

পাঁচ  
টাকা



বাংলাদেশ  
কোর্ট ফি

27.10.22, 27.10.22, 27.10.22, 27.10.22, 27.10.22,

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)  
Writ Petition No. 6782 of 2017

In the matter of:

An application under article 102(2) of the  
Constitution of the People's Republic of  
Bangladesh.

-And-

In the matter of:

Abakash Parjatan Ltd. represented by its  
Managing Director.

..... Petitioner

-Versus-

Government of the People's Republic of  
Bangladesh represented by the Secretary,  
Ministry of Environment and Forests and  
others.

Mr. A. F. Hassan Ariff, Senior Advocate with  
Mr. Margub Kabir, Advocate

... For the petitioner.

Mr. Syeda Rezwana Hassan, Advocate

... For the respondent No.7

Mr. Syed Quamrul Hossain, Advocate

... For the respondent No.2

Present:

Mr. Justice J. B. M. Hassan  
and

Mr. Justice Razik Al Jalil

Heard on 17.04.2022, 18.04.2022  
and Judgment on 20.04.2022.

J.B.M. Hassan, J.

The petitioner obtained the 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. 22.02.2200.213.58.001.17-442 dated  
10.04.2017 (Annexure-A) issued by the respondent No. 4 directing the  
petitioner to remove its establishment from Paschim Para, St. Martin's  
Cox's Bazar and order dated 25.04.2017 passed by the respondent No.  
3 in Enforcement Case No. 533/2017-815 under section 7 of the

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Bangladesh Environment Conservation Act, 1995 (amended in 2010) directing the petitioner to demolish its establishments (Annexure-A(1)) shall not be declared to have been issued without lawful authority and is of no legal effect and further as to why the respondent No. 2 shall not be directed to issue Environment Clearance Certificate to the petitioner and/or pass such other or further order or orders as to this Court may seem fit and proper.

Subsequently, by order dated 06.12.2021 a supplementary Rule Nisi was also issued which runs as follows:

“Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the memo No. 22.02.2200.213.71.270.17.Prosha-1019 dated 04.06.2018 (as quoted in Paragraph No. 9 of the instant application) issued by the respondent No. 4 cancelling the application of the petitioner for Environmental Clearance Certificate, without giving any valid and/or cogent reason, should not be declared to have been issued without lawful authority and is of no legal effect and in gross violation of the principles of natural justice and also why a direction should not be issued upon the respondents to dispose of the application of the petitioner for Environmental Clearance Certificate upon taking into consideration the material documents/information submitted by the petitioner in support of its application and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi, in brief, are that the petitioner, a private limited company has been carrying on the business, inter alia, of tourism, travel agency by operating hotels at different places of Bangladesh from 1998. The petitioner constructed a three storied hotel and tin shed cottages at the St. Martin's Island, Upazila-Teknaf, Cox's Bazar (the Hotel) in the year, 1998. After construction of the Hotel, the respondent

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No. 1 i.e Ministry of Environment and Forest declared St. Martin's Island as an "Ecologically Critical Area" (ECA) vide Notification No. পবম-৪/৭/৮৭/৯৯/২৪৫ dated 19.04.1999 published in the official gazette on 20.05.1999. Thereafter the respondent No. 1 vide Notification No. পবম/৪-৩৩/৩৮/৯৯/৪৩১ dated 29.06.1999 published in the official gazette on 11.07.2002 stated that it shall construct marine park and eco-tourism establishment on the Island and further restricted the following activities on the island; (i) collection of stone and coral from the island (ii) any construction without approval from the Government (iii) use of stone or coral in construction (iv) collection of coral snail, oyster, tortoise and other wild animals (v) collection of any kinds of moss (vi) cutting down of trees (vii) all kinds of hunting or killing of wild animals (viii) any activities which destroys habitats of animals or plants (ix) any activities which may spoil/change the nature of the land and water and (x) any activities which is harmful to fish or other aquatic animals.

By publishing the Notification No. পবম/৪-৩৩/৩৮/৯৯/৪৩১ dated 29.06.1999 in the official gazette on 11.07.2002, the Government for the first time restricted construction on the island without approval from the Government. This was done in order to protect the natural beauty of the island and to protect the habitats of animals and plants. The petitioner, even before the publication of the said gazette notifications, was active in ensuring at its own instance that the natural beauty of the island or the habitat of animals/plants are not hampered or disturbed in any way. The motto of the petitioner is for the tourists to enjoy the natural beauty. The

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destruction of such beauty will not serve anyone's purpose. The Government of Bangladesh upon acknowledging that commercial establishments set up prior to the operation of section 12 of the Bangladesh Environment Conservation Act, 1995, amended the said section 12 of the Act vide Bangladesh Environment conservation (Amendment) Act, 2010.

