



# The Building Construction Act, 1952 The Building Construction Rules, 1996

Deliberations at The Daily Star-Bangladesh Scouts Workshop, held on March 25, 2000

(The Daily Star is not responsible for any comment of any individual)



Mayor Mohammed Hanif making his point

**Dr. Nizamuddin Ahmed, Professor of BUET:** Our workshop today is on the Building Construction Act. We have outlined three basic objectives of the workshop. We will see the degree of implementation of the Act and any ensuing rules under the Act that have been framed. Then we will look at the loopholes and drawbacks with the assumption that obviously the rules are not being followed to tally. We are not blaming anyone. As a citizen, I am guilty too. We, who cannot implement the rules, also are guilty. We professionals, academics and those of us in government service, we are all responsible in some way or the other for the state of the city. Then we will look for a way for improvement. We will discuss and try to find out ways to help the people who are responsible for implementing this Act to actually implement it in a very effective way.

The Building Construction Act of 1952 was amended in 1987, in effect from 1986 and applies to the whole of Bangladesh. So it is not just Dhaka City that comes under the Act. The objective of the Act is very simple. It wants to prevent haphazard construction of buildings, excavation of tanks. The word 'haphazard' is the key word in this particular place. We want to avoid haphazard constructions that are likely to interfere in the planning of certain areas.

We need some definitions. What do we understand by a building? A building is not a building in a conventional sense. It can be a hut, a house, even a wall is considered as a building in this Act. The material can be brick, CI sheet, concrete, almost anything.

Then we must define master plan. It is a plan prepared and approved under any law for the utilisation of any land. Master plans have been drawn up at various times in various places. It can be done locally, at a district level, national level, city level, various different levels.

We have Mr. Faizul Bin Farid of RAJUK here today. He is the implementing authority of this Act. He is the key man to actually allow construction or disallow, and to break unauthorised construction. He will tell us what power he has, but we understand he can do and undo anything.

The essence of the Act is in Section 3. It says here that there are restrictions on construction of buildings and excavation. "No person without the previous sanction of the authorised officer can construct or reconstruct or make addition or alternation to any building or excavate or re-excavate any tank or cut or raise any hill." In other words, we cannot do anything without his printed permission (the authorised officer is figuring here very prominently) under such terms and conditions, the authorised officer may think fit to impose.

There are restrictions against misuse of land. No owner or occupier can occupy a building other than for the sanctioned purpose. For example, houses are being used for garment factories. This is the most common violation of the Act now. The Act says that nobody can use a building other than for the sanctioned purpose. If it is sanctioned as a residential building, it has to be used as a residential building, not a garment factory. But that is what is happening now. If the building use does not conform to the Master Plan, the authorised officer may order the owner or the occupier to remove or dismantle such buildings. In other words, if a residential building is a garment factory, the authorised officer can say that the building has to be demolished or it has to be stopped. Not only the owner, he can also do it to the occupier. The occupier may say that I have rented the building, it is not my building. So the two words are owner and occupier. The law is very clear about this.

No building for combined residential and commercial use shall constitute a nuisance to a zone or neighbourhood. That is the spirit of the Act.

How can you order removal and dismantling of buildings? If the works are contrary to the Master Plan, if the construction/re-excavation is not as per sanction; if the building or the tank causes inconvenience to any users of adjacent land, any other building, road, passage, such as if a shopping centre causes problem in a residential area, the authorised officer can order its removal and dismantling under this Act. Why isn't it done? The question will be addressed in the main discussion today. If not conforming to the Act, the authorised officer can

evict an occupier. He can say the building is only meant for residential use. He can order the removal of the building. He can order re-filling of the excavated tank. He can cancel the sanction. If you don't have a sanction, you don't have the power to build or excavate.

