

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

WRIT PETITION NO. 10472 OF 2011

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 :

Dr. Mahmuda Khatun

.....Petitioner.

= Versus =

The Government of Bangladesh and
others

.....Respondents.

Mr. Manzill Murshid , Adv.

.....for the petitioner.

Mr. Sk. Shaifuzzaman, Adv.

... for the Respondent No. 7 .

Heard on 29.03.2017 and

Judgment on 02.04.2017

Present :

**Mr. Justice Syed Muhammad Dastagir
Husain**

and

Mr. Justice Md. Ataur Rahman Khan

Syed Muhammad Dastagir Husain, J:

Rule Nisi was issued calling upon the Respondents to show cause as to why inaction of the respondents to take necessary steps to stop any kind of building construction adjacent to the Labsha Mosque, should not be

declared illegal and without lawful authority and why a direction should not be given upon the respondents to implement the provisions of section 12 of Antiquities Act. 1968 in case of construction near Labsha Mosque , should not be declared illegal and without lawful authority.

The petitioner is the Mutawalli appointed by the Bangladesh Wakf Administrator Office on 12.02.1998 under Memo Number 123/98 Khulna. The petitioner is now challenging the inaction of the respondents to take necessary steps to stop building construction activities to the adjacent areas of Labsha Mosque which is an antiques of 130 years old. The petitioner also seeks to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to take necessary steps against the people who are liable for performing the illegal construction work adjacent to the Labsha Mosque. The matter is involved a public importance. The Labsha Mosque is an antiques and it is also a public place which is now under the government and protection of the Government of People Republic of Bangladesh. In recent year few people under the leadership of respondent No. 7 , Secretary of Mosqid Committee are now trying to construct building violating the provisions of law, which is illegal and without lawful authority . The matter is involved about the interest of the common people as recognized antiques and the Government is under duty to protect the interest of the people by protecting the same. On 02.11.2011 on an application filed by Dr. Aftabuzzaman to the Director General of Archeological Directorate praying to protect the historical Labsha Mosque . It was stated in the petition that in hijri 1301 Zamindar Munsif Emadul Haque and Zamindar Aftabuddin Ahamed constructed two Mosque at the same time one is in Labsha, Shatkhira and another one in Kolkota. It was requested to protect the same. On 03.01.2011 the Director General, Department of Archeological, sent a letter to the Deputy Commissioner, Sathkhira, requesting to protect the said Mosque. On 12.09.2011 another application was filed by Md. Jujibor Rahman Secretary to the Ministry of Cultural Affairs, in which it was requested to take steps to stop any construction near the historical Labsha Mosque and as such a report was published by the Asiatic Society about the historical mosque. It was shown as a old historical places and radiological side which is Annexure – “ C-1” . On 18.10.2011 the Director General Department of Archaeology sent a letter to the Deputy Commissioner, Shatkhira stated that labsha Mosque is important archaeological Mosque and it is under

the process of publication of Gazette Notification in order to protect it. A report was published in the Daily Ittefaq on 31.03.2011 on the head line that “ Steps to destroy on 130 years old Mosque” and another report was published in Khabarpatra on 15.03.2011 on the heading that “ Conspiracy is going on despite of the initiative to protect Labsha Mosque. It was reported in the newspaper that few powerful local personals, including the respondents No. 7 are trying to construct on the land adjacent to Labsha Mosque violating the provisions of law. Moreover it was stated in the report that the provisions of Antiquities Act has not been followed in this Case Of “Labsha Mosque”. The legal notice was served upon the respondents . The Labsha mosque is not only significant but also it has very importance in the history of the country. The adjacent to its perimeter of the Labsha Mosque , the beauty of this monument is being dangerously affected, if construction of building so closer to this Monument is going on it will hamper the protection of this monument and making it endangered. Therefore , the construction is without any lawful authority and unlawful as per section 12 © of the Antiquities Act. 1968. Being aggrieved by and dissatisfied, the learned Advocate for the petitioner came up before this Court preferred this application under section 102 of the Constitution and obtained the present Rule.