The relevant section 12(2) is quoted below:

“২। এই আইন কার্যকর হইবার অব্যবহিত পূর্ব স্থাপিত শিল্প প্রতিষ্ঠান বা গৃহীত প্রকল্পের ক্ষেত্রে, বাংলাদেশ পরিবেশ সংরক্ষণ (সংশোধন) আইন, ২০১০ কার্যকরের পর অবিলম্বে পরিবেশগত ছাড়পত্র গ্রহণ করিতে হইবে।”

The Bangladesh Environment Conservation (Amendment) Act 2010 came into effect from 05.10.2010. Thereafter, the respondent No. 6 issued Memo No. পঅ/কজকা/সন্ট মার্টিন ইসিএ/০৬৪/২০১১/১১৪ dated 31.01.2013 upon the petitioner directing the petitioner to apply for Environment Clearance Certificate before the respondent No. 2 upon payment of prescribed fees and submission of all required documents including No. Objection certificate from the local authority.

Accordingly, the petitioner submitted application but it is still pending with the respondent No. 2 (Director General, Department of Environment). While the petitioner was awaiting the Environmental Clearance Certificate from the respondent No. 2, all of a sudden the respondent No. 4 (Department of Environment, Cox's Bazar) issued the impugned Memo No. 22.02.2200.213.58.001.17-442 dated 10.04.2017 directing the petitioner to remove its hotel establishment from Paschim Para, St. Martin's Cox's Bazar. The Petitioner vide its letter dated 11.04.2017 approached the respondent

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No. 6 categorically stating that its activities have not at any time affected the environment, to the contrary it has taken steps to ensure that the environment and beautification of the island remains intact. Further, it was also mentioned that during the monsoon and stormy season, the hotel was regularly kept open to be used as a cyclone shelter. Medical camps and other health check ups are regularly organized for the benefit of the local residents. In the end, it was mentioned that the petitioner applied for Environmental Clearance Certificate as per direction of respondent No. 6

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before the respondent No. 2.

Subsequently, in complete ignorance of the statements of the petitioner, the respondent No. 3 (Department of Environment, Chattogram Division) passed the impugned Order dated 25.04.2017 in Enforcement Case No. 533/2017-815 under section 7 of the Bangladesh Environment Conservation Act, 1995 (amended in 2010) directing the petitioner to demolish its establishment. In the said impugned Order dated 25.04.2017, reference was made to judgment and order dated 24.10.2011 passed by the High Court Division in Writ Petition No. 6848 of 2009 filed by Bangladesh Environmental Lawyer's Association (BELA) against Government of Bangladesh and others.

The petitioner was not made a party in the said Writ Petition and as such not aware. The said judgment and order applies for entities which have constructed establishments in violation of the Bangladesh Environment Conservation Act, 1995 and also the Notification dated 19.04.1999 in which

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the St. Martin's island was declared as an Ecologically Critical Area. The petitioner having constructed its hotel prior to the declaration of the island as Ecologically Critical Area, it does not fall within the ambit of the said judgment and order dated 24.10.2011. Further, the respondents failed to carry out any survey as per the judgment and order dated 24.10.2011.

During pendency of the Rule the petitioner filed an application for issuance of supplementary rule stating that after filing affidavit in opposition by the respondent, the petitioner came to know that its application seeking environmental clearance certificate was rejected by the respondents vide impugned order dated 04.06.2018. In the circumstances, the petitioner has also obtained supplementary Rule Nisi challenging the said impugned order dated 04.06.2018.

The Directorate of Environment represented by its Director General (DG) as respondent No. 2 appearing in the Rule Nisi 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 10.04.2017 containing direction upon the petitioner to demolish his 2 storied hotel, namely, Swapno Bilash Resort and the Order dated 25/04/2017 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.