What are the penalties for people who are defaulters? There can be a fine from 5,000 to 50,000 taka. Whether this is sufficient to deter somebody from constructing a five crore taka building is another question. A building will cost three, five, seven or eight crore taka nowadays. So in that case, you can also discuss whether a 50,000 taka fee is a very outdated amount. You can imprison somebody for two years, and his house can be dismantled and removed. I don't know if till today any defaulting builder has been sent to jail or if any attempt has been made in this regard. Why is the law not applied? Do we need another law to supplement this one for punishing defaulters?

What about the people who are acting under this Act? Does the Act give them indemnity? It does. Orders under this Act shall not be questioned in any civil court. This is a big protection for the people acting under this Act.

Decision of appeal officer and authority shall be final. Once the appeal has been treated and a decision has been given by some office or authority, that decision shall be final. There is indemnity for the government/person against a suit or legal proceedings for acting in good faith under this Act. The authorised officer cannot be held to question. Why have you done this? He has done so in good faith to implement the Act. This is the gist of the Act.

**Mahfuz Anam, Editor, The Daily Star:** Our discussion today has a very constructive aim. We do not aim to blame anyone, like what is RAJUK doing or why was WASA failed? Such a list would be too long. As a journalist, I myself am not able to do so many things. Instead of going into that, we can all see that Dhaka is in a bad state today. We all personally understand that. How can things be set right? As a journalist, what can I do to help RAJUK function properly? What can a lawyer do to help? How can a citizen help? WASA has a towering responsibility. How can WASA be enhanced so it can function better? I want to know. That is why *The Daily Star* is carrying out this programme today with the help of the Scouts. So please, don't let anyone think we're putting them in a spot. We are not here to point fingers. We all have our shortcomings. So please speak with open minds. Many of you are government servants. If you all feel that as government servants you have problems of saying certain things on record, then I assure you we will hear it off record and look for ways to get out of the situation.

Since the main implementers of the Construction Act in Dhaka are RAJUK, we can begin our discussion with the RAJUK representatives. What obstacles do you face in implementing this Building Act? There are structural flaws, such as inadequate staff, lack of experienced staff, lack of training and such internal matters. And then it could be that you are under pressure from external sources. You cannot function due to this pressure. Then when you do your work, you face all sorts of obstacles. I call upon you all to discuss openly. The spirit of today's discussion is not to find who is guilty. It is to find a way out from the present problem.

**Habibul Alam, National Commissioner, Bangladesh Scouts (W/Scouts):** We are looking at the matter from a slightly different point of view from that of *The Daily Star* and others. We will use your ideas as inputs in the future. At the same time, I want to assure you all that if this workshop is to be extended or if you feel that further extensive discussion on the topic is needed, *The Daily Star* and those of you here today can spend a day at Mouchak, so you can have a long clean discussion there.

**Mahfuz Anam:** Let RAJUK begin the discussion. It will be constructive if, for the time being, we restrict the discussion to Dhaka City.

**Rahmatullah, former chairman, RAJUK:** All the problems of Dhaka City are not Dhaka-oriented. These originate from all over Bangladesh.

**Mahfuz Anam:** When relevant, you can bring these elements into the discussion.

**Mohammed Syedur Rahman, Chief Engineer, RAJUK:** In the Building Act of 1952, which was

amended in 1987, the authorised officer has not been given all authority. In Sub-Clause 2 of Section 3 of the Act, it is stated that, "the government by notification in the official gazette directs that the power of the authorised officer under Section 1 shall be replaced by a committee in such areas as the case may be specified in the notification." So, RAJUK's authorised officer has been replaced by a committee. So passing of plans and other activities included in the Act are all controlled by the committee. The authorised officer is a Member-Secretary of the committee. The Building Act applies to all of Bangladesh, but the government from time to time can withdraw the effectiveness of the Act.

RAJUK's jurisdiction is 590 sq. miles. If we make a boundary line of this 590 sq. miles, we have Gazipur district in the north and our area in the northeast is Kaliganj thana of Gazipur district and Rupganj thana along with river Sitakohya of Narayanganj district to the east. To the south is Narayanganj, Keraniganj, Dhaleswari and Savar. To the east is the river Bangshi. This entire area is RAJUK's 590 sq. miles. This includes Dhaka City Corporation area and five pourashava (municipal) areas and other lowlands.