Mr. Manzill Murshid, the learned Advocate appearing on behalf of the petitioner submits that the duty and responsibility vested upon the administration to perform the duties of the people and they are to obey the provision of the Law. But they have failed to perform the duties and responsibility as vested upon them under section 12 of the Antiquities Act. 1968 . The respondents is directed to take necessary and immediate steps to stop the construction which is rendering the beauty of the monument Labsha Mosque and hampering its preservation which is certainly with any lawful authority and illegal manner. Further by referring 12 C of Antiquity Act 1968 that it imposes a duty upon the Government to restrict any sort of construction activity near the listed antiquities by anyone. It is the duty of the Government to organize protect and preserve the antiquities. The Respondents has failed to perform his duties and hence they may be directed to take appropriate steps to stop the illegal and unlawful construction activity near the Labsha Mosque.

On the other hand Mr. Shek Saifuzzaman, the learned Advocate appearing on behalf of the Respondent No. 7 by filing affidavit in opposition submits that the secretary of Masjid Committee of Labsha Jaminderbari Jame Mosque is the competent and acquainted of this Case. He then submits that the petitioner is neither doctor nor a Motawalli of the said Mosque actually she is the Motawalli of the Amir Haider estate and this is Munshi Emdadul Hoque walkf State however he submits that at the opening ceremony of the construction of extension of Labsha Mosque, Dr. Aftabuzzaman who was the applicant was present and before enlistment in the archeological department by gazette notification on 16.08.2012 they have started construction, located near the place of Labsha Jamider Bari Mosque, under Satkhira Sadar Upazilla. It is not within the boundary of the said Mosque. The mosque is of Archaeological important of the capacity of the 50% to 60% to pray at a time. The space of the Mosque is insufficient and compound is only of 7 Decemals which is inappropriate for a densely populate area. In order to solve the long existing problem the inhabitants of the concerned area arranged meeting and at the instance of the pious villagers, the successors of late Munshi Atau Hoque already expired made a registered Heba deed measuring 74 decimals of land for religious worship on 02.05.2010 so that a new mosque could be constructed and the said Heba Deed is Annexure –Y-4 of the petition. The new mosque was mutated and regularly paying the revenue to the Government. On 01.11.2010 the office of the Wakf Administrator allowed to reconstruct the Mosque in place of old one and thereafter on 01.02.2011 the office of the Deputy Commissioner issued letter not to destroy the old Mosque whatsoever in any manner and accordingly the respondent No. 7 did not reconstruct the Mosque. On 03.09.2011 the general meeting was held in the area where the local Member of Parliament, the Upazila Chairman, Vice Chairman and the complainant Ex- Minister DR. Aftabuzzaman were also present and on discussion about importance of construction of new Mosque besides the old Mosque, accordingly they have started construction a new Mosque keeping wide space beside the old Mosque. The Respondent No. 7 never did anything to demolish or destroy or change the old important mosque having Archeological importance rather he is one of those persons at whose effort the process of preserving the said historically important place was almost completed. He also by communicated to

Department of Archeological and other concerned Departments made proper steps for preserving a place of historical importance and they have stopped all construction as he was informed of the order of the highest Court. He further submits that the new mosque is on the Wakf Property, Physically would create no obstacle in any manner in preserving the historical importance mosque.

Heard the learned Advocates. As it appears the Respondent No. 7 being the secretary of the said Mosjid Committee of Labsha jaminderbari jama Mosque have started constructions in the year of 2010. The Deputy Commissioner Vide letter dated on 01.2.2011 which is Annexure – Y-8 by sending a letter stated that not to destroy the Archeological Labsha Mosque and to take appropriate action from the Archeological Department of Khulna. The Mosque as it appears was started vide general meeting held on 3.9.2011. The Laksham Mosque has been included as an Archeological Mosque by gazette Notification on 16th August , 2012 . As per law (not yet amended) nothing can be constructed within 100 feet of an Archeological building. The section 12 (3) (c) as runs follows:

“ the restrictions upon the right of the owner to alienate destroy, remove, alter or deface the antiquity or to build on or near the site of the antiquity”

Therefore the Respondent No. 7 are directed to follow the Antiquity Act – 1968 in constructing the said Mosque and the construction must be in accordance with law. The Labsha Mosque since already been declared under Antiquity Act can not be destroyed nor can be damaged. It is to be protected . However in view of densly populated area the Respondent No. 7 can construct the Labsha Jaminderbai jama Mosque in consultation with the Directorate General of Archeological Department keeping / preserving the Archeological Mosque as it is.

With such direction the Rule is disposed of.
