

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

Writ Petition No. 3399 of 2020

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Tarequddin Mahmud and others

....Petitioners

-Versus-

The Secretary, Ministry of Local
Government, Rural Development and
Cooperatives, Bangladesh Secretariat,
Dhaka and others

....Respondents

Mr. Mohammed Ziaul Hoque, Advocate

....For the Petitioners

Mr. Sayed Misbahul Anwar, Advocate

....For the Respondent Nos. 02 to 04

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice S. M. Masud Hossain Dolon

Heard on: 19.02.2024

Judgment on: 11.07.2024

S.M. Masud Hossain Dolon, J:

On an application under article 102 of the Constitution, the
Rule Nisi has been issued in the following terms:

"Let a Rule Nisi be issued calling upon the respondents
to show cause as to why the direction upon the
petitioners to vacate possession and the action of
respondent No. 4 taking attempt to demolish or
dismantle the homestead, tin shed building and
structures of petitioners under the scheduled District-
Chattogram, P.S-Kotwali, Mouza-Ghat, Forhabbag

Holding No. 391 Serajuddola Road, Anderkilla Kotwali (2980 sft along with tin shade house of petitioner No. 1) (649 sft along with tin shade house of the petitioner No. 2) (649 sft along with tin shade house of petitioner No. 3) bounded by North-Islamabad Town Co-operative Credit Society Building South-Oxford press and Azadi Building East-Red Crescent Society Building West-Serajuddola Road should not be declared to be without lawful authority and of no legal effect and /or pass such other or further order or orders as to this Court may seem fit and proper.”

Facts relevant for disposal of the Rule in short, are that the petitioner in this writ petition was threatened to vacate the possession furthers illegally attempted to demolish or dismantle the homestead, building and structure of the petitioners without due process of law.

Father of the petitioner No.1 Mr. Advocate Nurul Alam Chowdhury who was a very well known Advocate in Chattogram became tenant under the Islamabad Town co-operative Credit Society Ltd, Respondent No. 5 (thereafter in short, Society) during Second World War. By spending his own money, he constructed a semi pucca house thereon. However, after his demise, his wife, i.e. mother of the petitioners became the tenant under the Society and one of the Petitioners’ brother also made application in the year 2003 to treat him as co-tenant which was allowed by the Society. Accordingly, the petitioner No. 1 paid the rent regularly and without any objection from the Society at any time. The petitioner No. 2 also

took a shop along with the land as a tenant by way of rent from the Society since the year of 1967. By spending his own money and taken permission from the Society, he constructed and developed the house and has been continuing his business thereon by paying rent duly. Trade License, Utility lines, like gas, water, electricity etc. are in the name of the petitioner and his business institute "Alam Engineering Works" and the petitioner has been duly making payments of utility bill. The father of the petitioner No. 3 late Mulana Abdul Mannan who was a businessman in Chattogram became tenant under the Society since 1958. By spending his own money and was taking permission from the Society, he constructed and developed the house and has been continued his business thereon under the same and style of "Peeren-E-Refrigeration & Engineering Works". After his demise, his heirs are paying rent duly. As a result, all the petitioners have become non ejectable tenant under the Society in the Non Agricultural Tenancy Act, 1941.

On 27.10.2014, the management of the Society along with some other persons trespassed into their house/shop and asked the petitioners to vacate the house immediately. Finding no other alternative, the petitioner No. 1 filed other suit No. 394/2014, Petitioner No. 2 filed other suit No. 425 of 2014 and petitioner No. 3 filed Other Suit No. 427 of 2014, before the Joint District Judge, First Court, Chattogram for declaration and permanent injunction. In

those suits, the petitioners filed an application for temporary injunction under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure and prayed for restrain the Society from trespass into house from changing nature and character of the house and from evict the petitioners illegally. However, upon hearing the court was pleased to pass an order of temporary injunction as prayed for which has extended time to time till today.

Thereafter the Society filed an application under section 50(1) (Ka & Kha) of the Cooperative Society Act 2001 before the District Co-operative officer, Chattogram against all the petitioners which were registered as Dispute Case No. 05 of 2001, 07 of 2015 and 06 of 2015 respectively with a prayer for declaration that the petitioners are illegal tenant and also with a prayer for taking necessary steps for evict the petitioner. The petitioners appeared and filed a written objection and denied all the material allegations. District Co-operative Officer by order dated 20.03.2016 and 22.03.2016 allowed all the dispute cases. The petitioners against the said award filed writ petitions before this Division and upon hearing this Division was pleased to make the Rules Absolute holding that the petitioners are non ejectable tenant.

