

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

WRIT PETITION NO.945 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 :

Md. Golam Haider

.. Petitioner

-Versus-

The Secretary, Ministry of Environment & Forest, Bangladesh
Secretariat, Dhaka, Bangladesh and others.

... Respondents

Mr. Manzill Murshid, Advocate

... For the Petitioner

Mr. A. Q.M. Safiullah, Advocate

... For the Respondent No. 2 and 5.

Mr. Shah Md. Sirajul Hoque, Advocate

... For the Respondent No. 3.

Mr. Akhtar Imam, Advocate

... For the Respondents.

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

... For the Respondents.

Present:

Mr. Justice A.H.M. Shamusddin Choudhury

And

Mr. Justice Jahangir Hossain

Judgment on: 8th December, 2011.

A.H.M.Shamsuddin Choudhury,J.-

The Rule under adjudication, issued on 30.01.2011, was in following terms:

“Let a Rule Nisi be issued, calling upon the Respondents to show cause as to why a direction should not be given upon the respondents to maintain and protect the Nikunjo Lake in Zoharshahara Mouza, Dhaka, and why a direction should not be given upon the respondents to Demolish/remove/evict all the temporary and Permanent structure within the Lake area at Nikunja and zero height area near the Shahjalal Air Port and/or why such other or further order or orders as this Court may deem fit and proper should not be passed.”

Averments figured in the petition are summarized below:-

The petitioner is a contractor and importer and is engaged in that business for a long time. He obtained allotment of a plot in Nikunja area in the year of 1999. Thereafter he has constructed a two storied building on the plot and has been living there peacefully. The petitioner is a member of “Nikunjo (South) Residential Area Welfare Society” (here in after will be referred as a Samity). The petitioner was authorized by the society to file a case in order to protect the Nikunjo Lake in Zoarshahara Mouza, Dhaka.

The petitioner is seeking direction upon the respondents to stop encroachment through, permanent and temporary structure, constructed within the Nikunjo Lake, in Zoarshahara Mouza, Dhaka.

By way of illegal earth filling, the existence of the lake is threatened, creating a state of alarm to the environment, and by constructing buildings in the zero height area, the normal operation of the aircraft has become risky.

The provision of Section 5 of the Environment Conservation Act, 1992, prohibits any change in the nature of any land that has been earmarked as a natural reservoir. As per section 8 of the said Law any person who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000 or both. In spite of that provision of law, the land grabbers are continuing with earth filling activities in Nikunjo Lake, Zoarshahara Mouza, Dhaka.

The Rajdhani Unnayan Kartipakhya (RAJUK) initiated a project to build a residential area in Zoar Shahara Mouza, Dhaka, naming it; “Nikunjo Residential Area”. RAJUK has finalized a layout plan for the said residential area in which a lake was shown specifically. RAJUK had published a notification with the prospectus earmarking all the facilities of the project. In the project plan RAJUK identified an area as a Lake along with Park, community Center and others. The petitioner being informed about the other facilities including the Lake in the project area applied for a plot. Subsequently in the year of 1999 a plot was allotted to the petitioner. On the basis of the same prospectus, thousands of people applied to get an allotment of a plot in the Nikunjo Residential Area. But, after completing the procedure, RAJUK allotted few hundred plots to the people and some of them have already completed their building construction and have been living therein peacefully.

Thousands of people are residing in the Nikunjo Residential Area, and are depending on the lake to use as a recreational area and to get rid of the suffocating environment of Dhaka City. The sewerage and drainage system of the area will be seriously affected if the respondents do not take any steps to stop filling of the Lake. Moreover if the lake is destroyed the residents of the Nikunjo Residential Area will dangerously suffer during the rainy season due to rain water blockage.

On 04.10.2007, while the encroaching and earth filling of the Lake area was continuing and some people were constructing building in the Zero Height area, violating the provisions of law, a representation was submitted by the General Secretary of Nikunjo Residential Area Welfare Association to the Director General of Environment Directorate. It was stated in the representation that some people violating the provision of Environment Conservation Act, 1992, are continuing with earth filling within the lake area as recognized water reservoir. Immediate steps against all the illegal activities was requested.