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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.*

*(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 St. Martin Island is an Ecologically Critical Area (ECA) and a Unique Island of Bangladesh; and this Island is full of resources of natural turtles, corals, seaweed, algae and others. The Government of Bangladesh has declared the St. Martin Island as an Ecologically Critical Area in 1999 in accordance with section 5 of the Act, 1995 and in that ECA declaration, the Government specifies the activities to be done and also 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;*

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- 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 St. 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 have been established without Environmental Clearance Certificate and demolish them as soon as practicable.
- b) To take infallible measures against erection of any such future construction without Environmental 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 02.03.2017, the relevant officials of the Department of Environment held a physical inspection in the St. Martin Island, Teknaf, Cox's Bazar and found that the Writ Petitioner was operating the resort business in the Ecologically Critical Area (ECA) upon erecting a

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two storied building without any Environmental Clearance Certificate which is a clear violation of Bangladesh Environment Conservation Act, 1995 and its Rules, 1997. Accordingly, the Assistant Director of Environment issued a letter dated 10/04/2017 (Annexure-E to the Writ Petition) upon the petitioner directing him to remove his resort structure from the St. Martin Island within 25.04.2017, 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. But having found no action in removing the resort, the Director of Department of Environment passed an order dated 25.04.2017 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 against him for constructing and operating resort without any Environmental Clearance Certificate and directed him to give reply within 15.05.2017, 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

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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 08/03/2018 to the petitioner requesting him not to run the resort without any Environmental Clearance Certificate as per law and further, directing to submit relevant documents in support of his application to office of Environment within 22.03.2018, 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 04.06.2018 cancelling the online application of the petitioner due to his failure to submit relevant documents to the office of Environment despite issuance of several notices in this regard.

The Bangladesh Environment Lawyers Association (BELA) has also filed an affidavit in opposition contending, inter alia, are 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;
- বঙ্গোপসে সরকারী অনুমোদন ব্যতীত সকল প্রকার জ্বীত নির্মাণ কাজ;
- যে কোন নির্মাণ কাজে পাথুরে ও প্রবাল, শীলার ব্যবহার;
- প্রবাল, শামুক, সিপুক, কচ্ছপ এবং অন্যান্য বন্যপ্রাণী আহরণ;
- যে কোন প্রকার শৈবাল আহরণ;
- গাছপাড়া 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 জাতিকরক যে কোন প্রকার কার্যকলাপ।

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Mr. A. F Hassan Ariff, learned senior Advocate with Mr. Margub Kabir, learned Advocate appearing for the petitioner submits that the petitioner's establishment started in the year, 1998 as residential hotel and that the "বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (সংশোধনী-২০১০) came into effect from 05.10.2010 incorporating provision requiring the industrial establishment and project starting before the Act, 1995 for taking environmental clearance certificate. Pursuant to the said amendment the Upazila Nirbahi Officer by his letter dated 31.01.2013 directed the petitioner to apply for environmental clearance certificate. He further submits that following the said instruction, the petitioner filed an application for environmental clearance certificate on 20.03.2013 depositing required fees and furnishing all the documents but keeping the matter pending without any decision, the respondents arbitrarily issued the impugned memo dated 10.04.2017 and 25.04.2017 which require interference by this Court. He also submits that the Act, 1995 has been incorporated aiming to preserve the environment and therefore no provision in the law demolish the building of the citizen and as such the impugned memo dated 10.04.2017 is completely without jurisdiction.

Mr. Hassan Ariff has drawn our attention to the impugned order dated 04.06.2018 under the supplementary Rule and he submits that although the petitioner furnished all the relevant papers for issuance of environmental clearance certificate but without considering the same, the impugned memo was issued on the ground of non furnishing relevant required papers. He also submits that the petitioner never received any letter from the respondents as

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to the required papers and even the required papers are not relevant and not applicable for the petitioner.

Ms. Syeda Rezwana Hasan, the learned Advocate appearing for the respondent No. 7 (BELA) has drawn our attention to the judgment and order dated 24.10.2011 passed in writ petition No. 6848 of 2009. At the very beginning the learned Advocate raised the question of maintainability of the writ petition submitting that the petitioner has the alternative remedy seeking readdress against the impugned order in accordance with section 14 of the Act, 1995. She further contends that the impugned order as contained in Annexures-A and A1 have been issued in compliance to the judgment and order passed in writ petition No. 6848 of 2009 and therefore question of violation of natural justice or any illegality does not arise. Further contention of the learned Advocate is that according to petitioner's statement the hotel project started since, 1998 and so the Act, 1995 and the Rules thereunder, 1997 requiring the petitioner environmental clearance certificate is very much applicable and so, section 12(2) of the Act is relevant in respect of the petitioner. She again contends that the respondents' letters requiring relevant documents for issuance of clearance certificate were communicated to the petitioner by registered post and in such, circumstances, the petitioner can not deny as to receipt of the said letters in view of section 27 of the General Clauses Act.

Mr. Syed Quamrul Hossain, the learned Advocate appearing for the respondent No. 2 (Department of Environment) after placing his affidavit in

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opposition, has adopted the submissions as advanced by the learned Advocate for the respondent No. 7.

