

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

**WRIT PETITION No. 12552 OF 2015**

**In the matter of:**

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

AND

**In the matter of:**

Shah Md. Shafiqul Islam and others  
.....**Petitioners.**

**-Versus-**

Bangladesh of the People's Republic of  
Bangladesh, represented by the  
Secretary, Ministry of Environment,  
Bangladesh Secretariat, Shahabagh,  
Dhaka and others

.....**Respondents.**

Mr. Maqbul Ahmed, Advocate with  
Mrs. Sathi Shahjahan, Advocate

.....**For Petitioners.**

Ms. Farhana Afrose Runa, A.A.G.

...**For respondent No.1 & 2.**

Ms. Amatul Karim, Advocate

.... **For Respondent No.3.**

**Judgment on: 12.12.2021**

**Present:**

**Mr. Justice Md. Khasruzzaman**

**And**

**Mr. Justice Md. Mahmud Hassan Talukder.**

**MD. KHASRUZZAMAN, J.:**

In the application under article 102 of the Constitution, the  
Rule Nisi was issued in the following terms:

“Let a *Rule Nisi* be issued calling upon the respondents to  
show cause as to why Clause Nos. 2, 3 and 4 of the Government

Notification vide Memo No. পবম/পরিবেশ-৩/০৪/ইপোনি আ-১/২০১৩/১৫৫ dated 25.02.2014 purportedly issued from the Paribesh Branch-3 of Ministry of Environment and Forest, Government of the People's Republic of Bangladesh directing .. “২। পূর্বতন ইট পোড়ানো (সংশোধন) আইন, ২০০১ এর ৩(৫) ধারা অনুযায়ী দেশের সকল নবসৃষ্ট সিটি কর্পোরেশন/পৌরসভা অথবা সম্প্রসারিত সিটি কর্পোরেশন/পৌরসভা এর বর্ধিতাংশে ইটভাটা (যদি থাকে) সে সমস্ত ইটভাটাসমূহ আগামী ৩০ জুন ২০১৪ তারিখের মধ্যে বন্ধ অথবা স্থানান্তর করার নির্দেশনা রয়েছে। ৩। এছাড়া পূর্বতন আইন অনুযায়ী বিদ্যমান ১২০ ফুট উচ্চতার স্থায়ী চিমনী বিশিষ্ট ইটভাটাসমূহকে আগামী ৩০ জুন ২০১৪ তারিখ পর্যন্ত ২(দুই) লক্ষ টাকা ক্ষতিপূরণ আদায় সাপেক্ষে পরিচালনার অনুমতি দেয়া হয়েছে। ৪। প্রনীত ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ আগামী ০১ জলাই, ২০১৪ হতে কার্যকরী হবে বিধায় অনুচ্ছেদ ২ ও ৩ এ বর্ণিত সুবিধা সমূহ কোনক্রমেই আর বর্ধিত করা হবে না।” so far as it relates to the petitioners brick fields those are situated in different Upazilas under Chandpur District imposing the aforesaid conditions are violative of article 31 of the Constitution which guaranteed freedom of profession and or occupation and violative of the provision of the Bangladesh Environment Conservation Ain, 1995 and the provisions of the ইট পোড়ানো (নিয়ন্ত্রণ) আইন, ১৯৮৯ as repealed by the ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩ as contained in Annexure-E to the writ petition should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as this Court may seem fit and proper.”

It is stated in the writ petition that the writ petitioners after obtaining licence and environmental clearance certificate from the concerned authorities established 120 feet chimney brickfields in different upazilas of Chandpur District under the “ইট পোড়ানো (নিয়ন্ত্রণ)

আইন, ১৯৮৯” by investing huge amount of money on taking loan from the banks and thereafter they got their licences renewed till 30.06.2012 vide Annexures-A and B Series to the writ petition and has been manufacturing the bricks in accordance with law. But the Government vide Memo No. পবম/পরিবেশ-৩/জেপ্র/ (ইপোনি)-১/২০০৮/৩৯১ dated 12.07.2010 directing the brickfield owners to get their existing 120 feet chimney brickfields converted into Hybrid Hoffman Kiln/Zigzag Kiln/Vertical Shaft Brick Kiln with direction upon the relevant authority to renew the existing environmental clearance certificate and licence only upto two years. In this respect it is stated that the petitioners do not have any idea about the models as directed but they came to know from the expert that conversion into the aforesaid models is a long process and it requires experts/machineries which are not available in our country and as such, the Government extended its earlier time frame upto 31<sup>st</sup> March, 2013 for installation of the same vide Memo dated 02.01.2012 with a condition to pay a fine of TK.1,00,000.00 (One Lac) vide Annexure D to the writ petition. Thereafter, the Government published the “ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩” through Bangladesh Gazette on 20.11.2013 with effect from 01.07.2014 upon repealing the earlier Act of 1989 pursuant to which the

Ministry of Environment and Forest Affairs issued the impugned Clause Nos. 2, 3 and 4 vide Notification under Memo No. পবম/পরিবেশ-৩/৪/ইপোনিআ-০১/২০১৩/১৫৫ dated 25.02.2014 (Annexures-E and E-1). Under such circumstances, the writ petitioners filed an application dated 29.11.2015 before the respondent No.4 with a prayer for extension of time to convert their 120 feet chimney brickfields into environment friendly Zigzag Kiln vide Annexure-F to the writ petition but the respondents did not pay any heed to the same.

