

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 13398 OF 2015

Human Rights and Peace for Bangladesh (HRPB) represented by its Secretary, Advocate Asaduzzaman Siddique Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh and another
...Petitioners

-Versus-

Bangladesh represented by the Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, Shahbag, Dhaka and 4(four) others
...Respondents

Mr. Manzill Murshid, Advocate

...For the petitioners

Mr. A.S.M. Nazmul Haque, DAG with
Mrs. Afifa Begum Swapna, AAG

...For the respondents

Mr. Md. Shahjahan, Advocate

...For the respondent No.2

Mr. Md. Imam Hasan with

Mr. Md. Shahinul Islam, Advocates

... For the respondent No. 4

Present:

Mr. Justice Gobinda Chandra Tagore
and
Mr. Justice Mohammad Ullah

Heard on 30.06.2019.

Judgment on 03.07.2019.

Mohammad Ullah, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, *Rule Nisi* was issued calling upon the respondents to show cause as to why a direction should not be given upon them to take appropriate steps to ensure the implementation of the provisions of the Building Construction Act, 1952, the Building Construction Rules, 1996 and the Dhaka Metropolitan Building (Construction, Development, Preservation,

and Removal) Rules, 2008 in order to evict/remove/demolish all the unauthorized constructions, structures, occupations and uses of the land and building owners at the car parking spaces beside the main roads/streets of Dhaka City by violating the plan approved by the Rajdhani Unnayan Kartripakkha (RAJUK) and/or why such other or further order or orders as to this Court may seem fit and proper shall not be passed.

At the time of issuance of the *Rule* on 15.12.2015, the respondents No. 1 and 4 were directed to conduct a survey about the violation of the plan approved by RAJUK in case of unauthorized constructions, structures, occupations and uses at the car parking places beside the main roads/streets of Dhaka City and submit a report within 60 (sixty) days before this Court through an affidavit-in-compliance. The said respondents No. 1 and 4 failed to submit such report within the stipulated period as was directed; however the respondent No. 4, the Chairman, RAJUK, filed purportedly an affidavit-in-compliance containing a list of certain buildings covering the area of Gulshan, Banani, and Baridhara in which the car parking spaces are being used as commercial and other purposes instead of using the car parking in violation of the approved plan.

Shortly stated the necessary facts relevant for the disposal of the *Rule* are as follows:

The petitioner Human Rights and Peace for Bangladesh (HRPB) represented by its Secretary, Advocate Asaduzzaman Siddique and Advocate Md. Aklas Uddin Bhuiyan, Publicity Secretary of the petitioner No. 1 filed the instant Writ Petition in the form of a Public Interest Litigation (PIL) contending, *inter alia*, that the petitioner No. 1 is a non-profitable registered organization and the object of the organization is to uphold the Human Rights of the citizens, to establish the rule of law, to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their legal and social right, etc. It is contended in the application that the Dhaka City has been jeopardized through traffic jam, which hampers the smooth movement of the people at large. It is the legal and moral responsibility of the respondents to ensure the free movement of the citizens. But due to their inaction and negligence, the total traffic system of the City is being hampered and disturbed and the vehicles cannot move smoothly causing serious traffic jam in the City. One of the causes of such traffic jam is for the illegal occupation of road, pathway, setting up shops on the roadside and encroachment in the side of the road by the shop owners. Due to the unauthorized uses and occupation in the car parking areas and spaces of the buildings situated on the side of the roads, the vehicles have to park in the street. Therefore, the movement of the people becomes jeopardized. So, there is an urgent necessity to take steps to remove such a haphazard situation and to improve the traffic system of the City. But due to the deliberate negligence of the respondents in implementation of the Building Construction Act and the Rules, heavy traffic jam is being caused and the people at large become the

victim thereof. In such facts and circumstances, immediate necessary steps should be taken by the concerned respondents to remove all the unauthorized constructions from the roadside and all the unauthorized occupations and uses in the car parking places and spaces other than the parking. But no authority, including the respondents is taking any effective measures to remove such unauthorized occupations in order to use the car parking places and spaces as the car parking. It has further been stated in the petition that recently Mohakhali Zonal Office of RAJUK has prepared a list of 200 Buildings of Gulshan, Banani, and Baridhara residential area who are using their car parking area for commercial purposes by violating the terms and conditions of the plan approved and the provisions of the Building Construction Act, 1952, Building Construction Rules, 1996 and the Dhaka Metropolitan Building (Construction, Development, Preservations, and Removal) Rules, 2008. The landowners are liable to make their constructions with car parking spaces but at many places they had constructed their buildings without any car parking places which is illegal. In such facts and circumstances, the petitioners filed the instant Writ Petition and obtained the *Rule* and the direction as stated above.

Though the respondent No. 2, Dhaka North City Corporation has filed purportedly an affidavit-in-opposition, at the time of the hearing of the *Rule*, Mr. Md. Shahjahan learned Advocate for the respondent No. 2 submits that his client would not press the affidavit-in-opposition rather it will support the *Rule*.

The respondent number 4, RAJUK in its affidavit-in-compliance stated that the RAJUK has taken some steps to remove the unauthorized constructions, occupations and illegal businesses from the car parking spaces of the respective buildings of Dhaka City through a mobile Court operation which is still going on.

Mr. Manzill Murshid, learned Advocate for the petitioners having referred to sections 3, 3A(1), 3B(1)(a) and (b) of the Building Construction Act, 1952 and the rule 29 of the Dhaka Metropolitan Building (Construction, Development, Preservation, and Removal) Rules, 2008 submits that no owner or occupier of a building shall, without obtaining the previous permission from the Authorized Officer or the Committee, as the case may be, use the building for the purpose other than the purposes mentioned in the plan approved but from the report of RAJUK it appears that the building owners have been using their car parking places for commercial or other purposes and parking their cars outside the building blocking the roads and as such, they are frequently violating the said Act and the Rules.

