

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

WRIT PETITION NO. 7356 of 2014

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Human Rights and Peace for Bangladesh
represented by its President Advocate Manzil
Murshid and another

.....Petitioners

-Versus-

Bangladesh and others

.....Respondents

Mr. Manzill Murshid, with
Mr. Sanjoy Mandal, and
Mr. Ripan Barai, Advocates

.....for the petitioners

Mr. Amit Das Gupta, DAG

.....for the respondent no.1

Mr. Md. Abdul Alim Miah, Advocate

.....for the respondent No.11

*Heard on: 10.01.2022, 11.01.2022, 13.06.2022 &
04.08.2022*

Judgment on : 16.08.2022.

Present:

Ms. Justice Naima Haider

&

Mr. Justice Md. Khairul Alam

Naima Haider, J;

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the implementation of the provisions of Section 12(3)(c) and section 19(1) and (2) of the Antiquities Act, 1968 should not be ensured by taking appropriate steps by the respondents and why a direction should not be given upon the respondents to protect the historical and archeological site of the Shajadpur Rabindra kacharibari, Shirajgonj as per articles 23 and 24 of the Constitution of Bangladesh and

why a direction should be given upon the respondent to demolish/evict all illegal construction/structure near the culturally important archeological site of Shajadpur Rabindra Kacharibari, Shirajgonj which was constructed violating the provision of law and instructions of the authority and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts leading to issuance of the Rue Nisi, in brief, are that: The organization Human Rights and Peace for Bangladesh (HRPB) is a non profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights in particular. The petitioners are hereby as a public interest litigation challenged the inaction of the respondents in taking necessary steps and to implement the provisions of Section 12(3)(c) and section 19(1) and (2) of the Antiquities Act, 1968 in order to protect the natural existence of historical and archeological importance of the Shajadpur Rabindra Kacharibari, Shirajgonj.

A report was published in the Daily Prothom Alo on 05.08.2014 captioning the head line titling: violation of law and prohibition building is being constructed adjacent to Rabindra Kacharibari, Shajadpur. It was also reported in the newspaper that, few powerful local business people were containing constructions on the land of south portion of Rabindra Kacharibari, Shajadpur violating the provisions of law. It was further reported in the news paper that the building is the multistoried one which is only 10 feet away from the Rabindra Kacharibari, Shajadpur. Moreover, it was further stated in the report that provisions of Antiquities Act have not been followed in case of construction of said building in question. It was also reported that some 65 business people bought some 65 decimals of land near the Kacharibari in 2004 and had started construction of multistoried building thereon. After being informed in 2006, the Archeological Directorate had notice to them in reference to the provisions of Antiquities Act for stopping the construction work and in 2007 the Archeological Directorate gave further notice for violation of earlier prohibition. Ironically, as it may seem from the 30th May of 2014 the people have been constructing the building with a full swing and have been able to complete up to fifth level of the building, which is a complete violation of Antiquities Act as well as the provisions of the Constitution of Bangladesh and a report to that effect was also stopped by a construction work as the instance of the Upazila Authority on 04.08.2014.

From the averments of the pleadings before us under Article 102 it further appear that on 06.03.2008, the Chairman of Yarn Merchant Association, Shajadpur asked for a clearance for building construction thereat on RS Plot No.10919 from the authority in spite of clear legal prohibition and it was further stated on 03.09.2009, the Upazila Nirbahi Officer, Shajahadpur gave a further notice to the Chairman of the Yarn Marchent Association, Shajadpur prohibiting the construction of building citing the reference of the Ministry of Cultural Affairs. It is to be noted here that on 24.06.2011

the Custodian of Rabindra Kacharibari, Shajahadpur, gave a letter to the Regional Director, Archeological Directorate, Rajshahi Division, Tetultala, Bangladesh to take urgent necessary steps for stopping the construction of building as has been erected very adjacent to the Kacharibari. It is further stated here that on 12.06.2014, the Upazila Nirbahi Officer, Shajahadpur gave a further notice to the Chairman of Yarn Merchant Association, Shajadpur prohibiting the construction of building in question and had requested them to stop the construction work of the 2nd floor upwards of the building failing which legal actions would be taken but in vain and hence the writ petition.

An affidavit-in-oppositions has been filed by the respondent no.2.

Mr. Manzill Murshed, learned Advocate for the petitioner submits that due to construction of a multistoried building 10 feet away of the south boundary wall of the historical place as well as the archeological site, the respondents have put the Rabindra Kacharibari in a dangerous situation, which is in violation of section 12 and 19 of the Antiquities Act, 1968. Moreover it is the duty of the government to impose restriction as per section 12 of the Antiquities Act 1968 in case of any constructions but violating the provisions of the law, construction within and near the parameter of the protected immovable antiquity has been done, which is illegal. He further submits that as per the section 12(3)(c) of the Antiquities Act, 1968 building on or near the site of any antiquity is restricted. Hence, the section 12(3)(c) along with section 19(1) and (2) of the Antiquities Act, 1968 imposes a duty upon the Government to restrict any sort of construction activity near the archeologically significant immovable property/building by any one and thereby protect the same. It is the duty of the Government to organize protection and preservation of the antiquities. But in the case of Rabindra Kacharibari's the Government has failed to perform its duties. He next contends that the petitioner the authority has given several notices to the respondent No.11 and others for stopping the construction of the building, which has not been complied any way. Hence, a direction is required to take appropriate steps to stop these construction activities as per the provision of law and also to take appropriate measures in respect of the demolition of the building. Under these circumstances, the respondents are legally bound to take all necessary steps to stop construction activities.

