

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

SUO MOTO RULE NO. 19 OF 2010

IN THE MATTER OF:

The State

VERSUS

Government of Bangladesh represented
by it's Secretary, Ministry of Housing
and Public Works, Bangladesh
Secretariat, Dhaka and others

AFFIDAVIT ON BEHALF OF AMICUS CURIE

I, Syeda Rizwana Hasan, wife of Abu Bakar Siddique of House No.15/A, Road No. 3, Dhanmondi Residential Area, P.S. Dhanmondi, District-Dhaka, aged about 43 years, by faith Muslim, by profession lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:

1. That the affidavit is being filed on behalf of Syeda Rizwana Hasan, Chief Executive, BELA appointed as an amicus curie in the

above-mentioned matter by Your Lordships vide an order dated 20 February, 2011.

2. That in the abovementioned matter, their Lordships on 3 October, 2010 were pleased to issue Rule Nisi upon the respondents in the following terms:

“... to show cause within 7 (seven) days from the date of receipt of the order as to why they 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.”

3. That for effective disposal of the above-stated Rule, the following facts and legal positions are being presented before Your Lordships.

4. That at the outset it is respectfully stated that the construction of the building of the Bangladesh Garment Exporters and Manufactures Association (hereinafter referred to as BGMEA) is illegal inasmuch as the same has been built by filling up significant part of the Begun Bari *khal* in clear deviation from the provisions of Act No. 36 of 2000 and that it lacks approval from all concerned agencies including respondent No. 1, 3 and also the Department of Environment as required under the Building Construction Act, 1952, the Environment Conservation Act, 1995 and the rules made under the said laws.

5. That it is stated that although it is a matter of common knowledge that the building of BGMEA is located on the Begun Bari *khal* for the filling up of which prior approval of respondent No. 1 is legally mandatory under Act No. 36 of 2000, neither did respondent No. 3 apply for such approval nor did the other respondents in dealing with the approval of the building plan require such approval. While respondent No. 3 in submitting its building plan for approval has attempted to conceal the fact that the land for its proposed building is part of Begunbari *khal* (the word begunbari has been erased and

replaced with Boro Mogbazar), all the statutory agencies involved from transfer of land upto deciding over the approval of the building plan have also conveniently and intentionally ignored this fact to give undue benefit to the business house clearly to the derogation of the common people.

True copies of images showing the flow of the Begun Bari *khal* and the location of the BGMEA building within the Begun Bari *khal* are annexed hereto and marked as **Annexures - “A”, “A-1” and “A-2”**.

6. That the consequences of filling up of wetlands in violation of the provisions of Act No. 36 of 2000 is as follows:

...“৮। শাস্তি ইত্যাদি। (১) কোন ব্যক্তি এই আইনের কোন বিধান লংঘন করলে তিনি অনধিক ৫ বৎসরের কারাদণ্ডে বা অনধিক ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ডে অথবা উভয় দণ্ডে দণ্ডনীয় হবেন।

(২) ধারা ৫ এর বিধান লংঘন করে যদি কোন জায়গা বা জায়গার অংশবিশেষের শ্রেণী পরিবর্তন করা হয়, তা হলে সংশ্লিষ্ট কর্তৃপক্ষ নোটিশ দ্বারা জমির মালিককে অথবা বিধান লংঘনকারী ব্যক্তিকে নোটিশে উল্লেখিত জায়গার শ্রেণী পরিবর্তনের কাজে বাধা প্রদান করতে পারবে এবং নির্ধারিত পদ্ধতিতে অননুমোদিত নির্মাণকার্য ভেঙ্গে ফেলবার নির্দেশ দিতে পারবে এবং অন্য কোন

আইনে যা কিছুই থাকুক না কেন, উক্তরূপ ভেঙ্গে ফেলার জন্য কোন ক্ষতিপূরণ প্রদেয় হবে না।

(৩) এই আইনের বিধান লঙ্ঘন করে যদি কোন নির্মাণকার্য সম্পাদিত বা অবকাঠামো তৈরী হয়ে থাকে সেই সকল অবকাঠামো আদালতের আদেশে সংশ্লিষ্ট কর্তৃপক্ষের বরাবরে বাজেয়াপ্ত হবে।

7. That in not resisting the filling up of the Begun Bari *khal* for the construction of the BGMEA building, respondent No. 1 has surely failed to defend the public interest purpose of Act No. 36 of 2000.