On 28.12.2008 an application was filed on behalf of Nikunjo Residential Area Welfare Association to the Chairman of RAJUK to initiate positive steps to stop earth filling activities. However without any reasonable explanation, the Chairman of RAJUK, has failed to take proper steps to prevent illegal activities. The RAJUK has failed to perform the duty law has imposed upon it. On 05.04.2009, a letter was sent by the Director of the Aerodrome Department to the Chairman of RAJUK, stating that the North-East corner of the Lake of Nikunjo-1 (South) is under the restriction of zero height construction and due to that no construction of any structure is possible there. On the same date the Director, Aerodrome Department, sent a letter to the secretary of Nikunjo Residential Area Welfare Association informing them that in the North West area of Nikunjo there is no scope to build any construction within the water reservoir area as per the rules.

On 13.01.2010 the joint Secretary of Nikunjo Residential Area Welfare Association filed an application to the Officer In Charge of Khilkhat Police Station requesting them to take necessary steps against the earth filling on the Nikunjo Lake. It was stated in the letter that despite objection raised by the members of the Nikunjo Residential Area Welfare Association, some people have been violating the provisions of the Environment Protection Act, continuing with earth filling acts, within the Lake area.

On 14.01.2009 the Secretary of the Shomity filed an application to the Chairman, RAJUK, requesting him to recover the area of Nikunjo Lake which is already filled up by some people.

On 28.10.2010 the secretary of the Shomity filed an application to the Hon'ble Prime Minister of the People's Republic of Bangladesh requesting her to protect the Nikunjo Lake from land grabbers.

That 21.12.2010 the General Secretary of the Shomity has filed an application to the Chairman of the Civil Aviation Authority (CAAB) requesting him to take action to prevent building construction within the Zero height area near Hazrat Shahjalal Air Port.

The petitioner obtained some photographs of the lake area in which it is clearly shown that some land grabbers have illegally been encroaching upon the Nikunjo Lake. Despite these illegal activities the authority concerned is not taking any steps to stop it.

Thought the Civil Aviation Authority was informed by the Shomity of the violations of Rules, yet no action has been taken which is frustrating the provisions of law.

The petitioner also tried to draw the attention of the Director General of the Environment Directorate by serving an application to the latter, requesting appropriate steps to stop the illegal earth filling on the Nikunjo Lake.

The respondent No. 3 has filed an affidavit in opposition with statements as figured below:

After having been informed of the construction of building in the Zero height area, the CAAB, in a letter dated 15.3.2011, informed the Chairman, Rajdhani Unnayan Kortipakhya (RAJUK) to take necessary steps to stop building/structure.

Only the Respondent No. 2 (RAJUK), is empowered to evict or remove any illegally established building or construction with its jurisdiction. If necessary, the Respondent No. 3 (CAAB), would request or inform RAJUK to take proper action to evict or remove any building/structure placed in violation of the Civil Aviation Rules.

The respondent Nos. 2 and 5 have filed a conjoined affidavit in opposition in following terms:-

The respondent No. 2 RAJUK initiated a project to build a residential area in Zoar Shahara Mouza Dhaka naming it “Nikunja Residential Area”. RAJUK also finalized a layout plan for the said Residential Area in which a lake was shown specifically. RAJUK also published a notification with the prospectus citing all the facilities of the project.

It is not true that without any reasonable explanation the Chairman of RAJUK has failed to take proper steps to stop earth filling activities or that “RAJUK has failed to perform its legal duty”. On getting information about filling of earth in the lake area of Nikungo-1, RAJUK has taken steps to investigate into the matter through concerned officials of RAJUK and after investigation, a report has been submitted and on the basis of the same, RAJUK had already cancelled land utilization permit earlier issued in favour of the Cadet College Club Limited. An FIR, registered as Khilkheth Police Station Case NO. 10(10)07 has also been lodged against persons who are connected with filling of earth in the lake area of Nikunjo Project.

As the Rule ripened for disposal Mr. Manzil Murshid, advanced elaborately the petitioner’s assertion as figured in his pleading.

M/S. Akhtar Imam, A. Q.M. Safiullah and Shah Md. Sirajul Hoque, representing various respondents, were all in consensus in orchestrating the view that impediment on the encroachment is a must and illegal constructions are to be halted.

This **consensuality** has made our job rather easy. When the petitioner’s view is subscribed to by the respondents, we find no reason not to endorse the petitioners claim. The question, as it transpires, is who will bell the cat.

The Rule is accordingly made absolute.

All the respondents, RAJUK and the Police in particular, are directed to take infallible steps stop immediately, all kinds of encroachment upon and around the lake area, and to stop all illegal constructions, land grabbing in the area and to dismantle, remove all illegally erected structures therefrom without delay.

There is no order on cost.
