with .63 acres of land from C.S. dags No. 208 and 209 and .03 acres from C.S dag No. 105 and the building has been constructed on .63 acres of land on dags No. 208 and 209, leaving 2.41 katha on the northern side vacant, which is contiguous to the land in CS dag No. 105, which is indeed Begunbari Canal. BGMEA has erected no structure on that land. As per RAJUK's desire, BGMEA is to build a connecting bridge on this land.

Land allotted to BGMEA by EPB is part of the land which had been transferred by the Railway authorities to EPB. Initially, possession of 6.12 acres of land was conveyed by the Railway to EPB, but finally, by a registered Title deed, dated 17th December 2006, 5.55 acres of land were transferred for a consideration of Tkd. 43,56,86,274.00. The land allotted by EPB to BGMEA is thus, within the admeasurements of land purchased by EPB from Bangladesh Railways. BGMEA has fully paid the consideration due to EPB in installments. EPB requested BGMEA by a letter dated 26th April 2010 for the payment of the residual amount of Tk. 2,62,35,284.00 which remained outstanding, and that BGMEA had, by a pay order under cover of a letter dated 21st October 2010, had cleared the same and that BGMEA has, ever since, been pursuing for the

execution of a registered deed of conveyance in its favour, the last such request being on January 2011.

As the Rule matured we invited a number of bodies, having genuine interest and concern on the matter, who are familiar with relevant facts and laws, to assist us as amicus curiae, Bangladesh Environmental Lawyers' Association (BELA) being one of such bodies. BELA duly obliged by filing an affidavit, fully impregnated with invaluable facts and information, supported by documents annexed, which are recorded below in conspectus;

The erection of the building has been out and out illegal as the same has been done by filling up significant part of Begunbari Canal in breach of Wetland Protection Act (No. Act 36 of 2000) and the Environment Conservation Act 1995. The construction has been carried out barren of nod from the concerned authorities such as the respondents No. 1, the Department of Environment etc. No prior approval for filling in Begunbari Canal was taken, notwithstanding mandatory statutory requirement to that effect. The respondent No. 3 concealed the fact that the building was on Begunbari Canal when it submitted plan for the building.

"All of the statutory and semi statutory agencies, including those that purported to transfer the land to BGMEA, states BELA, "quite conveniently and designedly obliterated these facts." The authorities concerned, in according clearance for the building, also played the same kind of gimmick. BELA obtained precious documents of extreme rarity by invoking Right to Information Act 2009 and enclosed them with its pleadings, which enhanced the treasure trove preserved in this file". These instruments, states BELA through its pleadings, "reveal that the initial discussion on approval for the construction of a building by BGMEA led to the decision that out of the total of 40 kathas of land purportedly sold to the body by EPB, 5.23 kathas had to be excluded from the construction as the same would adversely impede implementation of Hatirjheel-Begun Bari Project as well as of Begun Bari Canal". In a subsequent congregation, however, for some obscure and inexplicable reasons, unsupported by any rational attribution, the respondent no. 2 deviated from the earlier proposition and rescinded the embargo it previously imposed on 5.23 kathas of the BGMEA's land. The said respondent, instead, emerged with a fresh proposition to protect 2.41 kathas of land to the north of BGMEA land. Those documents further depict that merely a land use permit was

accorded to BGMEA for construction of the building and there never was any permission for the actual construction itself of the same, nor was the building plan ever approved as per the requirement of Section 3 of the Building Construction Act 1952 and the Rules framed thereunder in 1996. It was clearly stipulated in RAJUK's letter dated 14th July 2003 that " ইমারত বিধিমালা মোতাবেক ইমারতের নক্সা রাজউক হতে অনুমোদন করতে হবে ।"

Although the Building Construction Committee, in its meeting dated 2nd January 2004, resolved to conditionally approve the plan submitted by BGMEA, no approval letter was, as a matter of fact, issued, because of BGMEA's persistent failure to adhere to the conditions attached, and to halt the construction work it had commenced bare approval. BEMEA paid no heed whosoever either to the sanction of law or to RAJUK's dictation, requiring the earlier to refrain from any construction work before obtaining approval. Minutes of RAJUK's meeting dated 7th and 8th June and 2nd July 2006, divulge that BGMEA concluded construction of the 15 storied Building nude of any approval, in frenzied defiance of the laws of the land.

Over and above a decision to impose a penalty, RAJUK had also resolved to demolish such portion of the building

which had been constructed in desolation of approval, by engaging the apposite provisions of the Building Construction Rules. RAJUK also required BGMEA to construct a bridge, for the purpose of paving an approach pathway in front of the Building to allow unhindered flow of the Sonargaon Lake, which included Begunbari Canal.

BGMEA haughtily discarded RAJUK's instruction to provide an undertaking to demolish unauthorised part of the structure.

BGMEA's high handed and, visibly arrogant, attitude reflects its abhorrent and weird resolve to project itself as being above law and demonstrate its ability to flout the law of the land with unfiltered impunity.

RAJUK has also exhibited its own apparent connivance with BGMEA's filthy perversion. It served no notice on the latter requiring it to demolish unauthorised construction and had also **travelled** far beyond the sanction of law, irrationally by drawing a fence between that part of the building that was included in the submitted plan (not approved) and that portion which was not so included, notwithstanding that the building as a whole was constructed without approval.

The respondent no. 2, RAJUK, also filed its own, independent, pleading to put on the **slade** the following assertions; BGMEA building was erected in conspicuous violation of Section 3 of the Building Construction Act 1952 as well as in breach of "মহানগরী, বিভাগীয় শহর ও জেলা শহরের এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উম্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষনের জন্য প্রনীত আইন, (Act XXX VI of 2000).

Notwithstanding BGMEA's act of repulsive vilification in constructing the building, infecund of approval, no step, save imposition of a negligible penalty, has been taken to purge the violation: no step to demolish the building. BGMEA applied to RAJUK on 9th September 2002 for a clearance certificate for constructing the 15 storied building on an area of 0.66 acres on Dag nos. 208, 209 of Baro Magh Bazar Mouza. The Environment Directorate then channeled a communication to RAJUK, with a query as to whether or not the latter had consented for the use of the land on the basis of the application that had been filed to the aforementioned Directorate.

Land measuring 0.66 acres, out of 6.12, that was proposed to be leased to BGMEA was claimed to have been owned by EPB, which obtained nod from the Ministry of Commerce in September 1998 to convey it to BGMEA. EPB then executed a

deed extending permission to BGMEA only to use the land, inserting a stipulation therein that it would be open to BGMEA to take necessary plan to construct a multi storied building to be passed by RAJUK. RAJUK initially objected to the use of 5.23 kathas as the same was linked with the proposed lake, but, then, eventually, agreed to accede to the proposition that 2.41 kathas could be given away by BGMEA to RAJUK for the balanced development of the proposed lake. It was, however, also emphasised that BGMEA would not acquire any title over the land by virtue of the said agreement.

BGMEA then commenced construction work without procuring RAJUK's approval. As this factum came to RAJUK's know, it imposed a penalty to the tune of Tk 12,50,000 and resolved to dismantle that portion of the Building for which approval was not asked for in its submitted plan. BGMEA eventually paid the penalty on 14th May 2007.

At the very inception of the hearing, what emerged to us to be the issue of much greater import was the question as to the title to the land, whereas the questions as to approval etc turned out to be of secondary introspection.

We did, therefore, direct the Deputy Commissioner (DC), Dhaka to depute an official, familiar with relevant information

on the title to the postulated land, to appear before us with all the relevant documents and volumes. In compliance with that direction, one Khurshid Ahmed, a land surveyor at the DC's office, turned up with the volumes and dockets retained in the district administration office and made the same available for our browsing and scanning. Mr. ABM Altaf Hussain, the learned Deputy Attorney General, read the texts in the **docets** over to us as part of his submission. None of the learned Advocates raised any dispute as to the authenticity of any of these **docets**.