We have gone through the writ petition, the supplementary affidavit filed by the petitioner, the application for issuance of supplementary Rule, affidavits in opposition separately filed by the respondent No. 2 and 7 and other materials on record.

Section 5 of the “পরিবেশ সংরক্ষণ আইন, ১৯৯৫” (shortly, the Act, 1995) incorporates the provision which runs as follows:

“ধারা-৫। প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষণা-(১) সরকার যদি এই মর্মে সন্তুষ্ট হয় যে, পরিবেশের অবক্ষয়ের কারণে কোন এলাকার প্রতিবেশ ব্যবস্থা (Eco-system) সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বা হইবার আশংকা রহিয়াছে তাহা হইলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা (Ecologically Critical Area) ঘোষণা করিতে পারিবে এবং অবিলম্বে উক্ত সংকটাপন্ন অবস্থা হইতে উত্তোলনের জন্য প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবে।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত সকল প্রজ্ঞাপনে সংশ্লিষ্ট এলাকার সীমানা ও মানচিত্রসহ আইনগত বর্ণনার উল্লেখ থাকিবে এবং এই সকল মানচিত্র ও আইনগত বর্ণনা সংশ্লিষ্ট এলাকাতে প্রদর্শিত হইবে এবং তাহা উক্ত এলাকার দালিমিক বর্ণনা হিসেবে বিবেচিত হইবে।

(৩) কোন এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষণার পর সরকার সংশ্লিষ্ট এলাকার জন্য ব্যবস্থাপনা পরিকল্পনা গ্রহণ করিবে।

(৪) প্রতিবেশগত সংকটাপন্ন বলিয়া ঘোষিত এলাকায় কোন, কোন জাতিকর কর্ম বা প্রক্রিয়া চালু রাখা বা শুরু করা যাইবে না তাহা সরকার উপ-ধারা (১) এ উল্লিখিত প্রজ্ঞাপনে নির্দিষ্ট করিয়া দিবে।”

Pursuant to said provision, the Government by the notification dated 19.04.1999 declared the St. Martin's Island, Teknaf, Cox's Bazar as Ecologically Critical Area (ECA). But due inaction of the respondents in preserving the Island, in the year 2009, at the instance of the BELA Writ

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Petition No. 6848 of 2009 was filed before the High Court Division and after contesting hearing, a judgment and order was pronounced on 24.10.2011 relevant portions of which 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 Environmental 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)

Pursuant to the said judgment and order, the respondents surveyed all establishments within the St. Martin's Island Area and identifying them, started action. In course of such action, the impugned letters dated 10.04.2017 and 25.04.2017 were issued. This situation led the petitioner to file this writ petition.

Now, maintainability of the writ petition having been raised by the respondents, we are deciding the said issue first. From the Rule Nisi obtained by the petitioner it appears that there are two parts, firstly challenging the impugned memos of the respondents dated 10.04.2017 and 25.04.2017 and secondly, rejection of application for environmental clearance certificate and seeking direction upon the respondents to issue

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environmental clearance certificate in favour of the petitioner. To appreciate the submission of the learned Advocate, we have gone through section 14 of the Act, 1995 which runs as follows:

“ধারা-১৪। (১) এই আইন বা বিধি অনুসারে প্রদত্ত কোন নোটিশ, আদেশ বা নির্দেশ দ্বারা কোন ব্যক্তি সংজ্ঞা হইলে তিনি, উক্ত নোটিশ, আদেশ বা নির্দেশ প্রদানের ত্রিশ দিনের মধ্যে সরকার কর্তৃক গঠিত আপিল কর্তৃপক্ষের নিকট উহার বিরুদ্ধে আপিল করিতে পারিবেন এবং আপিলের উপর উক্ত কর্তৃপক্ষের সিদ্ধান্তস্থ চূড়ান্ত হইবে এবং এইরূপ সিদ্ধান্তের বিরুদ্ধে আদালতে কোন মামলা দায়ের করা যাইবে না।  
(২)-(৩) . . . . .”

The impugned memos dated 10.04.2017 and 25.04.2017 were passed referring to the judgment dated 24.10.2011 passed in writ petition No. 6848 of 2009. Further the impugned memo dated 04.06.2018 refusing to grant environment certificate was issued on the ground of non submission of required documents. Considering both the issues, we are of the view that the issues can not be addressed by the alternative forum provided in section 14 of the Act, 1995. Hence, we hold that the writ petition is maintainable.