It has been said that RAJUK has a Master Plan. The Master Plan can only be effective if there is congruity with land use. That is, the Master Plan will elaborate where the roads will be, what the land use will be. Where it will be residential, where there will be an industrial area, where there will be housing, where there will be urbanisation, where there will be a lake, so on and so forth. All these will be determined.

The Town Improvement Act is of 1953. RAJUK began in 1956. The moment it began, the binding upon it was that as soon as RAJUK began work, it had to prepare a Master Plan. Accordingly, the first Master Plan of RAJUK was drawn up in 1959. The specific use of land is given there. It was said that the Master Plan would change every five years. RAJUK would change that, but for some reason it could not change it. Later the change began in 1992 and in 1997 it came out as a gazette.

Improper use and restrictions have been mentioned. After the authorised officer or the committee passes a plan for a residential building, it is seen that it is being used for commercial purposes. That is, the land is not being used for the purpose for which it had been passed. It is used for other purposes, like a garment factory or other commercial uses. In Gulshan we see some garment factories, but when Gulshan was planned, a certain area of the land was left for commercial use. But in practice it is seen that garment factories are being set up there. That area doesn't need any garment factory. If we see garment factories as an industry, then this should be in an industrial area. RAJUK has specific industrial areas. RAJUK has set up Tongi Industrial Area, Shyamspur, Kadamtali, Postagala as industrial areas in a planned way. If anyone wants to have commercial use as stipulated in the Master Plan, RAJUK is giving plans accord-

ingly. The law mentioned here for improper use states, in the case of improper use, RAJUK's authorised officer will give a notice to the effect that the use has to be discontinued within six months. If he doesn't discontinue the improper use, his plan will be cancelled within a year and it will be dismantled. So there is this six-month period and one year for dismantling.

It is not just RAJUK who is to implement the rules. The co-operation of various organisations is needed.

We often see traffic jams on the roads. Construction material is often left on the roads and RAJUK is blamed. But the road is not ours, it is the City Corporation's. But when someone is constructing, he has to keep his materials somewhere. He blocks the road to build his house. RAJUK is being blamed for keeping materials on the road. It is asked why RAJUK isn't moving these materials. Later it is seen that they have the rights of the road. Most of the roads above 30 feet in Dhaka are built by RAJUK and we hand these over to the City Corporation for maintenance. This means that they will maintain them and collect taxes. We do not have the right to collect taxes. They are to maintain the roads with the tax money.

Our policy is that if anyone is to make a construction, after the plan is passed and the trench is going to be dug, it is to be shown to the RAJUK inspector. But no owner does this. As a result, we don't even know how he is constructing. After one or two stories are raised, then it comes to light that construction is going on and there has been a deviation. But when the plan is passed, it is passed in accordance to the proportion of the plot and the road. The design of the plan is drawn up by an architect or engineer. They prepare it, the engineers supervise its implementation, but we have no control. They carry out the construction as the owners say. So there is deviation. The construction is not carried out according to plan.

When it is detected that the construction is not according to plan, then we give the owners a notice. He takes the notice and goes to court. Even though it is said here that after the plan is passed by the authorised officer, the matter cannot be taken to court, the court questions whether the plan was passed in keeping with the law, whether the notice was served in keeping with legal norms. Thus, the court puts up an embargo or injunction against us. As a result, the gentleman continues his construction and completes the building. Once it is finished, the verdict may eventually go against him, or, in many cases, in his favour. It may be said that RAJUK did not see the matter properly in the initial stage, but the construction is now complete. It is an asset of the country and, as an asset, it cannot be demolished. So the matter of the fine is raised. It is seen whether the matter can be regularised by means of a fine.