In such backdrop of the matter, the writ petitioners have challenged Clause Nos. 2, 3 and 4 vide Notification under Memo No. পবম/পরিবেশ-৩/৪/ইপোনিআ-০১/২০১৩/১৫৫ dated 25.02.2014 (Annexures-E) and obtained the above *Rule Nisi*.

The notice of the Rule Nisi having been served upon the respondents, respondent No.4, Director General, Environment Directorate under the Ministry of Environment, Forest and Climate Change Affairs has entered appearance in this Rule Nisi through Ms. Amatul Karim, the learned Advocate and filed affidavit-in-opposition denying all material allegations made in the writ petition and contending *inter alia* that in this writ petition the petitioners have 25 brickfields out of them 03 brickfields belonging to petitioner Nos. 20, 21 and 25 are Zigzag brickfields but the other

22 brickfields belonging to petitioner Nos. 1 to 19, 22, 23 and 24 are chimney brickfields which are prohibited by the “ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩” through Bangladesh Gazette on 20.11.2013 with effect from 01.07.2014. It is contended that for the purpose of protecting the environment from pollution, to protect the fertility of the land and forest, the Government has decided to convert existing 120 feet chimney brickfield into improved environment friendly modern technology and as such issued notification dated 15.07.2010, 25.02.2014 and 12.03.2014 and 23.11.2015 in this respect but the petitioners did not comply with the same. It is further stated that as a plea of non compliance of the Government Notifications and the law, the petitioners has shown lame excuse in the writ petition that modern technologies are not available in Bangladesh but they did not approach the authority to deliver the design of modern brickfields which are available in Bangladesh. It is also stated that most of the writ petitioners subsequent to this writ petition also filed Writ Petition Nos. 17381 of 2017, 12881 of 2016 and 15196 of 2016 and obtained Rule Nisi and interim order of injunction and as such, the present Rule Nisi has become infructuous.

Mr. Maqbul Ahmed along with Ms. Sathi Sahjahan, the learned Advocates for the petitioners has submitted that the petitioners after obtaining necessary licence and environmental clearance certificate from the relevant authorities started their business of manufacturing bricks under the law of 1989 and they are getting their licences renewed from time to time on depositing renewal fees in accordance with law but without giving any notice the respondents issued the impugned Notification dated 25.02.2014 stopping the lawful business of the petitioners which are violative of articles 31 and 40 of the Constitution and as such the same is liable to be declared to have been issued without lawful authority and is of no legal effect.

By referring to the affidavit-in-opposition Ms. Amatul Karim, the learned Advocate for the respondent No. 4 submits that to protect environment and public property in the interest of present and the generation to come, the government issued notifications at times and subsequently published the “ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩” through Bangladesh Gazette on 20.11.2013 with effect from 01.07.2014 pursuant to which the writ petitioners have no other option but to convert their existing 120 feet chimney brickfields into zigzag kiln and as such, the present Rule Nisi is required to be

discharged as there is no merit at all in the same. She further submits that most of the petitioners in this writ petition also filed Writ Petition Nos. 17381 of 2017, 12881 of 2016 and 15196 of 2016 and obtained Rule Nisi along with an interim order of direction and as such, the present Rule Nisi has become infructuous. Moreover, the learned Advocate pointed out that the interim direction of not to interfere with the petitioners' brickfields has already expired and the purpose of the Rule has become frustrated and consequently the same is liable to be discharged.

Considering the submissions of the learned Advocate for both the parties and on perusal of the materials on record it appears that as per article 18(A) of the Constitution, the respondents are duty bound to protect environment and public property for the better interest of the present and future generations and as such, the respondents from to time issued several notifications and lastly published the “ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩” through Bangladesh Gazette dated 20.11.2013 with effect from 01.07.2014 pursuant to which the writ petitioners have no other option but to convert their existing 120 feet chimney brickfields into zigzag kiln. It appears that probably the writ petitioners appreciating purpose of the law have filed application dated 29.11.2015 to the respondent No. 5

vide Annexure-F to the writ petition with a prayer for giving time to have their 120 feet chimney brickfields converted into the improved environment friendly modern technologies field like Zigzag Kiln and side by side the writ petitioners have filed the present writ petition just after three days of filing the application dated 29.11.2015.

It appears that at the time of issuance of the *Rule Nisi* on 09.12.2015, an interim order was passed directing the respondents not to interfere with running their (petitioners) brick fields till 30.06.2016 with clear terms /expressions that no further extension will be given.

So, it is clear that by the interim order the writ petitioners were given an opportunity of conversion of their chimney brickfields into Zigzag Kiln upto 30.06.2016. But till today the writ petitioners did not avail such opportunity to comply with the law. It further appears that challenging the provision of the “ইট প্রস্তুত ও ভাটা স্থাপনা (নিয়ন্ত্রণ) আইন, ২০১৩” some of the petitioners filed writ petitions rendering the present writ petition to be infructuous. It also appears that the petitioners at the time of obtaining the Rule has relied on some writ petitions being Writ Petition Nos. 8394 of 2014, 8712 of 2014 and 8715 of 2014 which were filed challenging the same notification dated 25.02.2014. The learned Advocate for the respondents



informed this Court that the *Rules Nisi* issued in those writ petitions were discharged in 2020.

In view of the aforesaid facts and circumstances, we do not find anything to interfere with the impugned notification and moreover, the opportunity, as asked for by the petitioners before the respondents, as given by the interim order of this Court being not availed of, the *Rule Nisi* has become infructuous and as such, the same is liable to be discharged.

In the result, the *Rule Nisi* is discharged as being infructuous without any order as to costs.

Communicate the order.

**MD. MAHMUD HASSAN TALUKDER, J:**

I agree.