



Jurisdiction in company matters



MD. RIZWANUL ISLAM

IT is commonly perceived that the High Court Division (HCD) has original statutory jurisdiction in company matters and the perception is right. However, it may not be so well-known that the HCD in its special statutory jurisdiction does not deal with all matters pertaining to the Companies Act, 1994.

This has been clarified in, *inter alia*, *Abdul Mohit and Others v Social Investment Bank Ltd. and others*, (2009) 61 DLR (AD) 82. In this case, the appellants, under Section 95 of the Companies Act, 1994, sought a direction from the Company Bench to allow them to attend the board meeting of the respondent company, Social Investment Bank Ltd. Their petition was rejected by the Company Bench of the HCD as it observed that Section 95 does not provide for any jurisdiction of the Company Bench. On appeal, the Appellate Division (AD) agreed with the HCD. The AD took note of the definition of 'Court' as per the wordings of Sections 2 (a), 2 (g), and 3 of the Companies Act, 1994. It observed that the provision of Section 9 of the Code of Civil Procedure, 1908 expressly provides that civil courts are granted jurisdictions to try all suits of a civil nature except those suits the taking cognizance of which is either expressly or impliedly barred by any statute.

The AD also referred to the Draft Companies Rules, 2000 (Rules) and observed that as Section 95 is not explicitly mentioned in the Rules within the list of Company Bench's 'Registrar of Company Matters', the matter involved in this case would not fall under the jurisdiction of the Company Bench. For these reasons, the AD agreed with the Company Bench and observed that when a Section of the Act provides for only procedural matters, in the absence of any express provision in the Act providing otherwise, it is not the Company Bench exercising its special company jurisdiction, but rather the ordinary civil courts

of competent jurisdiction which would be the proper forum. The AD and HCD's decision on this point follows a line of precedents beginning from the Pakistani era (under a similar provision contained in the Companies Act, 1913). For instance, the AD's judgement, in this case, refers to *Dacca Jute Mills Ltd. & others v Satish Chandra Banik and others* (1967) 19 DLR (DAC) 735; *Messrs Chalna Fibre Company Ltd., Khulna v Abdul Jabbar and others* (1968) 20 DLR (SC) 335; *Md. Shamsuzzaman Khan v M. S. Islam & others* (1976) 28 DLR (HCD) 101. Although an argument can be proffered that Section 3 of the Companies Act, 1994 draws no distinction between procedural and substantive matters and envisages the HCD as the court of competent jurisdiction for resolving all matters under this Act, in view of the established line of precedents, it is difficult to disagree with the AD's conclusion in this case.

Again, from a policy point of view, there may be cogent reasons to not to encumber the HCD with procedural matters pertaining to the Companies Act, 1994. If litigants could seek relief from the Company Bench of the HCD for petty procedural company matters, the Company Bench could have been clogged up with a potentially higher number of cases. However, at least on one point, it is difficult to not disagree with the AD. This is the reference to the Company Rules by the AD to ascertain the jurisdiction of the HCD. Surely, the Company Rules is the outcome of the exercise of powers granted by the Parliament under a law, namely Section 345 of the Companies Act, 1994. It is a well-established principle of interpretation of statutes that delegated laws cannot be used to interpret a primary law passed by the Parliament.

For instance, in *Mansur Ali v The Member, Board of Revenue, East Pakistan and others* (1959) 11 DLR 412, in essence, the issue before the court was whether or not Rule 50(3) of the Schedule of II to the Public Demands Recovery Act, 1913 (PDR Act) could oust the application of Section 22 of the PDR Act. According to the Board of Revenue (BR), it could. However, the then Dacca High Court rejected the finding of the BR. The Dacca High Court held that 'by rules or regulations you cannot affect a provision of the Act, even though it has to be considered as embodied in the Act and forming part of it'. (Para 7)

In *Muhit's case*, one may argue that the AD was merely reinforcing its findings and not affecting a provision of the Companies Act. Having said that, it is clear that by using the Rules, the AD, in this case, was, in fact, interpreting the provisions of the Companies Act which amounts to affecting the provisions of the Act. And it would be respectfully submitted that this is against the rules of interpretation.