**Mahfuz Anam:** Can we call the Chief Engineer of Dhaka City Corporation now?

**Mohammed Shamsul Haque Bhuiyan, Chief Engineer, City Corporation:** Though the responsibility of looking after the

Building Construction Act, 1952 falls indirectly upon several service organisations, we know RAJUK is directly in charge of this.

We at the City Corporation recently raised questions about this responsibility and right of RAJUK. The City Corporation even issued a letter to RAJUK about the matter. The matter is that, according to the City Corporation ordinance of 1983, construction of buildings within the City Corporation jurisdiction, construction control and relevant functions are the responsibility of the City Corporation. The Ordinance hasn't been amended. As we are facing problems regarding such construction, we have written to RAJUK stating that we also have the right to control construction. We need to discuss the matter and we hope for a solution in this regard from the City Corporation or the government.

I joined the City Corporation in July 1974. Since then till 1985-86, I have seen that whenever RAJUK approved a plan, a copy of the plan was sent to the City Corporation. This copy was preserved in the City Corporation and our engineers in charge of the area where the construction was taking place would have a degree of authority and control. If any deviation was noted, they could do something and the City Corporation would sometimes take initiative to sit with RAJUK to resolve the matter. But nowadays we see that the plan isn't being sent to the City Corporation. Last night I asked our Chief Revenue Officer why this didn't come anymore. He said that we now only get a copy of the letter, but we don't actually get a copy of the plan.

There are problems of construction. Traffic jams are created when the owners block the roads with materials. Where there are to be residential buildings, in many instances commercial buildings are built. There are many such problems and we all know about these. But the law to deal with these problems is not adequate, or rather, the enforcement is lacking.

I also feel it is very important to create a sense of awareness among us, the citizens, who do such things. If this awareness is not created, these crimes will continue.

Then there is the matter of political will. We see that when any government personnel go to do any work and enforce the law, political will and political backing is needed. Often political interference prevents those in charge of law enforcement from carrying out their responsibilities.

We at the City Corporation feel that there is a need for close co-ordination between RAJUK and the City Corporation. If there is need to enforce the law when carrying out responsibilities, co-ordination will be needed. It can be through a co-ordination committee or a cell or in any other way. If close co-ordination exists between these two bodies, we can function better.

The Chief Engineer of RAJUK mentioned that the City Corporation owns the road upon which the construction material is dumped. So it is the City Corporation that should take measures so that these ma-

terials don't remain on the road. This may seem correct, but if we take a closer look, we will see that once the plans of a building are passed, if RAJUK issues a statement that the City Corporation is to look into the construction at regular intervals and the City Corporation has the authority over this, then the owner or the company in charge can be given a notice.

**Mahfuz Anam:** If someone leaves some rods on the road, you don't need any provision from RAJUK. Under the prevailing law you can say, don't block the road.

**Mohammed Shamsul Haque Bhuiyan:** If I say, RAJUK's given you permission to construct, go ahead, but you can't keep the things on my road, then they'll say that the road belongs to the people. RAJUK has passed the plan in this way, what can we do? We can't keep the material on the roof and work. We have no alternative, but to keep this here. Such points arise. We have appointed magistrates. We have made attempts.

**Mahfuz Anam:** What do they do abroad? They have huge construction on the roadsides. What do they do?

**Mohammed Shamsul Haque Bhuiyan:** There are many systems, like the pre-cast materials brought in from outside. Pre-cast material is brought from the factory to construct a building. But the plans here are passed in such a manner that big buildings are on small plots of land or about 20 buildings are being built simultaneously on one road. There is no space to keep the material on the plots. In such cases, what can we do? There is not much we can do. But if we had a joint programme, then the matter could be managed in a more effective way.

**Dr. Nizamuddin Ahmed:** Is there any provision for people to pay the City Corporation a fee to use a portion of the pavement?

**Mohammed Shamsul Haque Bhuiyan:** There is no specific provision in this regard, but nowadays if we see that there is space on the side of the road which will not disturb the traffic, then we sometimes allow this.

