

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

Writ Petition No. 4091 OF 2017

In the matter of:

An application under article 102 of the Constitution
of the People's Republic of Bangladesh.

AND

In the matter of:

Hazi Md. Nazrul Islam

....Petitioner

-Versus-

Bangladesh, represented by the Secretary, Ministry
of Environment and Forest, Bangladesh Secretariat,
Shahabagh, Dhaka and others

..... Respondents

None appears

..... For the Petitioner

Mr. Muntasir Uddin Ahmed, Advocate

.... For the respondent No. 2

The 26th August, 2021

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice Md. Mahmud Hassan Talukder

Md. Khasruzzaman, J:

This is an application for discharging the Rule.

In the application under article 102 of the Constitution, on
26.04.2017 the *Rule Nisi* was issued calling upon the respondent Nos.
2-5 to show cause as to why the impugned Memo No.30. 26. 38. 3.
691.210914/স্মা- 1263 dated 29.12.2016 issued under signature of the
respondent No.4 for removal of the Brick field of the petitioner and

giving him only 15 days notice should not be declared ultra vires and illegal to have been issued without lawful and is of no legal effect and/or pass such other or further order or orders as this Court may seem fit and proper.

At the time of issuance of the Rule, the impugned Memo No. 30.26.38.3.691.210914/অপী- 1263 dated 29.12.2016 was stayed for a period of 6(six) months from 26.04.2017 and subsequently, it was extended time to time and lastly on 30.12.2019 it was extended for a period of 6 (six) months from date and thereafter the said order was not extended and as such it was expired on 29.06.2020.

The respondent No.2 filed an affidavit-in-opposition and an application for discharging the Rule, and those were receipt by the learned Advocate for the petitioner.

Mr. Muntasir Uddin Ahmed, the learned Advocate for the respondent No. 2, submits that the petitioner obtained Environment Certificate from their office and thereafter it was extended till 30.06.2016 and subsequently his Environment Certificate was not renewed. But the petitioner on the basis of this writ petition has been continuing his business within one kilometer from the newly established Central Jail, Rajendrapur, Keranigonj. He also submits that if the petitioner is aggrieved by any order passed by the Deputy Director of the Department of Environment, he can file appeal under section 14 of the Bangladesh Environment Conservation Act, 1995 and as such this writ petition is not maintainable.

The petitioner did not deny the factual matter as stated by the respondent No.2 that the brick field is situated within one Kilometer from the Central Jail, Rajendrapur, Keranigonj and thus it goes against the petitioner.

It is stated that section 8(4) of the ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ states that prior the enforcement of this section, if any clearance certificate holder has already established the brick kiln within the prohibited area or within the distance as stated in sub section (3) , then, he will transfer the said brick kiln in a suitable place as per provision of this act within 2 years of time from the enforcement of this Act, otherwise, his licence will be cancelled. Despite expiry of said 2 years of time in 2015, the petitioner did not transfer his brick field as per the Act, rather, he has been operating the brick field in question without any ECC or its renewal and thereby, the Deputy Director of Environment issued the impugned letter of direction upon the petitioner to transfer his brick field within 15 days upon stopping the operation of the brick field, otherwise, legal action would be taken against him (Annexure-G).

It is stated that writ petition is not maintainable in its present form as the petitioner has challenged the order of direction given by the Deputy Director of the Department of Environment to transfer his brick field within 15 days and against the same, there is an appropriate forum available for the petitioner to agitate his grievances by filing appeal before the Appellate Authority as per section 14 of the

Bangladesh Environment Conservation Act, 1995. However, the petitioner filed the instant writ petition without exhausting the given statutory alternative forum, thus, appreciating the same, the Rule may kindly be discharged.

It is stated that the brickfield in question is situated within 1 kilometer area of prohibited zone which is complete violation of section-8(3)(ka) and (Umo) of the ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ and based on the same, the Deputy Director of the Department of Environment has rightfully and with lawful authority issued the letter containing direction upon the petitioner to transfer his brick field in an environmental suitable place.

It is stated that the Environment Conservation Act is the parent law and the respondent Ministry and Department of Environment are the regulatory body and retains the authority to issue Environment Clearance Certificate (ECC) under different categories and renewal of it and in the event of violation of any of the given conditions stipulated in the ECC, the Department of Environment retains the authority to take any appropriate action under the parent laws, which includes issuance of relocation or removal or appropriate notice and thus, as per section 4 of the Environment Conservation Act, 1995, the Director General of the Department of Environment can delegate his power and function to any person for the conservation of the environment, and improvement of environmental standards, and for the control and mitigation of environmental pollution and in pursuant

to the same, the Deputy Director of Environment has issued the impugned letter of direction. Thus, the respondent No. 4 has issued the same with lawful authority which got legal forces and the petitioner is bound to obey the direction.

It appears that section 8(4) of the ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ provided the petitioner 2 years of time from the date of enforcement of this Act to transfer his brick field in an environmental suitable place which was expired in 2015, despite so, the petitioner, without transferring the brick field, has been operating the same without any Environment Clearance Certificate or its renewal and thereby, finding no alternative, the respondent No. 4 directed the petitioner to transfer his brick field within 15 days upon stopping the operation of the brick field.

Considering the submissions of the learned Advocate for the respondent No.2 and the statements made in the application, we have found substance of the application.

Accordingly, the application is allowed.

In the result, the *Rule Nisi* is discharged.

Communicate the order.

Md. Mahmud Hassan Talukder, J:

I agree.