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HUMAN RIGHTS
RIGHTS ADVOCACY

To rehabilitate juvenile offenders



NAHID FERDOUSI

A large number of children in Bangladesh are facing violence in a wide range of settings including family, schools, workplaces, communities and in care and justice systems. Reform of the youth justice system started since the Children Act was passed in 2013. As a replacement for the outdated Children Act 1974, the 2013 Act was a legislative attempt to put in place a modern system of rehabilitation, incorporating greater use of community-based interventions, and the promotion of initiatives to deal with the juvenile offenders.

In youth justice system, punishment and deterrence are not effective strategies for helping them succeed at school and work. They need basic support, opportunities and specialised treatment for getting reintegrated into the society. In this perspective, positive child development service of the Child Development Centers (CDCs) can play a valuable role to establish a sound environment for development and rehabilitation of child offenders. The CDCs are assigned to protect the best interest of every child and youth staying in there and to impart appropriate education including the necessary vocational training. Hence, the child development approach can offer valuable guidance and help for the children to develop their pro-social strengths to increase their ability to contribute to a healthy family and community life.

Establishment of three CDCs along with Children's Court as per the Children Act 1974 was a significant institutional development for juvenile justice system in Bangladesh. Two of them were established at Tongi in 1978 for 300 boys and Jessor in 1995 for 150 boys. In 2002, the third CDC for girls was established at Konabari, Gazipur, with a capacity of 150 inmates. Another CDC with a capacity of 300, is going to be established at Joypurhat District. No special Children's Court has been established in CDCs of each district yet.

Sections 59-69 of the Children Act 2013 explain the structure, activities, regulations, inspection and procedures of CDC in detail. Unfortunately, even after 2013, the number of established CDCs is not adequate. Moreover, the concept and principles of positive children and youth development

programme in the existing CDCs under the Department of Social Services (DSS), Ministry of Social Welfare is not functioning properly. In practice, lack of Children Rules or guidelines and lack of coordination among concerned ministries are creating the hindrance.

Though the Act has inserted substantive provisions of alternative care, family conferencing, diversions, still rules need to be adopted as to how family conferencing and diversions would be conducted at the ground level. Moreover, punitive mindset of the parents and family members as well as the police officers, judges and government officials is one of the most challenging issues. But the Children Act 2013 does not have any specific provision to address this problem. The Children Act 2013 explicitly prohibits death penalty and life imprisonment for children between 9 to 18 years old. However, this does not apply to those who are sentenced under the previous Act.

After about four years of its enactment, the availability of a child's desk in a police station, adequate probation officers, national welfare board and sufficient number of children's courts are yet to be set up in all designated areas. With the scarcity of place and the typical mindset of the society at large, one may find the provisions of the Act to be only lofty rules.

The government authorities should act proactively to make the necessary rules and regulations dealing with non-custodial sanctions in line with the General Comment of the Committee on the Rights of the Child 2007 and the Council of Europe Guidelines. The government should focus on Children Court, Child and Welfare Board, CDC, diversion programs and ADR. Children Development Centre can offer workshops for the parents involving the children for changing the age-old punitive parenting style. A sound child development system fundamentally requires improved social services, specialised assistance, child-centered initiatives and committed personnel with required skills, knowledge and experience.

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YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query

I am a small-scale businessman living near Ashulia. I have a land which I would like to develop and construct a 2-storyed building. Many of my neighbours have been constructing similar buildings in the locality. One of my relatives advised me to get building permission before I start the construction work; however, I know that none of my neighbours have taken such permission from any authority. Is it necessary to take permission for construction of building in my own land?

Bangladesh National Building Code 2006 are applicable.

