



10/04/22 20/04/22 28/04/22 20/4/22 20/4/22

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 11165 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:

Md. Syed Nur

... Petitioner

-Versus-

The Government of the People's
Republic of Bangladesh, represented by
the Secretary, Ministry of Environment
and Forest, Bangladesh Secretariat,
Ramna, Dhaka and others

... Respondents

Mr. Abdus Salam Mamun, Advocate

.....For the petitioner

Mr. Muntasir Uddin Ahmed, Advocate

..... For the respondent No. 2

Mr. Minhazul Hoque Chowdhury, Advocate

..... For the respondent No. 7

Heard on 22.9.2021

Judgment on 26.9.2021

Present:

Mr. Justice J.B.M. Hassan

and

Mr. Justice Razik-Al-Jalil

J.B.M. Hassan, J:

By filing an application under article 102 of the Constitution of
the People's Republic of Bangladesh, the petitioner obtained this
Rule Nisi in the following terms:

*"Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the Memo No. 22.02.2200.213.58.001.17-434
dated 10.4.2017 issued by the respondent No. 4 to the
petitioner directing him to demolish his two storied house*

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named Swopno bilash Resort at Daielpara, Saint Martin, Teknaf, Cox's Bazar (Annexure-E) and order dated 25.4.2017 passed by the respondent No. 3 in Enforcement Case No. 506 of 2017-789 directing the petitioner to demolish his establishment (Annexure-F) should not be declared to have been issued without any 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."

Relevant facts, in brief, are that the petitioner has got a two storied house, namely, Swopno Bilash Cottage also called as Swopno Bilash Resort at Dalepara, Saint Martin, Teknaf, Cox's Bazar (schedule property). After purchasing the schedule property the petitioner made an application on 2.9.2010 to the Upazilla Nirbahi Officer, Teknaf, Cox's Bazar to allow him to take construction materials to Saint Martin Island from Teknaf for re-constructing the said house with a copy to the Environment Directorate. The Upazila Nirbahi Officer allowed the application on 15.09.2010 having no objection from the Environment Directorate who received the application on 05.09.2010. On 19.07.2009 the Environment Director, Chattogram by memo No. পরিবেশ/ চবি/ ইসিএ-১৪/ ২০০৯/৩৮৭৩ asked the petitioner to stop construction of hotel over the land and the petitioner submitted a reply to the Director, Environment Directorate, Chattogram stating that he was not constructing commercial hotel and that he was using the house for his own and family use as well as letting out part of it on rent during tourist season. The petitioner completed re-construction of his dwelling house in the

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year 2010 and named it Swopno Bilash Cottage in Zinjira, Saint Martin Teknaf, Cox's Bazar (schedule property) and using it for the purpose of his family use. The said Swopno Bilash Cottage was later re-named as Swopno Bilash Resort and the petitioner paid land development tax and also obtained a Trade License and deposited fees for Environment Clearance Certificate.

All on a sudden, the respondent No. 4 issued the impugned memo bearing No. 22.02.2200. 213.58.001.17-434 dated 10.04.2017 directing the petitioner to remove his establishment from Dealpara, Saint Martin, Cox's Bazar. The petitioner has impugned the said memo dated 10.04.2017 (Annexure-E) in the instant writ petition. Subsequently, the respondent No. 3 passed the order dated 25.04.2017 in Enforcement Case No.506/2017-789 under The "বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (amended upto 2010) shortly, the Act, 1995 directing the petitioner to demolish his establishment. In the said impugned order dated 25.04.2017, reference was made to a Judgment and Order dated 24.10.2011 passed by the High Court Division in Writ Petition No. 6848 of 2009. The petitioner submitted a reply to the Director, Environment Directorate on 20.9.2009 (received on 24.9.2009) stating that he bought the land with establishment and did not make it hotel or restaurant but he was using it for family purposes. The petitioner earlier filed a Writ Petition being No. 9802 of 2017 but could not produce and annex relevant documents mentioned above with the said petitioner and it was thus, not pressed.

