

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

Writ Petition No. 4929 OF 2018

In the matter of:

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

AND

In the matter of:

Sanjib Kumar Kundu and others

...Petitioners

-Versus-

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

..... Respondents

Mr. MM Zulfikar Ali Hyder, Advocate

..... For the Petitioners

None appears

.... For the respondents

The 19th September, 2021

Present:

Mr. Justice Md. Khasruzzaman

and

Mr. Justice Md. Mahmud Hassan Talukder

Md. Khasruzzaman, J:

On an application under article 102 of the Constitution, the
Rule Nisi was issued calling upon the respondents to show cause as
to why decision of the respondents to remove/demolish part of
Kundu Market at Plot No. 338, Khatian No.36, J.L. No. 191,
Mouza: Naranpur, Police Station: Pangsha, District: Rajbari
belonging to the petitioner No.1 pursuant to six(06) separate

notices vide Memo No.05.30.8200.020.27.007.12-409 all dated 20.03.2018 addressed to the petitioner Nos.2 to 7 (Annexures-D series) should not be declared to have been issued without lawful and is of no legal effect and as to why a direction should not be given upon the respondents not to disturb/demolish the petitioners' aforesaid building pursuant to the six(06) separate notices vide Memo No.05. 30. 8200. 020. 27. 007.12-409 all dated 20.03.2018 addressed to the petitioner Nos.2 to 7 (Annexures-D series) and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts for disposal of the *Rule Nisi*, in short, are that:

The petitioner No. 1 is the owner of the case property measuring 15 decimals of land in R.S. Plot No. 338 appertaining to R.S. Khatian No. 36 under Mouja No. 191 Narayanpur, Police Station: Pangsha, District: Rajbari. The petitioner No. 1 constructed the market i.e. Kundu Market on the said land and other petitioners took rent the shops of the market from the petitioner No. 1.

The respondent No.3 on behalf of the respondent No.2 issued notice to the petitioners under section 5(1)of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970. Thereafter, the petitioners filed this writ petition and obtained the Rule.

Mr. MM Zulfikar Ali Hyder, the learned Advocate for the petitioners submits that the petitioner No.1 purchased the property and thereafter he took permission from the authority for constructing a building, accordingly, he constructed a market on the property and the respondent No.3 without following the provision of law issued the eviction notice which is clear violation of law. He further submits that the petitioner No. 1 has been in possession of the case property and he deposited the tax to the government regularly. But the respondent No. 3 without considering the title of the petitioner No. 1 issued impugned notices which needs to be interfered by this Court otherwise he will be seriously prejudiced.

Heard the learned Advocate for the petitioner and perused the application and the annexures annexed thereof.

It appears from the Annexure-D series vide Memo No. 05. 30. 8200. 020. 27. 007.12-409 all dated 20.03.2018 that the respondent No. 3 issued impugned notices under section 5(1) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 to evict the petitioners as unauthorized occupant of the case property. It further appears from section 10 of the said Ordinance that if any order passed under section 5 then any aggrieved persons can file appeal before the Divisional Commissioner.

The petitioners without going there travelled a wrong forum and as such this writ petition is not maintainable.

However, the petitioner is at liberty to file appeal before the Divisional Commissioner and the Divisional Commissioner is directed to dispose of the appeal on merit, if the petitioners files any appeal within 30 days from the date of receipt of the judgment.

Accordingly, the *Rule Nisi* is discharged.

Communicate the order.

Md. Mahmud Hassan Talukder, J.

I agree.