The Society from a quite long time has tried to evict the petitioners with a specific goal to construct a commercial building thereon so that the managing committee and some vested quarter

may gain personally by enter into contract with developers. However, being failed legally, some members of the Society instigated Chattogram City Corporation to demolish the building. On 25.02.2020, the Executive Magistrate came to the house of the petitioners along with other official and tried to evict the petitioners illegally but due to resistance, they failed and then they directed the petitioners to vacate the house within one week on the alleged ground that the structures are old and have become dangerous for public habitation. The Executive Magistrate also threatened the petitioners that in case of failure, the structures would be dismantled. The petitioners on 03.03.2020 made a representation to the Chattogram City Corporation stated that there are tin shed structures in the land which cannot be risky in any way. Furthermore, at this moment injunction order is in force passed by Joint District Judge, Chattogram. It was also informed that in Writ Petition No. 4956 of 2016, 6107 of 2016, 6108 of 2016 respectively this Division was pleased to make the Rule Absolute.

Thereafter, having found no other equally efficacious remedy the petitioners filed the instant writ petition and obtained the Rule.

Mr. Mohammad Ziaul Hoque, learned Advocate for the petitioner submits that no notice was issued ever by the Chattogram City Corporation and the Executive Magistrate and the petitioners were given no opportunity of reasonable hearing and as such the

actions of the Respondents are illegal, without lawful authority and is of no legal effect. He further submits that the petitioners filed other suit No. 394,425 and 427 of 2014 which are still pending for disposal and it is also admitted that in the said suits injunction was granted and the order of injunction is still in force. By Judgment dated 31.10.2017 this Division made Rule absolute in several writ petitions. Being failed everywhere the Society instigated City Corporation to remove the building. The Society did not challenge the order passed by the City Corporation dated 02.09.2014 rather deposited money which clearly proves that they instigated the City Corporation. He further submits that City Corporation made no inquiry whether the building is old or risky for inhabitation rather they issued letter for remove the building and relied on the so called inquiry made by the CDA. On the other hand, inquiry report itself bears no seal of any official and before inquiry no notice was ever given to the petitioners. Since, the Society could not evict the petitioners legally and they became failed to be benefitted financially. On 21.02.2023 official of the Society with ulterior motive was intentionally set fire to the building in question and resultantly, brother of the petitioner No. 2 died. Thereafter the Society filed Criminal Miscellaneous case No. 378 of 2023 before the Court of Additional District Magistrate under section 145 of the Code of Criminal Procedure which was ultimately dismissed. However, since whole building is already burnt,

the notice issued by the city corporation has become infructuous. Mr. Hoque also submits that clause 17.1 of the Third Schedule of the City Corporation Act 2009 states that if City Corporation thinks that if any building is risky for inhabitation, then they can ask the owner of the building to take necessary steps and in case of owner's failure City Corporation can take necessary steps. Clause 17.2 states that if City Corporation thinks that any building is unfit for inhabitation they by issue notice and can also restrain for inhabitation until necessary renovation is done and hence City Corporation has no authority at all to make any direction for removing the building. Learned Advocate lastly submits that City Corporation never served any notice to the petitioners or assigned any reason why the shop and residential houses of the petitioners are liable to be demolished, as such, act and conduct of the City Corporation is malafide and without lawful authority.

Mr. Syed Misbahul Anwar, the learned Advocate for the respondent Nos. 2 to 4 submits that all legal formalities of the Local Government (City Corporation) Act, 2009 Chattogram City Corporation, Chattogram issued a notice to Respondent No. 4 under section 41 clause 17 of the Third Schedule of the Local Government Act for removal of the building of the alleged land in question. He further submits that an inquiry was held in the land in question on 16.07.2013 from this investigation it is evident that an old two-

storied building and beam, column, wall, roof has appeared on the said place. And the owner of the building, when asked to show the approved design, expresses inability to show the approved design at the time. Learned Advocate finally submits that the instant writ petition is not maintainable in terms of the section 41 clause 17 of the Third Schedule of the Local Government (City Corporation) Act, 2009 and as such the rule is liable to be discharged.

We have perused the writ petition and all other relevant papers submitted by the petitioners in connection with the contents of this writ petition, supplementary affidavit and also affidavit in opposition submitted by the Respondent Nos. 2 to 4. It appears that the petitioner is a tenant and by spending money and taking permission from the Society they constructed a semi pucca house thereon and are paying rent duly.