8. That with regard to the legality of the construction of the building, it is respectfully stated that the construction is an unauthorized one inasmuch as it never obtained the approval from respondent No. 2 as required under the Building Construction Act, 1952 and the rules of 1996 made thereunder. This is evidenced from the perusal of the documents provided by respondent No. 2 in response to an application dated 20 January, 2010 made by BELA under the Right to Information Act, 2009 requiring information on the approval status of the BGMEA building. While the response of respondent No. 2 has not offered any clarification as to why decision for approval of the construction was taken despite clear prohibition in

Act No. 36 of 2000, it attached some documents relating approval of the building plan that are crucial and pertinent to the disposal of the Rule.

True copy of the application of BELA under the Right to Information Act, 2009 and the response of respondent No. 2 dated 8 September, 2011 alongwith supporting documents are annexed hereto and marked as **Annexures “B” and “B-1”**.

9. That the response of respondent No. 2 reveals that the initial discussion on approval of construction of a building by the BGMEA led to a decision that of the total 40 kathas of land (2 bighas) sold to BGMEA by the Export Promotion Bureau, 5.23 kathas have to be excluded from the construction as the same shall adversely affect the implementation of the Project titled “Integrated Development of Hatirjheel and Parts of Begunbari Khal”. In a subsequent meeting, respondent No. 2, however, backtracked from the said position and relying on a letter of respondent No. 3 imposed no restriction on the 5.23 kathas of the BGMEA owned land, but instead decided to propose protection of 2.41 kathas of land to the north of BGMEA land.

10. That the documents provided by respondent No. 2 with regard to the approval of the building plan of the BGMEA building show that there was only a Land Use Permit given in favour of the BGMEA authority (vide letter dated 14 July, 2003) for construction of building, but there was never any permission granted for “building construction” nor was the building plan approved as required under section 3 of the Building Construction Act, 1952 and the Rules of 1996. As such the letter dated 14 July, 2003 that merely gave Land Use Clearance to BGMEA for construction of high rise building imposed the condition that the building plan shall have to be approved by Rajuk in line with the Building Construction Rules, 1996. The said letter thus stated as follows-

...শর্তসমূহ :

...২। ইমারত নির্মাণ বিধিমালা ১৯৯৬ মোতাবেক ইমারতের নক্সা রাজউক হতে

অনুমোদন করতে হবে।

11. That although the Building Construction Committee in its meeting dated 22 January, 2004 decided to conditionally approve the building plan submitted by BGMEA, no approval letter was ever issued to the BGMEA due to the following three reasons-

- the requirement to fulfill the conditions upon which approval can be effectuated (Rajuk letter dated 27 January, 2004),
- the opinion of the leaders of the said Project (meeting minutes dated 27 April, 2004), and
- the defiance of the BGMEA authority in complying with the lawful instructions of respondent No. 2 in halting the construction of the building till the plan is duly approved with needed finality (letters of Authorized Officer dated 22 September, 2004; 16 January, 2005).

12. That it is respectfully stated that in the absence of any official sanction and/or approved building plan having been communicated by Rajuk to BGMEA, there arises no legal right in favour of the latter to start construction of the building.

13. That the letter of Rajuk dated 22 September, 2004 while making it clear that the plan for the 15 storied building of BGMEA was yet to be approved required the BGMEA authorities to refrain from doing any work till the approval of the building plan is given. Subsequent letter of Rajuk dated 16 January, 2005 reveals that the BGMEA authority paid no heed to the earlier letter of Rajuk dated

22 September, 2004 and continued with the construction work of the building without any approved building plan.

14. That while respondent No. 3 vide its letter dated 5 December, 2005 applied to the concerned authorized officer of Rajuk for final approval of its building plan, the minutes of the 02/2006 meeting of Rajuk held on 7 and 8 June and 2 July of 2006 recorded the fact that the BGMEA concluded the construction of the 15 storied building without any approved building plan and in total defiance of the letters sent to it by Rajuk on 11 August, 2004, 22 September, 2004 and 16 January, 2005 to halt the construction till the legal process of approval is completed.