Facts that emerged from these documents, are figured below in the original language. There is nothing in BGMEA affidavit to assert otherwise;

সুমোটো র"ল ১৯/২০১০

বিষয়- বি জি এম ই এ এর কথিত মালিকানা জমির বিস্তারিত ইতিহাস ।

বাংলাদেশ রেলওয়ে বিভাগ রেলওয়ে স্কিমের মাটি কাটার জন্য এল,এ, কেস ১৬/৫৯-৬০ এর মাধ্যমে ৫টি মৌজা হইতে যথাক্রমে ১ । রাজার বাগ ২ । শহর খিলগাওঁ ৩ । বড় মগবাজার ৪ । বেগুন বাড়ি । ৫ । বাগনোয়াদ্দা ৬ । কাওরান, হইতে সর্ব মোট ৫৮.৫৮ একর সম্পত্তি সি,এস, রেকর্ডিও মালিকদের নিকট হইতে অধিগ্রহন করা হয় । রেলওয়ে বিভাগকে উক্ত সম্পত্তি ১৮-১-১৯৬০ খ্রিঃ সালে দখল হস্থান্তর করা হয় এবং ২৮-০৩-১৯৬৮ খ্রিঃ সালে গেজেটে প্রকাশ করা হয় । পরবর্তি পর্যায়ে বাংলাদেশ রেলওয়ে বিভাগ বিশ্ব বানিজ্য কেন্দ্র স্থাপনের জন্য রপ্তানী উন্নয়ন ব্যুরোকে উপরে

উল্লেখিত অধিগ্রহন জমি হইতে ৬.১২ একর সম্পত্তি ০৫-০২-২০০৮ খ্রিঃ তারিখে হস্থান্তর করার সিদ্ধান্ত হয় যাহা বির্তকিত, যাহার বিবারন ।

মৌজা নং	দাগ নং	পরিমান	বিজিএমই এর বরাদ্দকৃত জমির পরিমান
বড় মগবাজার-২৮০	২০৩(অংশ)	০.৯২ একর-	. . . . .
	২০৮(অংশ)	৩-৯০ একর	০.৪১ একর
	২০৯	০.৫৮	. . . . .
বাগনোওদ্দা-২৮১	১(অংশ)	০.২২ একর	০.২২
বেগুন বাড়ি-২৭৯	২০৫(অংশ)	০.৫০ একর	০.৩

উক্ত সম্পত্তির কাতে ৫.৫৫৫ একর সম্পত্তি ১৭-১২-২০০৬ খ্রিঃ তারিখে ৬৬৮১ নং দলিল মূলে রপ্তানী উন্নয়ন ব্যুরোকে বাংলাদেশ সরকারের মহামান্য রাষ্ট্রপতির পক্ষে বিভাগীয় এস্টেট অফিসার বাংলাদেশ রেলওয়ে সাফ কবলা দলিল সম্পাদন করিয়া দেন । যাহার তফসিল বিবারন নিম্নরুপঃ-

জিলা-ঢাকা, থানা-রমনা ও সাব রেজিস্ট্রি অফিস ঢাকা সদর অধীন ।

ভুমিঅফিসের নাম/বিবরণঃ বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয় ।

মৌজাঃ-সাবেক ২৮০ নং বড় মগবাজার স্থিত ।

সাবেক ২০৩(দুইশত তিন) নং দাগের ০.৮৬১৪ একর, ২০৮ (দুইশত আট) নং দাগের ৩.৫২৪৬ একর এবং ২০৯ (দুইশত নয়) নং দাগের ০.৫৬০০ একর, মোট ৪.৯৪৬ একর ।

জিলা-ঢাকা, থানা-তেজগাওঁ ও সাব-রেজিস্ট্রি অফিস মোহাম্মপুর অধীন ।

ভুমি অফিসের নাম/বিবরণঃ-বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয় ।

মৌজাঃ- সাবেক ২৭৯ নং বেগুনবাড়িস্থিত ।

সাবেক ১০৫(একশত পাচঁ) নং দাগের ০.৪০৯৫ একর ।

জিলা-ঢাকা, থানা-রমনা ও সাব-রেজিষ্ট্রি অফিস ঢাকা সদর অধীন ।

ভুমি অফিসের নাম/বিবরণঃ-বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয় ।

মৌজাঃ-সাবেক ২৮১ নং বাগনোয়াদাস্থিত ।

সাবেক ০১(এক)নং দাগের ০১১৯৯৫ একর ।

একুনে তিন মৌজায় সাবে ৫টি দাগে মোট ৫.৫৫৫ (পাচঁ দশমিক পাচঁ পাচঁ পাচঁ)একর ।

উক্ত দলিলে জমির শ্রেনী হিসাবে ১৮ নং অনুচ্ছেদে ডোবা দেখানো হইয়াছে । বি,জি,এম,ই এর সাফলিমেন্টারী এফিডেভিট এনেক্সচার ‘‘কে-২’’ পৃষ্ঠা ২০ কথিত বিজিএমইএর কথিত বিল্ডিং এর জমি বরাদ্দের চুক্তি পত্র (অরেজিষ্ট্রিকৃত) সম্পাদিত হয় ০৭-০৫-২০০১ খ্রিঃ তারিখে যাহার তফসিল নিম্নরুপঃ-

মৌজা জে, এল, নং	সি, এস, দাগ নং		মোট জমির পরিমান	বরাদ্দকৃত জমি
বড় মগবাজার-২৮০	২০৩		০.৯২ একর	তিন দাগের কাতে
	২০৮		৩.৯০ একর	০.৪১ একর
	২০৯		০.৫৮	
বাগনোয়াদ্দা-২৮১	০১	০.২২	০.২২ একর	
বেগুন বাড়ি-২৭৯	১০৫	০.৫০	০.৩ একর	

(বিজিএমই এর এফিডেভিট ইন অপজিশন এনেক্সার ‘‘আই ২’’ পৃষ্ঠা ১৫) কিন্ত বাংলাদেশ রপ্তানি উন্নয়ন ব্যুরো বিশ্ব বানিজ্য কেন্দ্রের জন্য ৮-৯-১৯৯৮ খ্রিঃ তারিখে বিজিএমই এর এনেক্সার ‘‘আই’’ সিরিজ, পৃষ্ঠা ৪৯ কথিত য়ে সম্পত্তির বরাদ্দ অনুমোদন করেন তার তফসিল নিম্নরুপঃ-

মৌজা জে, এল, নং	সি, এস, দাগ নং		মোট জমির পরিমান	বরাদ্দকৃত জমি
বড় মগবাজার-২৮০	২০৩		০.৯২ একর	
	২০৮		৩.৯০ একর	০.৪১ একর
	২০৯		০.৫৮একর	
বাগনোয়াদ্দা -২৮১	১	.২২	.২২ একর	
বেগুন বাড়ি-২৭৯	১০৫	.৫০ একর	০.৩একর	
		৬.১২	০.৬৬ একর	

মোট-

সার্বিক পর্যালোচনা বিজিএমই এর পক্ষে ৭-৫-২০০১ খ্রিঃ তারিখে অরেজিষ্ট্রিকৃত একটি বরাদ্দ পত্র ছাড়া আর কোন মালিকানা দলিল পত্রে পাওয়া যায় নাই, সার্বিক বিবেচনায় আর দেখা যায় যে কথিত যে সম্পত্তিতে বিজিএমই এর বিল্ডিং নির্মিত হয়েছে সি, এস, জরিপের পরে আর কোন জরিপ কিংবা হাল নাগাত কোন নাম জারি দেখা যায় নাই। বিজিএমইএ কথিত নালিশি সম্পত্তিতে ভবন নির্মানের জন্য রাজউক বরাবরে বিগত ১১-০১-২০০৩ খ্রিঃ তারিখে ২০৮ ও ২০৯ নং দাগে বেগুনবাড়ী (কাটা)/বড়মগবাজার মৌজার সম্পত্তিতে ইমারত নির্মান অনুমোদন চাহিয়া আবেদন করেন করেন যেখানে মালিকানার প্রমান হিসাবে সংযুক্ত করেন ক্রয় সূত্রে দাবি করিয়া দলিলের কপি সংযুক্ত করেন যাহা দরখাস্তে উল্লেখ আছে।

কথিত নালিশি ভূমিতে ইমারত নির্মান আইনের ‘‘৩ খ’’ ধারার বিধান অনুযায়ী মঞ্জুরী লাভ ব্যাতিত বিজিএমইএ তথায় ১৫ তলা ইমারত নির্মান করিয়াছেন পরবর্তীতে রাজউক উক্ত অনঅনুমোদিত ভবনের কিছু অংশ অপসারন পূর্বক ভাঙিয়া ফেলার শর্ত সাপেক্ষে ৫০,০০০/- হাজার টাকা জরিমানা এবং নির্ধারিত ফি এর ১০ গুন ফি তথা ১২,৫০,০০০/- টাকা ফি আদায় সাপেক্ষে কথিত নক্সাটি অনুমোদনের সিদ্ধান্ত হয়। কিন্ত বিজিএমইএ কর্তৃপক্ষ রাজউকের সিদ্ধান্ত প্রতিপালন করেন নাই,

বিজিএমইএ ভবনের বিভিন্ন ফ্লাট বিভিন্ন ব্যক্তি ও প্রতিষ্ঠানের নিকট আর্থিক ভাবে লাভবানের জন্য বরাদ্দ ও হস্থান্তর করিয়া বহাল তবিয়াতে আইনের প্রতি শ্রদ্ধা না দেখাইয়া মাথা উচু করিয়া দাড়াইয়াছে ।