Thereafter Chattogram Development Authority (CDA) made an inquiry and submitted report that the building is old and owner failed to show any building plan. On the basis of the inquiry, CDA issued a letter and directed to remove the building within 15 days as the building is old and risky for inhabitation. Later, CDA requested Chattogram City Corporation to take necessary steps for removing the building.

From the record, it appears that City Corporation itself made no inquiry whether the building is old or risky for inhabitation rather they issued letter for removing the building relying on the inquiry made by the CDA. On the otherhand, inquiry report itself bears no seal of any official and before inquiry no notice was ever given to the petitioners. No copy of the said report was given to the Petitioners and as such the inquiry was motivated one. Furthermore, no notice was issued ever by the Respondent No. 2 and 4 and the Petitioners were given no opportunity of reasonable hearing before issuing the letter for removal of the building and as such the actions of the Respondents are illegal without lawful authority and against the principle of Audi alteram partem.

Admittedly, the Petitioners filed Other Suit No. 394, 425 and 427 of 2014 which are still pending for disposal and it is also admitted that in the said suits injunction was granted and the order of injunction is still in force. By Judgment dated 31.10.2017 High Court Division made Rule Absolute in Writ Petition No. 4956, 6107 and 6108 of 2016. In the said judgment, the petitioners were treated as non ejectable tenant and the Respondent No. 5 never challenged the judgment. In the said writ petitions since order was passed by the District Co-operative officer during subsistence of injunction order, it was observed that:-

“Before parting with the case we like to note that the Respondent No. 2, District Co-operative Officer during pendency of House Rent Control Cases and Civil Suits before the competent civil courts and subsistence of an order of injunction proceeded with the matter which is the subject matter for adjudication by the court. Thus, it can fairly be said that the Co-operative Officer in passing his orders has clearly usurped the power of the civil court. His conduct too is not free from censure because it was he who flouted the order of injunction passed by the court. The respondent No. 2 showing utter disregard to the order of the court, deliberately proceeded with the hearing of the dispute cases and passed awards allowing the same beyond his jurisdiction and violating the order of injunction. It is not only a despicable attempt to demeaning the authority of the civil court but also endangers the quality, dignity and integrity of the government officials as a whole in general and the concerned officer, the Respondent No. 2 in particular. It is not at all

desirable and expected from a government officer like the Respondent No. 2.

Therefore, action taken and awards passed by the Respondent No. 2 regarding the matter already before the civil court for adjudication in which the Respondent No. 3, society is a party is an affront to a judicial proceedings and is an attempt to preempting a judgment not to be condoned in any way.”

The petitioner submits that Respondent No. 5 being failed in their attempt before the court of law instigated the CDA and City Corporation to dismantle the semi pucca houses with an ulterior motive. From the Annexure-6 of the Affidavit in opposition filed by the City Corporation it appears that after the order passed by City Corporation dated 02.09.2014, the secretary of the Respondent No. 5 without challenging the order surprisingly deposited money deposited money which clearly supports the allegation made by the petitioner.

Clause 17.1 of the Third Schedule of the City Corporation Act 2009 states that if City Corporation thinks that if any building is risky for inhabitation, then they can ask the owner of the building to take necessary steps and incase of owner’s failure, City Corporation can

take necessary steps. Clause 17.02 states that if City Corporation thinks that any building is unfit for inhabitation they by notice can restrain for inhabitation until necessary renovation is done and hence City Corporation had no authority at all to make any direction for removing the building directly. As a result, in one hand without independent inquiry City Corporation cannot issue any notice for removing the building on the other hand according to the ACT they have no authority or power to issue notice directly to remove the building.

In view of the above facts and circumstances of the case, we find substances in the submission of the learned Advocate for the petitioner.

Thus, we find merit in this Rule.

Accordingly, the Rule is made Absolute.

The Executive Magistrate, Chattogram City Corporation attempted to demolish or dismantle the homestead, tin shed building and structures of petitioners under the scheduled District-Chattogram, Holding No. 391 Serajuddola Road, Anderkilla Kotwali (2980 sft along with tin shade house of petitioner No. 1) (649 sft along with tin shade house of the petitioner No. 2) (649 sft along with tin shade house of petitioner No. 3) bounded by North-Islamabad Town Co-operative Credit Society Building South-Oxford press and

Azadi Buiding East-Red Crescent Society Building Wes-Serajuddolla Road declared to have been without lawful authority and is of no legal effect.

However, there would be no order as to costs.

Md. Jahangir Hossain, J:

I agree.