15. That while the above-stated meeting minutes decided to collect penalty/fee from BGMEA for construction of the building prior to approval, a further decision was taken to demolish, as per the Building Construction Rule, the portion of the building that was not included in the building plan (also relevant is the letter dated 20 August, 2006). Again, it was decided to require BGMEA to construct a bridge (for the purpose of creating an approach road) in

front of the BGMEA building to keep the flow of the *Sonargaon* Lake (which indeed is Begun Bari *kha*) undisturbed.

16. That while the letters of Rajuk dated 20 August, 2006 (also 21 September, 2006 and 27 March, 2007) required the BGMEA to deposit an amount of taka 12,50,000/- as penalty and also to submit a written undertaking in a non-judicial stamp to remove all parts of the building not included in the building plan, the deposition by the BGMEA of taka 12,50,000/- (twelve lac fifty thousand taka) clearly prove that the BGMEA building is an unauthorized construction. The BGMEA, however, has not given any undertaking yet to remove the unauthorized construction or parts thereof as is evidenced from the letter of Rajuk dated 4 October, 2007.

17. That it is respectfully stated that the above facts not only bear the testimony of the illegal and defiant actions of the powerful players of the BGMEA, but also show how miserably Rajuk has failed in discharging its legal obligation in preventing the BGMEA authorities from proceeding with the unauthorized construction and also in subjecting their action to due process of law as laid down in the Building Construction Act, 1952 and the rules made thereunder.

18. That while Rajuk has not served notices upon the BGMEA for removal of its unauthorized construction and has not caused demolition of the same on its own, it has most illogically and going beyond the premises of law tried to draw a difference between part of the building that is included in the building plan submitted for approval from that which is not so included. As such Rajuk has attempted to say that of the 1856.78 square meter of floor area in each floor, only 92.76 square meter of areas is unauthorized as the same is beyond the area of 1764.02 square meter as proposed in the submitted building plan. Such calculation of Rajuk is inherently faulty as the entire building has no approval and hence the total construction of about 23,932.09 square meters is liable to be declared unauthorized and illegal.

19. That it is respectfully submitted that in recent times the number of unauthorized constructions in the Capital is rising high. While an estimate done in the year 2009 by the office of respondent No. 2 shows that the City has more than 3000 unauthorized buildings (under construction) that are posing definite threats to the safety of the city dwellers and challenging the sustainability of the township, there is hardly any coordinated efforts to check such illegal pursuits

and practices. Although respondent No. 2 has recently taken an initiative to take measures against such unauthorized constructions by forming 5 monitoring committees, precedents as that of the unauthorized construction of BGMEA building come to its way to block effective, non-discriminatory and fair exercise of administrative powers.

20. That while in recent times, judicial activism has raised hopes and aspirations in the minds of the common people for impartial, fair and proper administration of law and justice, it is expected that the trend shall continue and that incidences of violations of law and legal provisions by the powerful corners shall be dealt with needed severity to break the culture of impunity and the unholy cohesion between the powerful elites and the corrupt public officials.

21. That in view of the above facts and legal position, it is humbly submitted that the rule be made absolute to defend the constitutional commitment of equality before law, defend the sanctity of law and uphold its public interest spirit.

22. That it is necessary to state the above facts and make the above submissions at the time of hearing of the petition and hence begs permission from the Hon'ble Court to file this affidavit.

23. That the deponent not being in possession of all original documents, begs permission from this Hon'ble Court to allow the filling of photocopies as Annexures.

24. That the statements made hereinabove are true to my knowledge and belief and rest are submission before this Hon'ble Court.

Prepared in my office.

(Md. Iqbal Kabir)

Advocate

(Syeda Rizwana Hasan)

Deponent

The deponent is known to me
and identified by me.

Solemnly affirmed before me
by the said deponent on this
the day of March, 2011
at a.m.

(Md. Iqbal Kabir)

Advocate.

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**