The 1952 Act has provided regulations regarding setbacks, building heights etc. in urban areas. The Act also provided for prevention of haphazard construction of buildings and excavation of tanks, which are likely to interfere with the planning of certain areas in Bangladesh and enables government through Section 16 to make any substantial rules for carrying out the purposes of this Act.

The term 'building' as per Section

alternation to any building, or excavate or re-excavate any tank. Such sanction remains valid for three years and on the expiry of the period, the applicant can apply and obtain a fresh sanction.

In light of the aforementioned provisions of the Building Construction Act 1952, it is mandatory for you to seek prior approval from the concerned local authority before constructing a building. If you fail to do so, you shall be deemed liable under Section 12 of the Act and the punishment of such may be fine as well as imprisonment for a term of 7 years.

Additionally, the Bangladesh National Building Code 2006 aims to ensure minimum standards for design, construction, quality of materials, use and occupancy, location and maintenance of buildings within Bangladesh in order to safeguard, within achievable limits, life, limb, health, property and public welfare.

According to provision no. 3.1 of the 2006 Code, no building or structure shall be erected, constructed, improved etc. without obtaining a separate permit for such work from the Building Official. The definition of both building and owner has been widened herein the Code. Sanitary, plumbing and any other building service installation which are constructed or erected as an integral part of a building shall amount as building. Thus, any breach of the provision of the 2006 Code may lead to legal actions by the authority as deemed appropriate.

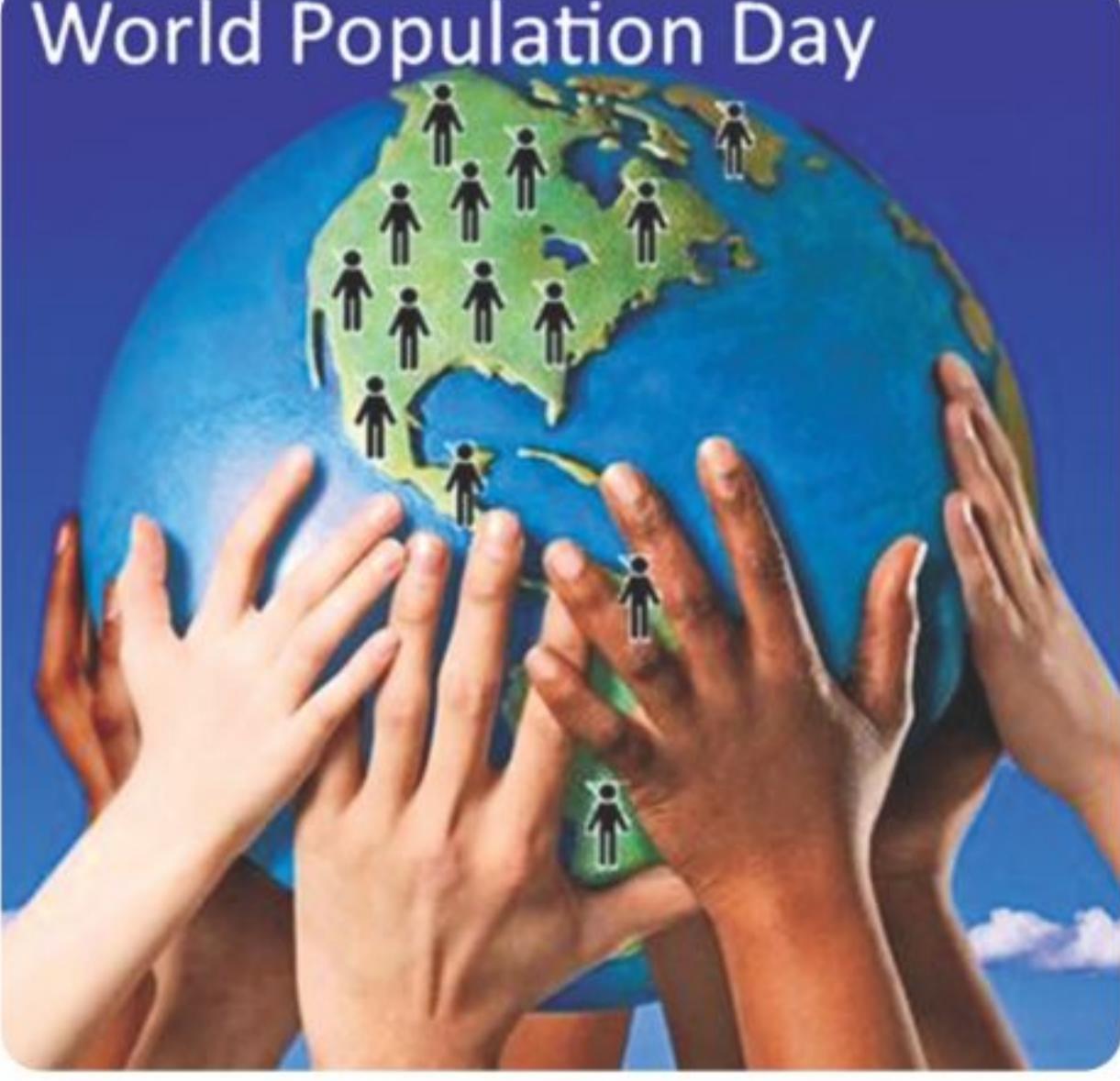
Hence, it is imperative that you obtain prior approval from the concerned authority and as your land is based outside the City Corporation area. You can obtain such permission from concerned Paurashava or Union Parishad office.