এই অবৈধ ভবনটি আইন অমান্য করিয়া সরকারী জলাদার এর উপর অবৈধ ভাবে নির্মিত বিল্ডিং এর একটি প্রতিবেদন ডেইলি নিউ এজ, পত্রিকায় ২-১০-২০১০ খ্রিঃ তারিখে প্রকাশিত হইলে সুপ্রীম কোর্টের এক জন বিজ্ঞ আইনজীবি জনাব ডি, এইচ, এম, মনির উদ্দিন বিজ্ঞ আদালতে দৃষ্টি আর্কশন করিলে অত্র আদালতের একটি বিজ্ঞ দ্বৈত বেঞ্চ যাহা বিচারপতি জনাব জুবায়ের রহমান চৌধুরী এবং বিচারপতি মিসেস ফারাহ মাহবুব এর দ্বারা গঠিত বেঞ্চ ০৩-১০-২০১০ খ্রিঃ তারিখে অত্র সুমোটো রুল জারি করেন ।

অত্র রুলের বিষয় হচ্ছে বিজিএমইএ ভবনটি ইমারত নির্মান আইন ১৯৫২ এর ৩ (তিন) ধারার বিধান ভঙ্গ করিয়া এবং মহানগরী, বিভাগীয় শহর, জেলা শহর, পৌর এলাকা সহ দেশের সকল পৌর এলাকার খোলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন ২০০০ এর ব্যর্তায় ঘটিয়া অবৈধ ভাবে নির্মিত কিনা তাহাই মূখ্য বিষয় ।

সার্বিক পর্যালোচনায় এবং দাখিল কৃত কাগজপত্র হইতে দেখা যায় যে বিজিএমইএ নালিশি সম্পত্তিতে তাহাদের বির্তকিত মালিকানা লাভের পূর্বেই অনঅনুমোদিত নক্সার ভিত্তিতে নির্মান করিয়াছেন বিজিএমইএ দাখিল কৃত এনেক্সার "কে-২" হইতে দেখা যায় যে, রপ্তানি উন্নয়ন বুরো তথা বিজিএমইএ বায়া তথা রপ্তানী উন্নয়ন ব্যুরো উক্ত এনেকসারএ বর্নিত সাব কবলা মূলে মালিকানা দাবী করেন, যাহার তারিখ ১৬-১২-২০০৬ খ্রিঃ অথচ বিজিএমইএ কথিত ভবন নির্মানের জন্য

কথিত ভবনের জায়গা ক্রয় সূত্রের মালিক হিসাবে দাবি করিয়া দলিলের কপি সংযুক্তির মিথা তথ্য দিয়া ১১-১-২০০৩ খ্রিঃ সালে ইমারত নির্মানের আবেদন করেন ।

কথিত নালিশি বিল্ডিং এর জায়গা রেলওয়ে স্কিমের মাটি কাটার জন্য এল,এ, কেচের নং ১৬/৫৯-৬০ মূলে অধিগ্রহন করা হয় এবং সেখান হইতে মাটি কাটিয়া অধিগ্রহনের উদ্দেশ্যে সম্পন্ন হয়, যাহার ফলে এলাকাটি নিচু ও জলা ভূমির সৃষ্টি হয় । অধিকন্তু সি,এস, জরিপের পরে উক্ত কথিত ভূমির আর কোন জরিপ হয় নাই বলিয়া সার্বিক কাগজ পত্র বিচার বিশ্লেষনে দেখা যায়, যদিও যে উদ্দেশ্যে কোন জমি অধিগ্রহন করা হয় সে উদ্দেশ্যে ব্যবহৃত না হইলে অথবা প্রয়োজন না থাকিলে আইন অনুয়ায়ী জেলা প্রশাসন বরাবরে হস্তান্তর করিতে হয় কিন্তু এ ক্ষেত্রে তাহার ব্যর্তায় ঘটিয়া বিভাগীয় স্টেট অফিসার বাংলাদেশ রেলওয়ে ঢাকা রপ্তানি উন্নয়ন বুরোর বরাবরে যথাযথ কার্যপ্রনালী প্রতিপালন ব্যতিরেকে সাফ কবলা মূলে সি,এস,জরিপ রবাবর বিক্রয় করিয়াছেন, যাহা সম্পূর্ন অবৈধ এবং কথিত দলিলও বাতিল যোগ্য । এ ক্ষেত্রে ট্রান্সফার অফ প্রর্পাটি এ্যাক্ট ১৮৮২ এর সংসোধনী আইনের '৫৩ সি', উল্লেখ করা হইল, যাহা নিু রুপঃ-

53C. Immovable Property without khatian not to be sold.-No immovable property shall be sold by a person unless his name, if he is the owner of the property otherwise than by inheritance, or his name or the name of his predecessor, it he is the owner of the property by inheritance, appears in respect of the property in the latest khatian prepared under the State

Acquisition and Tenancy Act, 1950, and any sale made otherwise shall be void."

অধিকন্ত বিষয়টি রেজিস্টেশন এ্যাকট ১৯০৮ সালের সংশোধীত "৫২ এ" ধারার বিধান লঙ্ঘিত হইয়াছে, যাহা অনুধাবন করার জন্য নিম্নে ধারাটি উপস্থাপন করা হইলঃ- "52 A. Registering Officer not to register unless certain particulars are included in an instrument of sale. Upon prosecution of an instrument of sale of any immovable property, the Registering Officer shall not register the instrument unless the following particulars are included in and attached with the instrument, nemely-

(a) the latest khatian of the property prepared under the State Acquisition and Tenancy Act6, 1950, in the name of the seller, if he is owner of the property otherwise than by inheitance;

(b) the latest Khatian of the property prepared under the State Acquisition and Tenancy Act, 1950, in the name of the seller or his predecessor he is owner of the property by inheitance;

(c) nature of the property;

(d) price of the property;

(e) a map of the property together with the axes and boundaries;

(f) a brief description of the ownership of the property for last 25 (twenty-five) years; and

(g) an affidavit by the executant affirming that he has not transferred the property to any person before execution of this instrument and that he has lawful title thereto". Z

আমাদের সামনে আর একটি বিষয় যে বিজিএমএ এর কথিত অনঅনুমোদিত ভবন টি জলাধারায় আইন অমান্য করিয়া তথায় নির্মিত হইয়াছে কিনা? মহানগর, বিভাগীয় শহর, জেলা শহরের ও পৌর এলাকা সহ দেশের সকল পৌর এলাকার খেলার মাঠ, উম্মুক্ত স্থান, উদ্যান ও প্রকৃতির জলাদার সংরক্ষন আইন ২০০০ সালের '২(চ)' ধারা অনুযায়ী জলাদার বলতে যাহা বুঝায় তাহা নিম্ম রুপঃ-

২-(চ) প্রাকৃতিক জলাধার অর্থ নদী, খাল, বিল, দীঘি,.....জলাশয় হিসাবে মাষ্টার প্লানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্য প্রবাহ এলাকা হিসাবে ঘোষিত কোন সংস্থা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমি ও উহার অন্তর্ভূক্ত হইবে;

কথিত বিল্ডিংটি জলাশয়ের উপর নির্মিত তাহা স্বীকৃত কেননা বিজিএমইএ পক্ষে দাখিল কতৃ এনক্সসার "কে ২(এ)" ১৮ অনুচ্ছেদের জমির শ্রেনীর (ডোবা) হিসাবে চিহ্নিত আছে যে, ডোবাটি ১৯৬০ সালের দিকে রেলওয়ে স্কিমের মাটি কাটার জন্য সৃষ্ট হইয়াছে। সে ক্ষেত্রেও উল্লেখিত জলাধার সংরক্ষিত আইনের ৬(৩) ধারা প্রতিপালন না করার জন্য উক্ত আইনের ধারা ৮(১) ২(৩) প্রয়োগযোগ্য যাহা নিম্নরুপঃ-

৮। শাস্তি, ইত্যাদি। (১) কোন ব্যক্তি এই আইনের কোন বিধান লঙন করিলে তিনি অনধিক ৫ বৎসরের কারাদন্ডে বা অনধিক ৫০(পঞ্জাশ) হাজার টাকা অর্থদন্ডে অথবা উভয় দন্ডে দন্ডনীয় হইবেন।

২) ধারা ৫ এর বিধান লঙন করিয়া যদি কোন জায়গা বা জায়গার অংশবিশেষের শ্রেনী পরিবর্তন করা হয়, তাহা হইলে সংশ্লিস্ট কর্তৃপক্ষ নোটিশ দ্বারা জমির মালিককে অথবা বিধান লঙন কারী ব্যক্তিকে নোটিশে উল্লেখিত জায়গার শ্রেনী পরিবর্তনের কাজে বাধা প্রদান করিতে পারিবে এবং নিধার্রিত পদ্ধতিতে অনঅনুমোদিত নির্মাণকার্য ভাংগিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উক্তরুপ ভাংগিয়া ফেলিবার জন্য কোন ক্ষতিপূরন প্রদেয় হইবে না।