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In this backdrop, the petitioner filed this writ petition and obtained the present Rule.

The Directorate of Environment represented by its Director as respondent No. 2 appearing in the Rule has filed an affidavit-in-opposition controverting the statements made in the writ petition. The contentions of the respondent, in short, are that the writ petitioner has challenged the letter dated 10.4.2017 containing direction upon the petitioner to demolish his 2 storied house, namely, Swapno Bilash Resort and the Order dated 25/4/2017 passed in the Enforcement Case no. 506 of 2017-789 directing the Petitioner to demolish his establishment (Annexure-E and F) respectively to the writ petition. Both the orders are appealable in accordance with section 14 of the Act, 1995 (amended in 2010). Therefore, the writ petition is not maintainable in its present form without exhausting the given statutory alternative forum.

Further, section 5 of the Act, 1995 deals with Ecologically Critical Area (ECA) which states as follow:

"(1) If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the Government may, by notification in the official Gazette, declare such area as an ecologically critical area and immediately take necessary action to reaching the destination referred to.

(2) Notification published under sub-section (1) shall mention, related with an area boundary and legal description with map and such map and legal description also displayed in such area and finally all things with considered as documentary description.

(3) The Government shall, take management planning for concerned area after declared such area an ecologically critical area.

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(4) The Government shall, in the notification publication under sub-section (1), specify the dangerous activities or processes that cannot initiated or Continued in an ecologically critical area."

It is stated that Saint Martin Island is an Ecologically Critical Area (ECA) and a Unique Island of Bangladesh and this Island is full of resource of natural turtles, corals, seaweed, algae and others. The Government of Bangladesh has declared the Saint Martin Island as an Ecological Critical Area in 1999 in accordance with section 5 of the Act, 1995 and in that ECA declaration, the Government specifies what should do or not to do in Ecological Critical Area and further, prohibited the following activities:

- "a) Cutting or Collection of natural Forests and Plants;*
- b) All kinds of hunting and killing of wild animals;*
- c) Catching or collecting oysters, corals, turtles and other wild animals;*
- d) All kinds of activities that destroy habitat for animals and plants;*
- e) All kinds of activities that destroy/ change of natural characteristics of land and water*
- f) Establishing any kind of industries that pollutes soil, water and air*
- g) Noise and pollution caused by industries or institutions*
- h) Any kind of harmful action taken to fish and other aquatic organisms."*

In Writ Petition No. 6848 of 2009, the Hon'ble High Court Division of the Supreme Court of Bangladesh passed a Judgment and Order on 24.10.2011 regarding the hotels, motels and resorts established in Saint Martin Island, Cox's Bazar and in the said Judgment, the Court gave the following directions amongst others:

"a) To conduct a survey within 60 days from the date of receipt of this judgment, to identify such buildings which

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- have been established without Environment Clearance Certificate and demolish them as soon as practicable.*
- b) To take infallible measures against erection of any such future construction without Environment Clearance Certificate and demolish them as soon as possible.*
- c) To invoke penal provisions as contained in the Environment Conservation Act, 1995 without hesitation and failure against all violators.*
- d) To take effective steps to protect all types of turtles, snails, oysters and all other marine and wild species in the island in accordance with the notifications referred to above."*

It is also stated that on 2.3.2017, the relevant officials of the Department of Environment held a physical inspection in the Saint Martin Island, Teknaf, Cox's Bazar and found that the Writ Petitioner was operating the resort business in the Ecological Critical Area (ECA) upon erecting a two storied building without any Environment Clearance Certificate which is a clear violation of Bangladesh Environment Conservation Act, 1995 and its Rules, 1997 and accordingly, the Assistant Director of Environment issued a letter dated 10/4/2017 (Annexure-E to the Writ Petition) upon the petitioner directing him to remove his resort structure from the Saint Martin Island within 25.4.2017, otherwise, legal action would be taken against the petitioner including filing cases by the Environment Enforcement Team and also recovery of compensation under section 7 of the Act, 1995. Thereafter, having found no action of the petitioner in removing the resort, the Director of Department of Environment passed an order dated 25.4.2017 in Enforcement Case no. 506/2017-789 (Annexure-F) directing the petitioner to demolish the resort in question and further, issued a show cause notice as to why a legal action should not be taken

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against him for constructing and operating resort without any Environment Clearance Certificate and directed him to give reply within 15.5.2017, failing which, legal action under the Bangladesh Environment Conservation Act, 1995 and Environment Court Act, 2010 would be taken against him.