2(b) of the Building Construction Act 1952, shall mean and include a house, out-house, hut, wall and any other structure whether of masonry, bricks, corrugated iron sheets, metal, tiles, wood, bamboos, mud, leaves, grass, thatch or any other material whatsoever. Section 3(1) of the 1952 Act requires one to take previous sanction of an government in order to construct or re-construct or make addition or

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FOR YOUR INFORMATION

World Population Day



In 1989, the Governing Council of the United Nations Development Programme recommended that 11 July be observed by the global community as the World Population Day. By resolution 45/216 of December 1990, the United Nations General Assembly then decided to continue observing World Population Day to enhance awareness of population issues, including their relations to the environment and development. In order to focus attention on the urgency and importance of population issues, the Day is observed worldwide.

The World Population Day was first marked on 11 July 1990 in more than 90 countries. Since then, a number of UNFPA country offices and other organisations and institutions commemorate World Population Day, in partnership with governments and civil society. This year's theme is "Family Planning: Empowering People, Developing Nations."

Access to safe, voluntary family planning is a human right. It is also central to gender equality and women's empowerment, and is a key factor in reducing poverty. Investments in making family planning available also yield economic and other gains that can propel development forward.

Yet around the world, some 225 million women who want to avoid pregnancy are

Right to safe family planning

not using safe and effective family planning methods, for reasons ranging from lack of access to information or services to lack of support from their partners or communities. Most of these women with an unmet demand for contraceptives live in 69 of the poorest countries on earth.

This year's World Population Day, 11 July, coincides with the Family Planning Summit, the second meeting of the FP2020 – Family Planning 2020 – initiative, which aims to expand access to voluntary family planning to 120 million additional women by 2020.

The United Nations Population Fund (UNFPA) works with many partners, both within and outside the United Nations system. UNFPA works to support family planning by: ensuring a steady, reliable supply of quality contraceptives; strengthening national health systems; advocating for policies supportive of family planning; and gathering data to support this work. UNFPA also provides global leadership in increasing access to family planning, by convening partners – including governments – to develop evidence and policies, and by offering programmatic, technical and financial assistance to developing countries.

COMPILED BY LAW DESK (SOURCE: UNFPA.ORG).



Response
Dear reader, thank you for your query. It is a common malpractice in Bangladesh that many landowners (specially outside metropolitan area) do not take permission from the concerned authorities while developing their respective lands. On the other hand, many are even unaware of the existence of these laws. In your case, the Building Construction Act 1952 and the