(৩) এই আইনের বিধান লঙ্গন করিয়া যদি কোন নির্মান কার্য সম্পাদিত বা অবকাঠামো তৈরী হইয়া থাকে সেই সকল অবকাঠামো আদালতের আদেশে সংশ্লিষ্ট কর্তৃপক্ষের বরাবরে বাজেয়াপ্ত হইবে।

উপরোক্ত আলোচনা বিচার বিশ্লেষন এবং সার্বিক পর্যালোচনায় ইহা সুস্পষ্ট যে,

ক) নালিশি অধিগ্রহন কৃত সম্পত্তি যথাযথ ভাবে রপ্তানী উন্নয়ন বুরো তৎপর বিজিএমইএ কর্তৃপক্ষের নিকট হস্তান্তর হয় নাই।

খ) বিজিএমইএ কথিত মালিকানা (বির্তকিত মালিকানা) লাভের পূর্বেই মিথ্যা তথ্য ক্রয় দলিল এর কপি সংযুক্ত করিয়া ইমারত নির্মানের অনুমোদনের প্রার্থনা করিয়াছেন, যাহা চরম প্রতারণার সামিল ।

গ) রেলওয়ে কর্তৃপক্ষ কর্তৃক রপ্তানী উন্নয়ন বুরো বরাবরে কথিত সাব কবলা দলিল ট্রান্সফার অফ প্রর্পাটি এ্যাক্টের ‘‘৫৩ সি’’ ধারার বিধান অনুযায়ী বাতিল যোগ্য এবং রেজিষ্টেশন এ্যাক্টের ‘‘৫২ এ’’ ধারা অনুযায়ী বারিত বটে ।

ঘ)মহানগর, বিভগীয় শহর, জেলা শহর, পৌর এলাকা সহ খেলার মাঠ, উম্মুক্ত স্থান উদ্যান ও জলাধার সংরক্ষন আইন ২০০০ এর চরম লঙ্ঘন ।

পরিশেষে এই উচ্চ ভবনটি দেশের প্রচলিত আইনের কোন বিধি বিধান এর তোয়াক্কা না করিয়া সংশ্লিষ্ট কোন কোন কর্তৃপক্ষের সহিত আতোয়াত করিয়া, কিংবা কোন কোন ক্ষেত্রে ভূল বুঝাইয়া ও প্রভাব খাটাইয়া মালিকানা না থাকার সত্ত্বেও নির্মান করিতে সর্মথ হইয়াছে, যাহা সম্পূর্ন রুপে বেআইনী ও জনস্বার্থের পরিপন্থি ।’’

As the hearing on the Rule commenced, a Galaxy of Impeccable Lawyers with their endowed ingenuity appeared on both the sides of the fence and they included such brand names as M/s. Rukonuddin Mahmud, Aktar Imam, Anisul Huq, Fida M Kamal, Monsurul Huq Chowdhury, Manzil Murshed and Ms. Syeda Rizwana Hasan.

Mr. Rokanuddin Mahmud, the learned Senior Advocate, under instruction from the respondent No. 3, BGMEA, in his ice breaking part of the speech, picked up the question of this

court's competence to issue the Rule and proffered with his characterstick hyperbaric style, that no scope to issue suo motu order in the form of mandamus exists under Article 102 of the Constitution. There must be an application by an aggrieved person. He referred to Part 11 of the High Court Rules (Rule's relating to Special Jurisdiction) to lend weight to his submission on this point.

On substantive matters, to refute the assertion that the building was pricked up in derogation of several statutory surmons, Mr. Mahmud posited that the land upon which the perpendicular stands, was not a wet land as the same was not so declared by the authorities in consonance with the জলাধার আইন।

On the accusation that the sky scrapper was elevated in violation of several statutory dictations, Mr. Mahmud expostulated that even if it is accepted for argument's sake that the structure was erected barren of approval, that misfeasance was cured when RAJUK imposed fine and the same was duly paid. He cited Section 3(B) of the Act to substantiate his articulation on this point, insisting that Section 3(B)(5) is a condition precedent to carry out demolition. He tried to draw a

line of distinction between the instant case on the one hand and RAJUK-V-Abdur Rouf Chowdhury (RANGS Building Case) and Jamuna Builders Ltd.-V-RAJUK (Jamuna Future Park case), on the other.

He however, kept pursuing that the construction proceeded with RAJUK's nod. In his remonstration, the map was duly approved, though was not handed over. He also relied on **Deminimus** Rule. He said RAJUK asked BGMEA to construct a stunning bridge and the latter obliged. He went on to submit that the area over which the building is situate, does not spread over to Begunbari Camal.

He was quite momentous in arguing that the Court can not order demolition unless the regulatory body does so, because it is the satisfaction of that body, rather than that of the court, that is what the apposite statute contemplates. He also remained obstinate to the theme that there can be no demolition unless set rules are followed.

Mr. Mahmud concluded his submission outlining that the plot is indeed owned by BGMEA because it has bought the land from its previous owner for a consideration. He asked us to recognise BGMEA member's insubstitutable contribution to our economy, not only by creating Juggernaut scale employment, but

also being one of our major sources of foreign exchange earning, and tried to have us to perceive that an order derogatory to the body would be inconducive to national interest and that acquisition of land for BGMEA would, because of its status and role, satisfy "public purpose" criterion as envisaged by land acquisition statues.

Mr. Mahbubey Alam, the learned Attorney General, with his characteristic rhetoric, came up rather dispassionately, concentrating primordially on the ownership aspect of the land. According to him, if BGMEA has no title over the land, it is immaterial whether the building was raised in breach of several legislations or not. That said however, he did not abandon the allegation that the building is liable to be scrapped also because it was erected in breach of relevant legislations.

On title, his strenuous assertion is that we need go no further than scanning the records retained in the office of the Deputy Commissioner, Dhaka, to unveil the whole truth, on the proprietorship of the land, adding that these **docets** divulge beyond any qualm that the land was acquired for the Railway for specific purposes and, as such, when the residual part of the acquired land stood redundant, the same **willy nilly** reverted back to the district authority and hence, BGMEA never had any

title over the property. It was, said Mr. Alam, out of EPB's competence to transfer the property to an amalgam of private individuals for the latters' private accrual.

On the question of construction beyond approval and in breach of various legislative schemes, the learned AG argued that since the structure was erected in blatant and bizarre violation of the laws and the Rules specified in the town planning and building construction as well as environment protection legislations, the same is certainly liable to be demolished without further ado, in any event.

Mr. A.B.M Altaf Hussain, the learned Deputy Attorney General plated, with a significant degree of force, that in so far as the building had been hoisted without sanction, there exists nothing to distinguish the instant case from those of Jamuna Future Park and RANGS Building. In substantiating his oration, the learned DAG tried to have us to swing to the conclusion that imposition of fine under Section 3(B) does not imply exoneration. "If that was the case", submitted the learned DAG, "that would encourage unscrupulous affluent persons to make construction without approval and than try to have their yucky action legalised by paying fine." That, according to Mr. Altaf Hussain, can not be the scheme of the legislation and

would be tantamount to licensing wrongdoers. He however, put utmost emphasis on the title, insisting that if BGMEA is without title, as it definitely is, questions of approval becomes otiose, because an interloper can not erect its building on the land owned by the government. He read over to us the dossier Dhaka District administration prepared, as cited above, with reference to the records brought by its officers for our perusal.

Mr. Aktar Imam, appearing to assist us, again with his symptomatic **splendour,** proffered that facts are fairly clear: the construction was in breach of Section 3 as there was no prior approval.

Document at Annexure D of BGMEA's affidavit shows nothing more than an initial NOC - it has nothing to do with ownership.

He however, cited 43 DLR page 147 to say that there can be ex-post facto sanction and submitted that private interest may not always be sacrificed at the alter of public interest and that procedural safeguards must not be bartered. Private interests in his view, must also be protected. He asked us to be attentive to public interest, justice and equity in the round.

Mr. Anisul Hoque, appearing to assist us probono as an amicus, with his characterstick aura of articulation projected with distinctive audibility, BGMEA's bareness of title.

He had it to say that the legislation pertaining to acquisition of land suffers from no ambiguity: it is established with **unjettisonable** probity that land belonging to a citizen can only be acquired if such an action is justifiable for public purposes. It is also well in line with authorities of high preponderance that if an acquired piece of land or, part thereof, is not needed for the purpose which necessitated acquisition, the same shall revert back to the acquiring authority and the requiring authority would have no role in the matter. This legal theme, according to Mr. Huq, entails that such part of the acquired land that was found to have been in excess, certainly vested in the district administration. He expanded his submission, saying that an unbroken chain of authorities have elaborated with meticulously defined precision what "public purpose" means for land acquisition. Relying on the **propoundment** expressed by Ispahai J in the case reported at page 272 of 9 DLR, Mr. Huq went on to submit that to seek sanctuary under the shed of public purpose, the purpose must be of benevolence to the whole community or to a considerable

part thereof. He also cited quotation from Willoughby's Constitutional Law, Vol-11.