The learned Advocate submits further that the respondents are under legal obligation to remove such unauthorized constructions, structures, occupations and uses from the parking spaces used other than the parking, but the respondents failed to discharge their legal duties and as such they should be directed to act in accordance with the prevailing Laws and the Rules of the country.

On the other hand, Mr. Md. Shahjahan, learned Advocate for the respondent No. 2, Dhaka North City Corporation submits that since the owners of the building have been using their car parking spaces for other purposes, it is the duty of the RAJUK to remove such unauthorized constructions, occupations, and make it available for the use of the car parking spaces.

Similarly, Mr. Md. Imam Hasan, learned Advocate appearing for the respondent No. 4, RAJUK submits that it has already made a survey and prepared a list of the buildings wherein the car parking spaces are being used for other purposes by violating the provisions of the Laws and the Rules and the RAJUK has conducted Mobile Court operation for removal of those unauthorized constructions, occupations, and uses of the car parking places other than the parking purpose.

The learned Advocate submits further that if the Dhaka City Corporation does not allow the owners of the buildings to park their cars on the roadsides, they would have been compelled to use their car parking spaces or parking their cars in the designated areas.

We have perused the materials on record and considered the submissions of the learned Advocate for the parties.

It appears that the petitioners sought for implementation of the provisions of the Building Construction Act, 1952, the Building Construction Rules, 1996 and the Dhaka Metropolitan Building (Construction, Development, Preservation, and Removal) Rules, 2008 in order to evict, remove all the unauthorized structures, constructions and occupations made by the landowners at the car parking spaces beside the main roads/streets in Dhaka City. It further appears that pursuant to the direction of this Court, the respondent No. 4, RAJUK, made a survey at Gulshan, Banani, and Baridhara area and have found that the building owners have been using their car parking places or spaces for the purposes other than parking and the RAJUK is conducting mobile Court operations to remove those unauthorized occupations from the car parking spaces since 18.01.2016 and the Mobile Court operations are continuing. Section 3(1) of the Building Construction Act, 1952 provides that notwithstanding anything contained in any other law for the time being in force or in any agreement, no person shall, without the previous sanction of an Authorized Officer construct or reconstruct or make an addition or alteration to any building within the area to which this Act applies. The said provision of the Act, 1952 applies to the area of Dhaka City Corporations. Section 3B (b)(i) provides that if any building has been constructed or reconstructed or any addition or alteration to any building has been made without obtaining the sanction or in breach of any of the terms and conditions subject to which sanction was granted, shall be removed or dismantled. Similarly, the provisions of rule 29(1)(Ka) of the Rules, 2008 provides that if any violation of approved plans or unauthorized construction is found, the authority shall direct the concerned owner to demolish or dismantle the unauthorized construction made therein. Thus, from the provisions of sections 3A (1) and 3B (b)(i) of the Act,

1952 as well as rule 29 of the Rules, 2008 it appears that if any unauthorized construction is made or any alteration is done or addition is made to any building without prior sanction of the authority (RAJUK), it is the responsibility of the RAJUK to cause removal or dismantle such unauthorized constructions or additions or alterations made therein. It is apparent from the report prepared by the RAJUK that the owners of the building of Gulshan, Banani, and Baridhara are frequently using their car parking spaces for the purposes other than the parking and thereby they have been frequently violating the provisions of section 3(1), 3A and 3B (1) of the Act, 1952 and the rule 29 of the Rules, 2008. Similarly, Building Construction Rules, 1996 imposes such restrictions on unauthorized uses of the car parking spaces other than the purpose of car parking. By the *Rule* issuing order dated 15.12.2015 though the respondent Nos. 1 and 4 were directed to submit a report upon conducting a survey about the violation of the approved plan of the RAJUK by the building and land owners at the car parking places beside the main roads/streets of Dhaka City, they submitted a partial report covering only a very limited area of Gulshan, Banani, and Baridhara. But, in fact, similar situations have been prevailing over the total Dhaka City. In such facts and circumstances, we find merit in the *Rule*.

Accordingly, the *Rule* is made absolute.

The respondents are hereby directed to remove such unauthorized constructions, occupations, and uses of the car parking places or spaces other than the parking area demarcated in the approved plan. For that purpose, all over Dhaka City, the respondents shall take the following measures:

- (1) Before removing such unauthorized constructions, occupations, and uses of the places demarcated as car parking areas other than the parking, the respondents shall publish a public notice, giving 30(thirty) days time to the concerned owner of the land and buildings, in the two widely circulated daily Bengali Newspapers as well as in one English Newspaper immediately.
- (2) The concerned Authorized Officer of RAJUK shall inform the owners of the land and buildings about the said public notices by publicities (miking) in the concerned areas.
- (3) In case of failure by the concerned owner of the buildings to remove such unauthorized constructions, structures, occupations and uses, the respondents shall remove, demolish, or dismantle all such unauthorized constructions, occupations or uses in the car parking spaces of the concerned buildings within next 6(six) months from the date of receipt of a copy of this judgment.
- (4) The respondents concerned shall realize the cost of such removal, demolishing and dismantle from the concerned owner of the buildings in accordance with law.

- (5) The respondent Nos. 2 and 3 are hereby directed to keep their road free from all sorts of unauthorized car parking and shall submit their respective progress reports.

The respondents No. 2, 3 and 4 shall submit their respective progress reports to this Court every 3(three) months.

Accordingly, the Writ Petition, as well as the judgment, shall be treated as continuous mandamus.

The office is directed to communicate the judgment and order to the respondents at once.