**Dr. Nizamuddin Ahmed:** Is this being misused? Do any City Corporation employees or officers use this loophole in the law and give permission to pile up the material to block roads?

**Mohammed Shamsul Haque Bhuiyan:** I will not deny this 100 per cent, but there is always a percentage of possibility of misuse in the case of implementing the law. But there is no major misuse that I know of. We discourage this, but it is often seen that certain influential people forcefully do this. They do it in such a manner that it is beyond our control. We are often influenced by influential external forces. For example, the Panthapath road from Hotel Sonargaon towards Russel Square, if you go west, you will see to your right that Basundhara is constructing a huge complex. They have fully damaged our recently carpeted road with their materials. In view of Clinton's visit to Bangladesh when we were given an order to repair the road, I spoke up on this. I said that they damaged the road. We had sent our magis-

trates, police, ansars, but we couldn't control them.

We need the co-operation of the people, a sense of responsibility of the people. We need to create awareness among the public. If we were sensible, we could cut down a lot on these irregularities. If we are conscientious, if we are committed to carry out our civic duties, we can do it.

**Kazi Mohammed Sheesh, Chief Engineer, Dhaka WASA:** I will speak rather informally, first as a citizen then as a WASA official.

Despite many problems, I feel we have managed to resolve much of this by means of co-ordination with RAJUK. This is constructive.

From the 1959 Master Plan it is seen that there is over 1000 acres of land earmarked for parks and open spaces in the Dhaka City. How far has it been possible to retain this? Other data show that in Dhaka Metropolitan area there are over 500 commercial high rise buildings. Most of these are up to 24 stories. There are about 2000 residential high rise buildings. Most of these are up to 15 stories. There are about 250 supermarkets. Of these, DCC has about 40. Most of these have been constructed with no planned area. Most of these supermarkets don't have any parking space and this causes traffic jams.

According to Section 13 of RAJUK's 1996 Rules, there are certain requirements for constructing these buildings. For example, there have to be entry and exit facilities for the vehicle; open or shaded parking place; if there is any ramp, it has to be at least three metres away from the road and the ramp has to have a 1:8 slope. For every 100 square metre of market place, a 23 square metres of parking place has to be kept. RAJUK must surely want to follow this. We can discuss this today.

A survey carried out by RAJUK last October states that there are about 260 high-rise buildings in Dhaka which are risky and constructed with no specifications. Of these risky buildings, 43 are in Dhanmondi, 29 are in Mirpur and Uttara, 27 in Gulshan, five in Ramna. These buildings are supposed to be demolished. So far RAJUK has failed to break one.

In Dhanmondi the plan is according to our old plan of DIT designed for water and sewer disposal. We surveyed an area within the boundary of Road 2 on one side, Road 27 on the other, Mirpur Road on one side and Satmasjid Road on the other. This area is about 1.5 square kilometres. When DIT passed the plan for this area, the plans were for one bigha plots and no building would be more than four stories. WASA was informed accordingly. Now in the past five years 216 multi-storied buildings have been constructed. Of these, 74 were under construction when we carried out the survey. The construction of others had been completed. These were five stories and over. Now in this area of 1.5 square kilometres where there was to be at the most four-storied buildings on one bigha of land, if there are six-storied buildings and over on several one-bigha plots, totalling about 216 such buildings, then how can the old water and sewer designs be applied there? It is alarming for Dhaka City.

We have brought down our population growth rate from 3 to 1.6, but the population growth of Dhaka City, including the floating population, is from 5.5 to 8. It is necessary to move this excessive population from the city.

Then there is the Dhaka drainage system. Water is normally of four kinds. One is storm water. One is domestic sewerage. One is surface drain and one is solid waste. In all countries, solid waste is first treated in a different manner and then disposed. The other three can be done combined or separately. DCC has the responsibility of surface drains and solid waste. And the responsibility of storm water and sewerage is ours.