He proceeded to illuminate his perspicacity stating that the land was purportedly vested in EPB for constructing World Trade Centre, whereas BGMEA constructed its own building for its own financial augmentation, which has no relevance to Word Trade Centre and again it did not pay the entire consideration amount and that handing over the land to BGMEA was papably illegal. BGMEA sold parts of the building to fatten its own purse. So, there was no public purpose element even in the microscopic degree.

Mr. Fida M. Kamal, appearing to assist us ex-**gratia**, who happened to have had represented the state in the RANGS Building case in his capacity as the Attorney General of the day, with the treasure trove of inestimable knowledge he gained during the progression of that case, commenced his submission, toeing his traditionally pellucid style, by unequivocally proclaiming that this case is indeed distinguishable from that of RANGS Building in that while RANGS raised its building on its own realty, BGMEA had done so on the land owned by the government, gaining wretched entry on it as an illegal intruder and hence BGMEA can not animate any submission at all and

can certainly not rely even on those contentions which were advanced, abortively though, by RANGS. It would be ludicrous for a squat to engage any law that can be taken in aid by a person with title. He did then move forward to say that even if BGMEA was duly attired with title, its building would have been amenable to annihilation for the same reason RANG's building was reduced to rubble, because, if a structure is erected in breach of provisions stipulated in the town planning and building construction legislations, or any other apposite statute, the same is liable to be ravaged, irrespective of whether fine has been imposed or not, in the same way a convict's name does not wane from the record simply because he has paid the fine imposed.

Mr. Kamal also vocalised the theme that the building has been constructed on the plots which are not the same that were even purportedly conveyed to BGMEA. He was unequivocally inquisitive as to how BGMEA obtained the land it erected the building on. The map does not show that this land was conveyed to BGMEA – "it had grabbed this land stealthfully", uttered Mr. Kamal. There was no plan for the land and the papers reveal irreconcilable degree of discrepancies even on the purportedly transferred land.

He lent enduring weight to the view that land acquired under the Land Acquisition Act 1894, suffers from the incapacitation as to transferability and as such, it could only be used for another "public purpose", when excess land turned redundant for the original purpose, in the way Cypress doctrine applies.

Mr. Mansurul Haque Chowdhury submitted that RAJUK is mandatorily required to act in accordance with Section 12 of the Imarat Ain 1952 and hence demolition is irrestitible. In his vocabulary, if BGMEA is allowed to retains its illegal structure on the plea of its contribution to the national exchequer, and on the plea that enormous sums of money had been expended to construct it, and that the parts of the building had been sold to innocent buyers, the Rule of Law and constitutionally imposed Rule against discrimination would be rendered topsy turvy. In such an event it will not remain open to any court to order elimination of any illegal construction, because others will then engage Article 27 and 28 of the Constitution. He concluded submitting that it will herald an unpalatable and pathetic judicial retreat if this Court gives in to the desire of a mighty body.

Mr. Manzil Murshed argued that as the whole area was a Jaladhar, the Building is liable to be demolished under the

Environment Protection Act 1995. Environment Pollution Control Ordinance 1977 also proscribes construction of building on Jaladhar. He drove on to say that even RAJUK is stripped of any authority to grant approval to make any construction on a Jaladhar. The amount RAJUK took was by way of compensation: that cannot be treated as legalising the building. No lake can be filled in. It has to be looked at in juxtaposition with Hatirjheel Project. This building is obstructing the progression of Hatirjheel Project wherefore only one part is being constructed. Breach of Jaladhar Ain is a congnisable offence. It would entail an ugly precedence if this building is allowed to stand erect because of the opulence of the people who erected it.

Ms. Syeda Rizwana Hasan, appearing for BELA, placed her copiously resourceful and lucidly analytical submission in her traditional charismatic manner, embracing all possible applicables areas of jurisprudence, starting with the question of title and then trailing her odyssey through the legislations that control town planning, building construction and environment protection. In her vignette, the building must be leveled to the ground as it ignominiously stands on the land owned by the state, despicably projecting its vulgar superciliousness. She, at the

inception of her submission, expressed her dismay at the fact that despite incessant request, BGMEA kept mum in supplying the information BELA asked for, which compelled her organisation to procure documents by engaging provisions in right to Information Act, which have been enclosed with BELA's pleading. She did then, submit comprehensive written submission, which are reproduced verbatim, herein under;

A. LEGALITY OF HANDING OVER OF THE LAND TO BGMEA/OWNERSHIP OF BGMEA

1) The laws on acquisition (Land Acquisition Act, 1948, Acquisition and Requisition of immovable Property Ordinance, 1982) require "public purpose" to be satisfied for all acquisition processes. Case laws have defined "public purpose" and held that acquisition in favour of private entities per se is not a public purpose (9 DLR (1957) page 272; 41 DLR (1989) page 326 and hence selling lands that were acquired for a definite public purpose to a private entity like BGMEA is untenable in the eye of law.

2) Where lands are not utilized for the purpose for which it was acquired, it has to go back to the original owner (3BLC page 18). This established principle of law

rendered the purported transfer even to EPB void ab-initio, let alone BGMEA.

3) The land in question was acquired in favour of Railway vide LA case 16/59-60 under a project of excavation of soil for Railway Scheme. Possession was handed over to Railway on 18 January, 1960 which was notified in the Gazette dated 28 March, 1968. The total amount of acquired land was 58.58 falling under 6 different mouzas, namely Razar Bag, Shohor Khilgaon, Boro Mogh Bazar, Begunbari, Bagnoadda and Kawran (Enclosure-1).

4) An inter-ministerial meeting, held on 10 December, 1997 decided to hand over 6.12 acres of this total 58.58 acres of land to the Export Promotion Bureau (EPB) for building a World Trade Centre thereon. The land proposed to be handed over (through sale) to EPB fell under three different mouzas, namely Boro Mogh Bazar, Begunbari and Bagnoadda (Enclosure-2).

5) It was only on 20 December, 2006 that a Deed of Conveyance was purported to be executed between Bangladesh Railway and the EPB (page 14 of the supplementary affidavit of BGMEA) that recorded that only 5.555 acres of land instead of 6.12 acres could be

handed over to EPB. This Deed shows that EPB indeed handed over possession of part of 5.555 acres of land to BGMEA on 19 December, 1999, i.e., six years prior to the execution of the Deed in its favour on 20 December, 2006 which is beyond the scope of law. Again, for the land, EPB was required to pay Taka 43, 56, 86, 274 to Railway in five installments. The last installment was paid by EPB on 15 May, 2011 (page 17 of the supplementary affidavit of BGMEA) whereas EPB executed the Sale Deed with BGMEA on 07 May, 2001 (page 54 of the affidavit in opposition of BGMEA).

6) The Deed has not given EPB the right to transfer the land (page 18 of the supplementary affidavit of BGMEA).

7) EPB has not yet got the land mutated in its own name. The same is true for BGMEA. It has not been able to produce any document of ownership/mutation.

8) It is a mandatory requirement of law under section 17 of the Registration Act, 1908 that any Deed of Sale must be registered. Evidently, the Deed of Sale dated 07 May, 2001 in pursuance of which EPB purportedly "sold" the property in question to EPB was not registered. At the

time of execution of the so-called Sale Deed, EPB was not the lawful owner of the property in question as it registered its own Sale Deed on 20 December, 2006. Since EPB was never the owner of the property at the material time, the question BGMEA becoming the owner does not arise at all. As such BGMEA is an unlawful encroacher a squatter to be precise, on the public property and is liable to be evicted under section 5 of the Government Property (Recovery of Possession) Ordinance, 1970.

9) The Sale Deed signed between EPB and BGMEA on 7 May, 2001 clearly states (condition 1, page 54 of the affidavit in opposition of BGMEA) that BGMEA shall pay all the ten installments in five years failing which EPB may cancel the agreement. Records show that BGMEA completed the construction of the building in 2006 although the last payment was made by it only on 21 October, 2010 that again on the face of repeated reminders given by EPB (page 27 of the supplementary affidavit of BGMEA). EPB took no initiative to cancel the agreement.

10) Further, although the agreement clearly prohibits (condition 5, page 54 of the affidavit in opposition of BGMEA) any transfer of the property prior to construction of the BGMEA Building, as per approved plan from RAJUK, it is evident that part of the unauthorized building has been transferred to at least two other entities (Enclosure-3). EPB has not proceeded against BGMEA against such breach.

