

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

Present:

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Jahangir Hossain

WRIT PETITION NO. 9988 OF 2010.

IN THE MATTER OF :

An application under Article 102 of the Constitution
of the People's Republic of Bangladesh;

A N D

IN THE MATTER OF :

Human Rights and Peace for Bangladesh

... Petitioner

-Versus-

Bangladesh and others.

...

Respondents

Mr. Manzill Murshid, Advocate

... For the Petitioner

Mr. A. B. M. Altaf Hossain, DAG

... For the Respondents.

Heard And Judgment on: 26th October, 2011.

A.H.M. Shamsuddin Choudhury,J:

The Rule under adjudication, issued on 05.12.2010 was in following terms:

“Let a Rule Nisi be issued calling upon the Respondents to show cause as to why the inaction of the respondents to take necessary steps to stop any kind of building and the respondents to implement the provisions of Section 12(c) of the Antiquities Act, 1968 and Rule 61 of Dhaka Metropolitan Building (Construction, Development, preservation and Eviction) Rules 2008, in case of construction near Lalbagh Fort should not be declared to have been done without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Averments figured in the petition are summarized below;-

The organization Human Rights and Peace for Bangladesh (HRPB) is a non profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights etc.

The petitioners are challenging the inaction of the respondents in taking necessary steps to stop building construction activities in areas adjacent to protected of Lalbagh Fort (henceforth, the Fort) which has very significant and important role, not only, in the history of Bangladesh but also the history of this subcontinent. The petitioners also seek to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to enforce necessary steps against the people who are liable for illegal construction work adjacent to the Fort. The Fort is also a public place of profound significance, which is now under the governance and protection of the Government of the People Republic of Bangladesh. However, in recent years a few people have taken possession of the property which belongs to this protected historical monument and they are constructing buildings violating the provisions of law, which is illegal and without lawful authority. The matter involves interest of the common people as this

historical place belongs to the common people of Bangladesh and the Government is under a duty to protect the interest of the people by protecting the historical places. The affected people are unable to come to protect this historical place of sentimental importance and hence the petitioners move this Public Interest Litigation (PIL) before this Hon'ble Court.

A report was published in the Daily Ittefaq on 13.10.2010 under the caption, "Lalbagh Fort's land is Being dispossessed". It was reported in the newspaper that a few powerful local people, including the respondent No.7, 8 and 9, are continuing constructions on the land adjacent to Lalbagh Fort, violating the provisions of law. It was also stated in the report that the provisions of Antiquities Act are not being followed.

As this, report was published, the Human Rights and Peace for Bangladesh decided to take steps to protect this important historical landmark. By constructing buildings within the perimeter and adjacent to the perimeter of the Fort, the beauty of this monument is being dangerously affected. Construction of buildings so closer to this monument is hampering the protection of this monument and making it vulnerable. So, such construction is unlawful as per Rule 61 of Dhaka Metropolitan Building (Construction, Development, Preservation and Eviction) Rules 2008 and Section 12(c) of the Antiquities Act, 1968.

The custodian of the Fort has sent a letter to the Officer-in-Charge of Lalbagh Police Station for action to stop the on going construction work, but no action has been taken by the Police Station, although it is certainly the duty of the local police to stop any illegal construction within their jurisdiction.

Director General of Bangladesh Archeological Department has submitted an application to the Chairman of Rajdhani Unnoyon Kortipokho (RAJUK) informing of the illegal building construction which is going on without RAJUK'S permission and hence he requested RAJUK to take steps to prevent such activity. It is the duty of RAJUK to accord permission, control and observe any construction activity by citizens within the Capital and certainly the Fort is within their jurisdiction. But, surprisingly RAJUK has proven to be ineffective in the same way, Lalbagh Police Station had been.

Few photographs of the unauthorized and illegal construction adjacent to the Fort has been obtained by the petitioners, which reveal that some buildings have already been erected and others are under construction, dangerously closer to the historical monument which is likely to jeopardise hamper the protection and preservation scheme of the Fort. Obviously these buildings are being constructed in breach of the present law and without proper authority.

Under Section 12 of the Antiquities Act 1968, it is the duty of the government to protect the historical immovable properties. Section 12(c) of the Antiquities Act 1968 imposes a duty upon the government to restrict any sort of construction activity near the listed immovable property.

The authorities framed rules, named "Dhaka Metropolitan Building (Construction, Development, Protection and Eviction) Rules 2008; rule 61 of which provides that no one, including the owner of any listed immovable property, can do any construction, renovation or demolition activity on that property without the permission of proper authority and even if any such activity is continuing then the authority has the power to order to stop such activity. It was also provided in the rule that 250 (two hundred and fifty) diameter area, adjacent to listed immovable property, is to be treated as the part of the monument, so any kind of construction, renovation or demolition in the mentioned area is illegal and the Government is under obligation to prevent such construction, renovation and demolition activity. None filed any affidavit to oppose the Rule.

As the Rule was taken up for hearing Mr. Manzil Murshid made impassioned submission to depict the present appalling state of the Fort itself and its surrounding vicinity by taking us through the pictures taken recently and reading over the daily Ittefaq article. As none filed any pleading in rebuttal we can take as true the petitioners averments. In fact we can also take judicial notice of the pathetic scenario that prevails in and around the Fort. The only question for us is whether the petitioner is entitled to the craved relief.

This Fort is no doubt a place of immense historic importance. Built by Moghal Prince Mohammad Azam, it is the only Moghal relic of significant importance in

Bangladesh. It stands as a snazzy vestige of Moghal architectures, a rare display of our heritage.

It is somberly that the goons are out there to dissipate this invaluable monument that stands as a memento of our history, and worse even is the culpable non-feasance of those functionaries who are bounden with statutory obligations to protect this Fort and other places of historic importance which are on the way to total dissipation due to greedy foray of the grabbers. This is about time the respondents are awakened and made to work to protect the Fort so that generation to come would see it and know of its history. The respondents, particularly the Lalbagh Police, RAJUK, the City Corporation and the Department of Archeology are directed to immediately evict all squatters, demolish all structures erected within the Forts land or the surrounding area that has been designated as protected area and to maintain incessant vigilance to ensure protection of the Fort.

With the above directions the Rule is made absolute. There is, however, no order on cost.

The office is directed to treat it as a writ petition notwithstanding non-filing of affidavit by reason of the fact that the petitioner NGO depends on fund donated by its members alone as claimed.