Mr. Md. Abdul Alim Miah, learned Advocate on behalf of respondent no.11 submits that the respondent made their constructions which is far away from the Rabindra Kacharibari and 250 feet away from the back side of the Kachari Bari and as such there is no question for defacing the Kachari Bari in question and as such the allegation made against the respondent under Section 12(3)(C) read with Section 19(1) and (2) of the Antiquity Act of 1968 does not lie and as such the respondents pray that the rule be discharged on the same ground. Furthermore it was contended by the learned Advocate for the respondent that the Sketch Map that two three stored building were built by some other persons which are situated at the North East Side of the Kachari Bari and those 87 and 122 feet away from

the main structure of Kachari Bari. Two other six storied building were built by some other persons situated in the north side of the Kacharibari and those 228 feet away from that main building of the Rabindra Kachari Bari. It would be further evident from the Sketch Map which was provided by learned advocate for the respondent that many other five storied building having been made by other persons on the north west side of the Kachari Bari which are 165 and 208 feet away from the main structure of the Kachari Bari and another six storied building has been built by some other persons on the west side of the Kachari Bari in question which is only 60 feet away from the old building of the said Kachari Bari. The height of the newly built auditorium by the Government situated in the premises of the Kachari Bari, which is also 46 feet. On the other hand it was contended by the learned advocate for the respondent that the height of the structures of the respondent up to level 4(four) are 40 feet which are not in way much higher than that of newly built auditorium which is situated within the premises of the Kachari Bari in question near the main structure. After the issuance of the rule in question and application for conducting a survey to identify and demarcate the actual area of the Rabindra Kachari Bari pursuant to the C.S and S.A map, structures standing thereon and canal, road and drain on behalf of the respondents was filed and this court had allowed the application and had directed the respondent no. 2 and 3 to conduct the survey with the assistance of the Office of Director General Land Survey in order to identify in the demarcated actual area to Shajadpur Rabindra Kacharibari, Shirajgonj.

Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect.

This Court in exercise of powers under Article 102 of the Constitution can entertain a petition filed by any interested person in the welfare of the people not in a position to knock the doors of this Court. Issues of public importance, enforcement of fundamental rights of a large number of the public *vis-a-vis* the constitutional duties and functions of the State can be treated as a Public Interest Litigation.

This court has been quite conscious that the forum of this court should not be abused by any one for personal gain or for any oblique motive. On perusal of the record and considering the standing of the petitioner, we are of the view that the instant application filed as a PIL is maintainable.

Having gone through the writ petition and the affidavit-in-opposition filed by the respondent no.11 as well as survey report and taking into consideration the facts and circumstances of the case and submissions made by the learned Advocates for the contending parties, this Court notes that the Rabindra Kacharibari is a place of historic importance. There are allegations that this invaluable Kacharibari in question that stands as a landmark in our history, the culpable non-feasance of those functionaries who are bounden with the statutory obligations to protect the Rabindra Kacharibari and other places of equally historic importance are on the way of total dissipation due to some greedy foray of the land grabbers. This is

about time the respondents wake up from slumber and made to work to protect the Rabindra Kacharibari so that generations to come would see it and know its history.

The respondents who appeared are also aware of the legal obligations to protect and maintain the historically important place under article 24 of the Constitution, which states that “The state shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places or special artistic or historic importance or places” and under the relevant provisions of the Antiquities Act, 1968, the Ancient Monuments Preservation Act, 1904 and the Treasure-Trove Act, 1878 which are required to be addressed in terms of the rule and in accordance with the law.

That being the position we are inclined to dispose of the rule keeping in view of the Antiquities Act of 1968 where it was mentioned that “ব্যক্তিমালিকাধীন জমির মালিকের সাথে সমঝোতা চুক্তির মাধ্যমে প্রত্নতাত্ত্বিক নিদর্শন সুরক্ষার ব্যবস্থা করা প্রয়োজন, প্রযোজ্য ক্ষেত্রে চাষাবাদের জমিতে প্রত্নতত্ত্ব সম্পদ রক্ষার্থে শস্য ক্ষতিপূরণ পদ কমপেনসেসন প্রদানের ব্যবস্থা গ্রহণ করা যাবে ”,.

In view of the aforesaid, we dispose of the Rule with the following directions:

1. Respondents no.2 in particular is to inquire if any building or any kind of structure is situated on or near the site of the Shajadpur Rabindra Kacharibari, Shirajganj creates an impediment in the preservation of the natural existence of historical and archeological importance of the Shajadpur Rabindra Kacharibari, Shirajganj.
2. If the respondent No. 2 finds any building or structure situated on or near the site of the Shajadpur Rabindra Kacharibari, Shirajganj as an impediment to preserve the said immovable antiquity, they may take steps in accordance with law.
3. In order to preserve the sanctity and structure of the Raibindra Kacharibari, the respondent No.2 is at liberty to manage the said land including the building and the structure situated thereon in the manner as they think fit and proper for the preservation of the immovable antiquity, namely, Shajadpur Rabindra Kacharibari, Shirajganj.

With these observations and directions, the Rule is disposed of.

There is no order as to cost.

The Rule shall survive as a continuous mandamus.

Communicate the judgment and order at once.