B, DISCREPANCIES IN THE DESCRIPTION AND MEASUREMENT OF LAND

1) Various documents adduced display serious anomalies in the description of lands that have purportedly been sold and handed over to BGMEA and the land on which the building has been structured;

i) While, as per the permission letter of the Ministry of Commerce dated 6 September, 1998 (page 49, Annexure I, Affidavit in Opposition of BGMEA), no land was earmarked to have be given to BGMEA from C.S. dag No. 203 and 209, the agreement purportedly signed between EPB and BGMEA shows that BGMEA was given 0.41 acres from CS dag No. 203, 208 and 209.

ii) Again, although the amended certificate of authentication by EPB dated 28 March, 2004 (page 45 of the affidavit of BELA) states that land measuring 0.03 acres from C.S. dag No. 105 only was given to BGMEA for use as connecting road, the agreement instead, has included this land in the schedule of land to be sold to BGMEA. This corrected certificate of EPB clearly suggests that BGMEA was not allocated any land from dag Nos. 203, 105 and 1.

iii) The application submitted by BGMEA (page 10 of the affidavit in opposition of BGMEA) to Rajuk for approval of its Building plan mentions C.S. dag Nos. 208 and 209 only and does not mention C.S. dag Nos. 203, 1 and 105 at all. While all the five dags together make up 0.66 acres on which BGMEA is claiming to have constructed its building, exclusion of dag Nos. 105 and 1 from the application render the size of the plot to 0.41 acres only. Hence Rajuk can, if it can at all, only approve the plan on 0.41 acres and not on 0.66 acres and that again on submission of proper document as to ownership, which BGMEA has, thus far not been able to produce.

iv) All subsequent correspondences, however, show that Rajuk decided to approve the plan on 0.66 acres although

due to differing statements as to allocation and scattered location (page 33 of BELA affidavit) of the plots in question, the occupation of 0.66 acres of land by BGMEA on the five plots is impractical, impossible and not tenable in the eye of law. The claim by BGMEA that it has constructed the building on 0.66 acres of land falling within C.S. dag Nos. 208 and 209 must be rejected for the fact that it was only allocated 0.41 acres of land from C.S dag No. 208 and nothing was even purportedly sold to it from C.S. dag No. 209.

v) It is due to these anomalies in the description of land that Rajuk could never hand over the plan, it conditionally approved for the BGMEA building, absence of title notwithstanding.

vi) On-site visit, the DC office records show that the BGMEA building stands on C.S. dag No. 208, 1 and 2 (Enclosure-4) and not on C.S dag No. 208 and 209 as claimed by BGMEA in its application (page 10 of the affidavit in opposition of BGMEA).

C. LEGALITY OF THE CONSTRUCTION

1. It is clear that although Rajuk, vide its letter dated 14 July, 2003 (page 35 of the BELA affidavit) gave site clearance to

BGMEA for constructing a multi-storied building on plot Nos. 208 and 209, the same was subjected to approval of building plan under the Building Construction Rules, 1996. Similarly, although Rajuk decided to conditionally approve the building plan of BGMEA (page 43 of the BELA affidavit), the same was subjected to the submission of a statement as to mouja, C.S dag number and area of the land in question that BGMEA till date has not been able to submit.

In the absence of accurate description of the lands and proper documentation as to ownership, the plan that Rajuk decided to approve was never handed over to BGMEA. Defying Rajuk's lawful directions (pages 47, 50, 59 (item 49.1 and 49.3), 64 of BELA affidavit), BGMEA proceeded with and completed the construction of the building without any approved plan which is a clear violation of Section 3 of the Building Construction Act, 1952.

3. The Deed of Conveyance describes the land handed over to EPB as "DOBA" (ditch). The CS record (Enclosure-5) shows that dag No. 208 and 209 where BGMEA is claiming to have its Building are recorded respectively as "nala" and "pond", Annexure "K-1" (page 11) of the

supplementary affidavit of BGMEA which shows that lands whereon the building has been constructed, are surrounded by wetlands and lakes. All these documents prove it beyond any shadow of doubt that the unauthorized building has indeed been constructed on wetlands and in clear violation of the provisions of Act No. 36 of 2000.

D. LEGAL CONSEQUENCES

1. The unauthorized construction of the BGMEA building is liable to face the consequences laid down in section 3B for (a) it is contrary to the master plan (Enclosure-6), (b) it is causing undue inconvenience in the implementation of the project on Hatir Jheel Development, and (iii) due to the discrepancies in land description, lack of ownership of EPB/BGMEA and the legal bars against transfer of acquired property, sanction, it prayed for, could not be granted (section 5(d).

2. As the building has been constructed by filling up part of a wetland and without obtaining prior approval of the Ministry of Public Works, it is liable to face the consequences laid down in section 8 of Act No. 36 of 2000.

3. The Sale Deed dated 7 May, 2001 signed between EPB (without being the owner of the lands in question) and BGMEA (being a private entity) having purportedly been executed without lawful authority, makes no sense whatsoever in the vision of law and carries nihility.

4. BGMEA, having acquired no ownership at all on the land in question, is an unlawful encroacher on the public property and is liable, not only to be evicted under section 5 of the Government Property (Recovery of Possession) Ordinance, 1970, but to be prosecuted and penalised for having sinfully and feloniously squatted on it for over a decade.

5. For not preventing the unauthorized construction of the BGMEA building, the negligent officers of Rajuk should face dire consequences."

As we moved to embark upon our job, after hearing submissions from all the learned Advocates and perusing Ms. Hassan's written treatise, we reckoned that the questions that should be addressed to dispose of the Rule are whether (i) we are competent to issue an order in the form of mandamus suo motu (ii) BGMEA is fortified with any title over the land and if not,

what consequence should ensue, (2) the building is liable to be dismantled in any event irrespective of who holds the title.

Before stepping on the ladder to explore the substantive questions, as in (ii) and (iii) above, however, we must determine whether it is open to us to issue a Rule, suo motu, involving an order in the form of mandamus.

Mr. Mahmudul Islam, the acclaimed author of Constitutional Law of Bangladesh, emerged as the pivotal advocate to insist that there exist no opportunity to issue suo motu rule under the scheme envisaged by Article 102 of the Constitution. He is of the view that the phrases, "on the application of any person aggrieved", necessarily connote that there must be an application by an aggrieved person, to set the judicial review machinery on the move.

This theme, has, however, failed to attract the Appellate Division's favour, and as such, we need move no further on this issue, save iterating that such a negative and pruning view can only be endorsed if the word, "application", is construed narrowly.

That takes us to explore the issue no(ii).

Documents adduced by BGMEA itself project that on 6th September 1998, a memo was issued by a Senior Assistant

Secretary, Ministry of Commerce, intimating that the government has approved allotment of 0.66 acre of land in favour of BGMEA to enable it to construct its own complex, from 6.12 acres of land, adjoining Hotel Sonargaon in Kawran Bazar area, which was allotted for the construction of "World Trade Centre."

By a memo, dated 8th September 1998, EPB intimated BGMEA that pursuant to the Ministry of Commerce decision, dated 6th September 1998, it has been decided to allot 0.66 acre of land to BGMEA from 6.12 acres of World Trade Centre land in Kawran Bazar on condition that the price for the land, fixed at Tk. 5176470.50 as fixed by the Ministry of Commerce, shall be paid by BGMEA by 10 installments in 5 years and that if it becomes impossible on BGMEA's part to construct its own building for any reason, it will not be open to BGMEA to transfer or sell the land to any person, institution or organisation. BGMEA was asked to pay the first installment to EPB. A map demarcating the land was enclosed. It was also stated that the land was conveyed to BGMEA free of encumbrances.

BGMEA also adduced a document captioned "চুক্তি নামা", showing EPB as the first party and BGMEA as the second one. This so-called agreement recites that pursuant to the Ministry of

Commerce decision, EPB has allotted the scheduled land to BGMEA with a view to sell it on 8th September 1998. It proceeded to state that BGMEA would pay Tk. 5176470.50 in 5 years by 10 installments, failing which EPB would be at liberty to rescind the agreement.

In the event of the emergence of any dispute on the title to the land, the responsibility shall fall on EPB, which shall remain obliged to refund to BGMEA the money the letter shall pay. BGMEA will not be free to sell the property before constructing its building with RAJUK's approval. It was specified that the deed would be used solely for the purpose of obtaining RAJUK's approval for the building plan.

The agreement was an unregistered one, and undated.

Another document adduced by BGMEA reveals another agreement, this time a registered one, concluded between Bangladesh Government on the one hand and EPB on the other, evidencing transfer of 5.555 acres of land by the government to EPB to enable the latter to construct a "World Trade Centre," pursuant to a decision of the Ministry of Commerce. Reason for reducing the quantum of the land from 6.12 to 5.555, has been assigned.