For Dhaka the design is done separately, but unfortunately Dhaka is combined. So DCC's drains are not working properly. Nor are the sewer lines. We have to lay stress on this matter.

Then comes the problem of polythene and plastic. This is not good for WASA or the country as a whole. This causes sewer blockage. Then when it goes underground, because it is not biodegradable, sunlight can't get through it and the soil's fertility is spoilt. There are about 2000 polythene and plastic industries in the coun-

try. Of this, polythene alone is 300. Of this, 250 are in or around Dhaka. Everyday 6 million polythene bags are used. If we would reuse the polythene, this wouldn't be so. A total of 52 per cent of the people in Dhaka buy new polythene bags when they go shopping or get new polythene bags free of cost. It is rarely reused due to its quality or due to the fact that it is free. About 15 million pieces of polythene are used in the entire Bangladesh daily. This polythene blocks the surface drains, blocks sewer lines, blocks storm water drainage lines.

As an engineer I find our system strange. There are 250 to 300 slums in Dhaka city. About 2.5 million people live in these slums. About 10 to 15 thousand people stay in some of these slums. They use water some way or the other. They dispose sewer some way or the other. These either go to DCC drains or into our system or into the solid disposal system.

You all know about the Hazaribagh tanneries. WASA has taken up a programme there for chromium recovery. This is supposed to begin at the end of April. The rivers are being polluted badly. The river Sitakohya is in the same condition. Industries are growing. If the deterioration of the river water isn't lessened, it may not be possible in the future to use this water for the Saidabad Water Treatment Plant as planned.

Despite all these problems, we are trying to go ahead with our work. It is possible to solve these problems technically. The huge financial support needed may also be made available. The lack, I feel personally, is commitment. There must be a political commitment. There must be commitment amongst the engineers, the planners, Economists, journalists must have this commitment.

Let me end with an example. A few years ago, there had been an earthquake in Japan's Kobe city. The water supply system was absolutely disrupted by the earthquake. A young engineer was made Chief Engineer and given the responsibility to rehabilitate it. He placed his funds for approval. Japan is a rich country. The funds were sanctioned immediately. He would work day and night, the work would progress. Then there would be a slight tremor. The lines would be disrupted again. This went on for some time. He had been given a time limit. He was given the funds that he had asked for and all sorts of facilities. Despite his efforts, when he couldn't do the job, one day his dead body was found below his office building. He had committed suicide, leaving a letter to say that he had failed to perform his duties and that was why he had committed suicide.

We may not go so far as him. I am the Chief Engineer of an organisation. The point may arise that, if anyone can't perform his duty, the government is there, there are laws. But if it is difficult for us to get our jobs, it is even harder to lose them. Even if I do not perform my duties, once the government has given me a job, with the help of the court, it is not so easy to take my job away. I hope that at least some exemplary action is taken if any one of us fail to do our jobs.

**Mahfuz Anam:** I would ask Mr. Mohammed Shawkat Ali Khan, former Chief Town Planner, RAJUK, so far as about RAJUK's limitations. It seems as if RAJUK is quite helpless. You see a lot, but if you take any initiative, the court intervenes. Is the court the main problem or is there anything else?

**Mohammed Shawkat Ali Khan, former Chief Town Planner, RAJUK:** The authorised officer has the responsibility of planning and building. It is his responsibility to implement the Master Plan. There is a Master Plan, there are Acts, there is an authorised officer. So where is the problem?

What do we have under planning? We have learnt from Sweden that Dhaka has an area of 590 sq. miles. City Corporation is one organisation under this area. Then there are five pourashavas (municipalities). In the village areas there are upazilas, union councils. Then there are two cantonments. The caretaker of the entire area's Master Plan is RAJUK. The TI Act has given RAJUK the authority over this area.

We have also learnt through the discussion that there is lack of inter-organisational coordination, particularly in water supply, drainage, sanitation, solid waste disposal, telephone, gas supply. During our planning we had identified about 50

Continued on page 9