Now let us decide the propriety of the impugned notices dated 10.04.2017 and 25.04.2017 issued upon the petitioner for demolishing the hotel building in question. It is on record that the petitioner started the hotel business in the year, 1998 and before that the Act, 1995 as well as the Rules, 1997 thereunder was framed. Schedule 1 of the Rules, 1997 shows that the petitioner's hotel falls within the class of “কমলা-র শ্রেণী”. Therefore, the petitioner required to obtain environmental clearance certificate in accordance with section 12(1) of Act, 1995. But the petitioner never took any environmental clearance certificate in running its business and thus,

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there being no implementation of law, the BELA brought the matter before the High Court Division in the form of Public Interest Litigation (PIL) through writ petition No. 6848 of 2019 challenging inaction of the respondents in taking action against the perpetrators who had been running hotels business and others, in gross violation of the Act, 1995. After hearing the High Court Division by the judgment and order dated 24.10.2011 made the Rule absolute giving certain directions as mentioned above.

Pursuant to said judgment and order, the respondents conducted survey within the area of St. Martin's Island. In their course of action, the respondents have issued the impugned orders dated 10.04.2017 and 25.04.2017 as contained in Annexures-A and A1. Therefore, we do not find any impropriety for our interference over those orders.

The second part of the Rule Nisi is seeking a direction upon the respondents for issuance of environment clearance certificate and the supplementary Rule Nisi is rejecting the petitioner's application for environmental clearance certificate. We have considered the submissions of both the parties as well as the impugned order of rejection dated 04.06.2018. It appears that the petitioner was required to file application for environment clearance certificate in accordance with Rule 6(5)(Ga) of the Rules, 1997. Annexure-1 to the writ petition shows that the petitioner filed an application on 20.03.2013 furnishing certain documents. Subsequently the petitioner also filed some other documents on 08.02.2018. However, the respondents by their letter dated 01.03.2018 required the petitioner to file certain more documents for consideration of its prayer and by the memos dated

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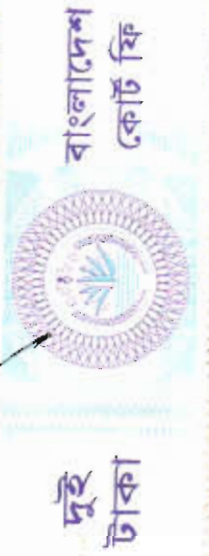
09.05.2018 and 27.05.2018 the respondents issued reminder for furnishing those relevant papers. Thus finding no response from the petitioner, the respondents issued the impugned letter dated 04.06.2018 rejecting the application for clearance certificate for want of non furnishing relevant documents. Although in this regard, Mr. Hassan Ariff submits that the petitioner did not receive the said letters requiring it to furnish the papers but that can not be accepted as those letters being posted under registered post. Moreover, the petitioner was supposed to remain vizilent with the office of the respondents and his application when the matter was long pending.

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However, considering all aspects, if the petitioner can maintain its business observing all the required rules and formalities incorporated in the Act and the Rules, the respondents has to give clearance certificate. But before that the petitioner has no right to run the business without any environmental clearance certificate. Hence, before issuance of any environmental clearance certificate the petitioner shall not be allowed to run business. Therefore, the respondents shall shutdown the business concerned i. e hotel forthwith and the petitioner is at liberty to file a fresh application for environmental clearance certificate in accordance with the Act, 1995 and the Rules, 1997 submitting all necessary papers and following all the required formalities. In that case, the respondents shall consider its prayer in accordance with law expeditiously. Before deciding the issue of granting environment clearance certificate, respondents shall not demolish the Hotel structure subject to the condition that the petitioner shall not run Hotel business before having environmental clearance certificate.

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In view of above discussions, we do not find any merit in this Rule.  
 In the result, the Rule is discharged with the observations made above.  
 Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J:


J.B.M. Hassan


I agree


Razik-Al-Jalil

Typed by: ARazi: 27.10.2022.  
 Read by:  27.10.22  
 Exam. by:  27.10.22  
 Readied by:  27.10.22

18/

  
 27/10/22  
 মোহাম্মদ মাহফুজুল হক ভূঞা  
 প্রশাসনিক কর্মকর্তা

  
 27/10/22  
 মোঃ মোস্তফা কামাল ভূঞা  
 সুপারিনটেন্ডেন্ট

 27-10-22  
 সভাপতি মোঃ মোস্তফা কামাল ভূঞা  
 বাংলাদেশ সুপ্রীম কোর্ট, সইয়েমট বিল্ডিং  
 ১৮-৭২ ইং সানের ১৯২ স্ট্রাইট  
 ঢাকা-১১০০