It states that it was decided in 1995 that an area of land covering 6.12 acres in Boro Mogh Bazar, Begun Bari, and Bognoada Mouza, adjoining Hotel Sonargaon, would be sold directly by Bangladesh Railway to EPB and the government on principle, agreed to this proposition. Subsequently, because of the situation of the land, it was decided to transfer 5.555 acres in buyer's favour. On 28.06.2006 a letter was addressed to EPB for the execution of a Saf Kabala. EPB paid Tk. 435686274.00 to the Railway.

Paradoxically, this agreement was concluded on 27th November 2006, and registered on 17th December, 2006.

Other documents put forward by BGMEA portray that there have been exchange of correspondences between EPB and BGMEA in the years 2010 and 2011, revealing that EPB has been asking for the consideration money and BGMEA, stating in January 2011, that it has paid the money and hence sale deed should be executed, evincing that even as of January 2011 no transfer deed was executed.

By a latter dated 9th January 2011, BGMEA intimated EPB that the earlier had already drafted a sale deed, and the same should, hence, be executed.

The documents cited above depict a plethora of absurdity: The government approved allotment of 0.66 acre of land to BGMEA, on 6th September 1998 and then, two days later EPB addressed a memo to BGMEA, intimating that pursuant to the Ministry of Commerce's decision, it has allotted the said portion of land to BGEMA, from 6.12 acres, meant for World Trade Centre. This was followed by a so-called instrument, unregistered, which was not even dated, though date ascribed by the witnesses suggest that this so-called instrument was executed on 7th May 2001, which stipulates that BGMEA would pay a consideration in 10 installments over a period of 5 years.

Curiously enough EPB did not even own the land on that date because, as BGMEA produced document impart, the government transferred the land to EPB years later, i.e. in 2006.

The information that enjoy consensuality, unmask that the land concerned, were, until 1960, owned by the local people, who stepped on to the dominion over the land as the heirs or successors of the C.S. recorded people. In that year, land admeasuring 58.58 acres from Reynar/Rag, Khilgaon, Baro Moghbazar, Begunbari, Boagnodha, Kawran Bazar, were acquired for the then East Bengal Railway vide L/A case No. 16/59-60. The same were handed over to the Railway. Some

6.12 acres, part of which is the subject matter of our adjudication, formed part of that 58.58 acres, acquired from the people in the vicinity. There is no duality on this fact. It is also beyond altercation that part of the acquired land turned out to be unnecessary for the purpose for which the same were acquired.

Documents and averments further disclose that initially reluctant RAJUK, eventually granted it's consent for the construction of a building on conditions that an area of 2.41 Kathas would be set apart for RAJUK. It was emphasised that the said agreement would not mean recognition of title. By a letter dated 26th April 2010, EPB asked BGMEA to pay the unpaid consideration amount to the sum of Tk. 26235284,00, and BGMEA paid the amount on 21st October 2010. No deed of conveyance has been registered, despite BGMEA's request, the last of which was on 9th January 2011, as stated above.

So, what legal position on title are reflected from those admitted facts and documents, adduced by BGMEA itself?

To trace the answer, we have to dissect the provisions contained in the "Land Acquisition Ordinance" 1894 and in the "Acquisition and Requisition of Immovable Property

Ordinance" 1982, as well as in the Transfer of Property Act. But before scanning these provisions, any sane person would ask:

"Who was EPB in 1998 to transfer the land it did, admittedly, not have ownership over?"

It is axiomatic that the land was acquired under the Ordinance of 1894. As the 1982 was the reigning one at the time of purported transfer to EPB/BGMEA, provisions of the latter Ordinance are also apposite.

The 1894 Ordinance empowered the government to acquire land if public purpose necessitated such moves.

Unbroken chain of unimpeachable authorities, in interpreting provisions as to acquisition and requisition of land, inflexibly proclaim that if land or part of the same becomes unnecessary, post acquisition, the requiring body must return the same to the government which will then either use it for another "public purpose" or return it to its original owner.

In Shankar Gopal Chatterjee-V-Additional Deputy Commissioner, Dhaka, 41 DLR 326, this Division held that acquired land shall not be used for a purpose other than the one for which it was acquired.

In Salam-V-Government of Bangladesh 1BLC 53, it has been held that if any land remains unused for the purpose for

which it was acquired, it will remain open to the government to decide as to whether the requiring body will be entitled to use it for any other public purpose or will return the same to its original owner.

In Naushad Ahmed Chowdhury-V-Ministry of land Administration and Land Reform, 3BLC 18, this court expressed, that in view of Section 17(2) and 41 of the Ordinance of 1982, unused acquired land should have been released in favour of the original owner as the inquiry officer found that the land had remained unused since 1962.

Indeed, Section 17 of the 1982 Ordinance explicitly so ordains.

The concept "public interest" underwent judicial scrutiny in a fairly good number of cases. As power to acquire immovable property override's a citizen's Constitutional right to own property, superior courts firmly maintain the proposition that the phrase "public purpose" must be strictly construed.

In the classic case of Jogesh Chandra Lodh-V-Province of East Pakistan, 9DLR, Ispahani and Khan JJ pronounced without prevarication that "public purpose" encompasses something that is of benevolence to the whole community or a substantial part thereof, amplifying that anything that furthers the general

interest of the community as opposed to the particular interest of the individual, is to be regarded as a public purpose. Their lordships magnified their views stating that no reason of general public policy will suffice to validate an order of requisition unless the order is made for public purpose or in public interest and that verbal assertion that requisition is made for the development of jute industries through a certain private agency for the benefit of the public, was not enough.

Their Lordships were quite vigorous in asserting that existence of public purpose is the foundation of the power and is indeed sina qua non to acquire a property and that the government can not acquire private property for the private interest of some individual or individuals.

In Razab Ali-V-Province of East Pakistan 10 DLR 489, Amin Ahmed Chowdhury and Sattar JJ laid down their edict saying that the purpose must be for the general good of the people as opposed to the good of a particular individual or group of individuals. They went on to accentuate the theme with the following observation, "As between individuals, no necessity; however great, no exigency, however imminent, no improvement, however valuable, no refusal, however

unneighbourly, no **obstinancy**, however extravagant, can compel or require any man to part with an inch of his estate."

It has also been pointed out that there is no public purpose in any undertaking or venture in which the public is served indirectly and in a circuitous way and that every grocery in a country serves a public interest, but such groceries are not primarily and directly concerned with such purpose.

In Abdus Sabhan Sowdagar-V-Province of East Pakistan 14DLR 486, Murshed and Siddiqiky JJ insisted that the minimum consideration must be as to whether the efficient working of a public utility concern would be affected without its having another accommodation and secondly, it must also be considered whether or not such an accommodation can be available otherwise than by a compulsory order of acquisition.

They went on to underscore that the District Magistrate must be satisfied not only that there is a public purpose but also that the property is required for such a public purpose, iterating that the concepts, "requirement" and "public purpose", are **justiciable**.

They also stressed that public purpose can only be established if it is shown that the purpose will bestow benefits on the public directly, not incidentally and that if the purpose is,

however, to benefit an individual or a group of individuals directly and the benefit to the people or to a section of it, is only prospective or incidental, the purpose is private.

In Mrs. Maleka Siraj-v-Bangladesh, WP No. 2713 of 2010 (unreported), this Division came out with the view that the purpose shall be for the community as a whole or a substantial part thereof, not for a class of people, however important that class may be.

In the backdrop of the decisions cited above, we find the so-called approval accorded by the Commerce Ministry for the transfer said part of acquired land to BGMEA, as intimated by its memo of 6th September 1998, as absolutely horrendous, least said, not only because the said approval or transfer was not signified by any recognised instrument, but primarily because, being acquired land, the same could not be transferred to a private body for the latter's private purpose. The purported transfer to enable BGMEA to construct its own complex, went nowhere nearer the concept, "public purpose".

Purported confirmation of transfer by EPB to BGMEA, as conveyed through its memo dated 8th September 1998, reflects even a worse scenario, because apart from the total embargo on the transferability of acquired land for private purpose, EPB was

not even the owner of the land until November 2006. Documents portray that it was a purely commercially oriented move any way.

We are prepared to be swayed to the conclusion that vesting the residual part of the acquired property to EPB in 2006 was not devoid of the sanction of law because; (i) it is the government which decided to do so after the requiring body abandoned it, (ii) the purpose was capable of showering direct benefit on the people at large as a Twin Tower would have done, (iii) it was not meant to enrich an individual or a group, (iv) the transfer was vide a registered deed.

But, it will be grotesque to say that the purported transfer by EPB to BGMEA was blessed with any degree of legality. Such an avowal would be repugnant to the theme established by the high profile authorities, cited above.