It is further stated that the writ petitioner made an application for issuance of Environment Clearance Certificate in favour of Swapno Bilash Resort and accordingly, upon receiving of the said application, the concerned Official of Department of Environment held a physical inspection on 2.1.2018 and found that the said Resort was constructed in 2003 without any positional certificate and since then, the writ petitioner has been administering the resort without having any Environment Clearance Certificate. Thereafter, the Assistant Director of Department of Environment issued a letter bearing memo no. 22.02.2200.213.58.006.18.prosha-424 dated 8/3/2018 to the petitioner requesting him not to run the resort without any Environment Clearance Certificate as per law and further, directing to submit relevant documents in support of his application to office of Environment within 22.3.2018, otherwise, his application would be cancelled. Thereafter, the Assistant Director, Department of Environment issued letter bearing a memo no. 22.02.2200.213.58.006.18.prosha-1069 dated 7.6.2018 cancelling the online application of the petitioner due to his failure to submit relevant documents to the office of Environment despite issuance of several letters in this regard.

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কোর্ট ফি



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The respondent No. 7 has also filed an affidavit-in-opposition contending, inter alia, that a subsequent notification dated 29 June, 1999, No. 33/38/99/431 published in the official gazette on 11 July, 2002 prohibited the following activities in the said Island:

- দ্বীপ এলাকা থেকে পাথুরে ও প্রবাল শীলা আহরণ;
- যথাযথ সরকারী অনুমোদন ব্যতীত সকল প্রকার ভৌত নির্মাণ কাজ;
- যে কোন নির্মাণ কাজে পাথুরে ও প্রবাল, শীলার ব্যবহার;
- প্রবাল, শামুক, কিন্নক, কচ্ছপ এবং অন্যান্য বন্যপ্রাণী আহরণ;
- যে কোন প্রকার শৈবাল আহরণ;
- গাছপালা কর্তন বা আহরণ;
- সকল প্রকার শিকার ও বন্যপ্রাণী হত্যা;
- প্রাণী ও উদ্ভিদের আবাসস্থল ধ্বংস বা অনিষ্টকারী সকল প্রকার কার্যকলাপ;
- ভূমি এবং পানির প্রাকৃতিক বৈশিষ্ট্য নষ্ট/ পরিবর্তন করিতে পারে এমন সকল কাজ;
- মাছ এবং অন্যান্য জলজ প্রাণীর ক্ষতিকারক যে কোন প্রকার কার্যবন্দী।”

Mr. Abdus Salam Mamun, the learned Advocate for the petitioner submits that the petitioner filed an application for obtaining environmental clearance certificate on 05.11.2012 and 09.7.2013 but while the matter was pending for decision, without disposal of the said application the respondents issued the impugned notices for removing the petitioner's structures. He further submits that the subject property is the petitioner's only residential accommodation although for his livelihood in the winter season the petitioner uses a small part thereof as guest house for the tourists. He also submits that the alleged inspection on the basis of which the impugned notices were issued, was done in the absence of the petitioner. In support of his submissions, Mr. Mamun refers to the case of Chairman, Board of Intermediate and

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Secondary Education, Jessore and others vs. Md. Amir Hossain and another reported in 56 DLR (AD) 24.