The pertinent question any self righteous person would be inquisitive about is how the public at large or even a substantial section of it, could reap any benefit, even incidentally or circuitously, from an edifice that has been constructed for the visible economic well being of the members of BGMEA alone. What amelioration have people been deriving out of it, except that it is delineating itself as an obnoxious symbol of sheer

disdainfulness of a group, endowed with fleshy economic muscle, deliriously, withering aspired seraphic image of Hatirjheel Project, a dreamy project that has been animated with huge amount of tax payers' money? There can be no qualm whatsoever on the assertion that it is BGMEA members alone, who are the exclusive beneficiaries. As truth has it, BGMEA has, a fact that has not been rebutted, sold most part of the building to banks and other commercial entities and has, thereby, enabled its members to be aggrandised. It has been like a holocaust on civility.

BGMEA has not acquired any title also because there has been no transfer of title through a device recognised by any provision of the Transfer of Property (TP) Act, 1882 and the Registration Act, 1908. The purported allotment intimated through a couple of memo issued by the Ministry and EPB, was tantamount to a totally vacuous moves. It was neither a sale nor even a lease.

The second move initiated by EPB by executing a so-called unregistered চুক্তি নামা was also a hoax. There can not be a sale of real property without a registered deed as narrated above. While ordinarily there can be a verbal contract under the Contract Act, 1872 a contract in respect to a realty must be reduced into

writing and registered as that is what the TP Act and the Registration Acts surmon. No recognised transfer deed stood executed or registered even in January 2011 as is apparent from BGMEA's letter dated 9th January 2011. In any event, as the land was acquired for public purpose and the EPB itself obtained the acquired property to hoist, "Twin Tower" for public purpose, it was out of EPB's competence to transfer the same for the private purpose of an agglomerate.

It does, hence, go without saying that BGMEA does not, and did never have, at any point of time, any kind of title or interest over the land.

What can be asseverated without mortifying the truth is that, a scam of abysmal proportion had been perpetrated in respect to the land, which is certainly government property, in which uncanny plot, EPB and, of course, some depraved officials of RAJUK, also extended their debauched hands.

Apart from the said unregistered allotment instrument, which enjoys no recognition by any stature, there is nothing whatsoever to support BGMEA's claimed title. Neither the BGMEA's pleading nor those of any other party, depict any instrument of title in BGMEA's favour. Although the building in dispute was erected well after C.S. survey, again, there is nothing

whatsoever to show BGMEA's title or even possession vide any post C.S. survey.

BGMEA, in its application to RAJUK on 11th January 2003 claimed title over the land, relying on the said stale documents, although curiously enough, by its own statement, EPB by a so-called contract, bereft of any legal status, only allowed it to use the land with liberty to construct a building thereon. We find this contract, if it can be described as a contract at all, to be rather elusive. The so-called allotment can not be drawn to any concept of transfer of realty known to any provision of the TP Act or any other statute.

RAJUKs pleading divulge that BGMEA applied for approval as early as in 2002 for a clearance certificate, when all the papers submitted even by BGMEA show that the land belonged to the government.

These reflect perpetuation by BGMEA of a series of pernicious acts of **inexonerable** proportion, amounting to fraud and deceit.

It is abundantly clear that BGMEA, with the visible connivance of EPB, indulged upon a fraud of reprehensible diversity, to grab government's property. Question is, how on earth could BGMEA apply for the approval of the building in

2003, when document submitted by it shows that even EPB did not acquire any interest on the land at that time and, that by no means, is the end of the harrowing episode. The building was structured on the land beyond that which was purportedly given to BGMEA, as is disclosed by the map and the **docets** in the DC's office. By doing so BGMEA obtruded upon the entire wetland.

It is also obvious from all the instruments that as soon as it became clear to BGMEA and EPB that the earlier's land grabbing exercise has become exposed, they proceeded to create fraudulent documents years after BGMEA applied to RAJUK, claiming ownership over the land.

BGMEA's action has not only been reproachful but is also felonious, to say the least.

M/s. Rokanuddin Mahmud and Akhtar Imam reminded us of the contribution members of BGMEA infuse into our exchequer.

We are not oblivious of this. But, can we, or for that purpose, can the state, allow them impunity or immunity from the law? We are unable to accede to such a proposition. The rule of law shall cry in wilderness if we allow impunity to a class of people because they make important contribution to our

economy. Irrespective of whether they do so or not, they must remain amendable to the law of the land like any one else, and must not be allowed to act as a reprobate lot, or else the rule of jungle shall reign. Such squalid acts can not be endorsed.

BGMEA, we must iterate, acted in the most decadent, disdainful and imperious manner by pretending that its members' stentorian economic muscle place them with supra legal status. They have, raised a building on the government land, effectively frustrating the long cherished Hatirjheel Project. The very presence of the building shows that a conglomerate of financially affluent people can scorn and unravel our law with impunity in a nauseating manner. Such a view is simply repulsive to notion of justice.

Most insalubriously, it had been built by displaying bizarre audacity to put an stumbling block on part of Hatirjheel Project, by impinging upon Begunbari Canal, culpably filling in the same, obnoxiously imperiling the expected pageantry of the Project.

The buildings stands their as a cancerous growth with the capability to dilate malevolency not only to Hatirjheel area, but to the city in its entirety. In our view, unless this malignant growth is evaporated forthwith, it will swamp the whole city.

If a body claims to be a major contributor to the country's economy, its contributing aspect must pervade to all areas. It can not be licensed to indulge upon anarchy. It must behave in an orderly manner or else face the harsh rigour of law, to which every one is subject, irrespective of his stature or standing.

Garments workers, by keeping the garments industries rolling, also make tremendous contribution to our economy. Similar contributions are made by Bengali diaspora, stationed abroad, who inject loads of money to our treasury. Even the poor peasants yield crops to feed the whole nation, and thereby block exodus of foreign exchange, without whose bestowal, the entire populace, inclusive of the BGMEA members, will starve. So, the claimed dispensation by BGMEA on ground of their contribution is absolutely indecorous. We can not allow a class of privileged people to flout the law because they are rich: Lord Denning's command must not be ignored;

"Be you ever so high, the law is above you".

We must put on record that even the government is totally handicapped in this respect because it can not transfer this land to any individual or even to a conglomerate for the latter's private purpose as the land was acquired for public purpose.

It is therefore, obvious that the Rule is destined to see the face of success on this count alone, and the building is fated to be scrapped and deflated to ground as it does guilefully stand on the government owned land.

Although our above finding makes embarkation on the second count unnecessary, we would, nevertheless, proceed to that aspect as well, to satisfy the interest of totality.

Question as to whether payment of fine imposed by RAJUK for unapproved construction, entitles the structure concerned to enjoy sanctification, came up in two widely publicised cases in the recent past.

In Jamuna Builders Ltd.-V-RAJUK (Jamuna Future Park Case), this Division's decision to summarily reject Writ Petition No. 421 of 2010, stating that RAJUK is, notwithstanding provisions in section 3(B)(5) of Act, sufficiently fortified with the power to dismantle an unapproved construction, had received Appellate Divisions endorsement.

In RAJUK-V- A. Rouf Chowdhury 61 DLR (AD) 28, the so-called RANGS Building Case, the Appellate Division **undistortedly** vouched that a structure heightened to encroach upon the realm reserved for the Civil Aviation Authority, is liable to be scrambled.

There is nothing in section 3(B)(5) of the Act to say that receipt of fine amounts to legalizing unapproved construction.

What section 3(B)(5) says is that no dismantling order shall be made unless it is found that (a) such building . . . . . has been constructed . . . . . in a manner which is contrary to the Master Plan or development plan . . . . (d) sanction if prayed for could not be granted.

It is beyond argument that the building has been constructed in a manner which is contrary to the Master Plan and development plan.

The subject building is liable to be reduced to extinction also on the ground that it was built in breach of জলাধার আইন, and Act XXXVI of 2000, irrespective of whether payment of fine made the wrong, right. Even RAJUK can not allow someone to raise structures in breach of these laws.

In this respect we wholly endorse and adopt what Ms. Hasan has laid down in her written submission, quoted above in it's entirety, and what Mr. Morshed verbally submitted.

The Rule is hence made absolute, as it is so destined, coupled with the direction that the authorities will demolish the building within 90 days.

The fact that lots of money had been spent, can not be a ground to allow it to stay upright.

BGMEA must return money to those who bought flats in the building, as those transactions stand vitiated, within 12 months from the receipt of claims. The flat buyers, can however, not, in our view, claim interest, because, as we look at it, they are guilty of contributory negligence. They had actual or constructive knowledge about BGMEA's bareness of title and the illegality as to the construction of the building.

Sheikh Md. Zakir Hossain, J:

I agree.