In reply, Mr. Muntasir Uddin Ahmed, the learned Advocate for the respondent No. 2 contends that the reply of the petitioner dated 20.9.2009 and Annexure-C-2 reveal that the petitioner's structures contain 16 rooms and that Annexure-D series to the writ petition show that the petitioner obtained trade license for doing his business in respect of subject property, namely, "স্বপ্ন বিলাস রিসোর্ট" and he discloses his profession as business. Therefore, it is petitioner's admission from his documents that the property is not relating to residential accommodation. He further contends that the petitioner is doing resort business without obtaining environmental clearance certificate in the Ecological Critical Area as declared by the Government on the basis of the judgment and order dated 24.10.2011 passed in Writ Petition No. 6848 of 2009 (Annexure-F to the Writ Petition). He also submits that the writ petition is misconceived inasmuch as the petitioner has got alternative remedy of appeal under section 14 of the Act, 1995.

Mr. Abdus Salam Mamun, the learned Advocate for the petitioner again submits that there are a good numbers of hotels and resorts in the Saint Martin Island who do not have environmental clearance certificates. But the respondents opted pick and choose basis in issuing the impugned notices out of grudge and malafide intention.

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It is also admitted by the learned Advocate for the respondent No. 2 that there are hotels and resorts in the area against whom the respondents have taken steps and a number of writ petitions are pending now.

Mr. Minhazul Hoque Chowdhury, the learned Advocate for the respondent No. 7 has adopted the submissions made by the learned Advocate for the respondent No. 2.

We have gone through the writ petition, two sets of affidavits-in-opposition separately filed by the respondent No. 2 and 7 and other materials on record including the cited cases.

In Writ Petition No. 6848 of 2009 the High Court Division passed judgment and order on 24.10.2011 giving certain directions amongst others, for demolishing hotels, motels and resorts constructed without environmental clearance certificate in the Saint Martin Island (নাবিকেল জিঞ্জিরা দ্বীপ). The directions given in the said judgment are as follows:

1. To conduct a survey within 60 days from the date of receipt of this judgment, to identify such buildings which have been established without Environment Clearance Certificate and demolish them as soon as practicable.
2. To take infallible measures against erection of any such future construction without Environment Clearance Certificate and demolish them as soon as possible.
3. To invoke penal provisions as contained in the Environment Conservation Act, 1995 without hesitation and failure against all violators.
4. To take effective steps to protect all types of turtles, snails, oysters and all other marine and wild species in the island.

(underlined)

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The petitioner's document (trade license), as contained in Annexure-C series shows that the petitioner has been running hotel business with the subject property. Thus, it appears from the record that in the name of "স্বপ্ন বিলাস রিসোর্ট" the petitioner's property is a resort (two storied building) within the area of Saint Martin Island. It is admitted that the petitioner does not have any environmental clearance certificate. Therefore, the impugned orders are absolutely in compliance to the Court's direction and as such, we do not find any impropriety in the impugned notices for our interference. Further, without exhausting the alternative appellate forum, the petitioner files, this misconceived writ petition.

However, from the submissions of both the parties it reveals that there are a good numbers of hotels, motels and resorts in the Saint Martin Island who do not have environmental clearance certificate and those have been constructed within the Ecologically Critical Area (ECA). Therefore, the respondents must take action (subject to Court's order, if any) immediately against those establishment/constructions in accordance with the judgment and order passed in writ petition No. 6848 of 2009.

The respondent No. 7 is also directed to keep follow up as to compliance of directions passed on 24.10.2011 in Writ Petition No. 6848 of 2009 (mentioned above) by the respondents failing which respondent No. 7 shall take appropriate steps in accordance with law.

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In view of the above discussions, we do not find any merit in the Rule.

In the result, the Rule is discharged with the above observations.

There will be no order as to costs.

Let a copy of the judgment and order be communicated upon the respondents at once for their information and necessary action.

J.B.M. Hassan

Razik-Al-Jalil, J;

I agree

Razik-Al-Jalil.

Typed by: Jahir: 20.04.2022.

Read by: 20-4-22

Exam by: 20-4-22

Readied by: 20-4-22

প্রত্যয়িত অবিকল প্রতিলিপি

20-4-22

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

20-4-22

মোঃ আবদুল মোমেন
সুপারিন্টেন্ডেন্ট

20-4-22

মোঃ আবদুল মোমেন
সুপারিন্টেন্ডেন্ট

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”