

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

WRIT PETITION NO. 5915 OF 2005

In the matter of:

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

And

In the matter of

Bangladesh Legal Aid and Services Trust
and others.....Petitioners.

Versus

Government of the People's Republic of
Bangladesh and others.....Respondents.

Ms. Sara **Kamal** [ed correction: Hossain]
Advocate, with

Mr. Md. Idrisur Rahman.

Mr. Pratikar Chakma and

Mrs. Amatul Karim, Advocates,

.....For the petitioners.

No one appears for the respondent nos. 1-8,
10 and 11.

Mr. Md. Jafar Imam, Assistant Attorney
General,.....For the respondent no. 9,

Mr. A.K.M. Nazrul Islam, Advocate,

.....For the respondent no. 12

Heard on: 29-10-2007. 30-10-2007 and
Judgment delivered on: 15-11-2007

Present:

Mr. Justice A. B. M. Khairul Haque

And

Mr. Justice Syed Md. Ziaul Kari
Syed Md. Ziaul Karim, J:

This Rule Nisi was issued, calling upon the respondents to show cause as to why threatening for eviction of the petitioner Nos. 2-5 and thousand other slum dwellers from their peaceful possession of their homestead at Gudaraghat/Vashantek Basti, CS Plot Nos. 776 & 777 Mouza Zoarshahara, JL No. 271, Khatian No. 127, West Vashantek/Gudaraghat section 15 Ward No. (old) 4 (New 95) PS Kafrul, District Dhaka, without due process of law should not be declared illegal and without lawful authority being contrary to right to life as mandated by Article 32 of the Constitution.

Short facts leading to this Rule are that the petitioner no.1, Bangladesh Legal Aid and Services Trust (briefly as BLAST”) a leading legal aid and human rights Organization filed this writ petition in the public interest to protect and promote the fundamental human rights of the people. Petitioner nos.2-5 are citizens of Bangladesh and are by profession shopkeepers, small traders, maid servants and petty private service holders respectively who are living in Gudaraghat Basti (briefly as Basti). The Basti is situated in C.S. and SA. Plot nos. 776 measuring an area 1.15 acres of land and 777 measuring an area 0.50 acres of land, total area 1.65 acres of land, under Zoarshahara Mauza. The Basti was developed in the year 1996. It was a low lying land filled with deep water. The inhabitants of the said Basti have been residing there by making bamboo platform. Most of the residents are victims of river erosion or landless people. By their self motivation they jointly constructed a road of mud from the eastern to the western side of the said Basti, [ed correction: .] They earn livelihood by driving rickshaw van /pulling Cart and some are employed as daily labour in the construction sectors. The land in question was acquired in LA. Case no. 159/61-62 by the Government for implementation of different projects under the Housing Directorate. Thereafter, Mirpur Housing Estate, Dhaka, made a layout plan of section nos. 14-17, of Mirpur Housing

Estate, Mirpur, Dhaka. There are 127 families residing in the said Basti. The petitioners and other slum dwellers are living in the said Basti by using and utilizing utilities such as water, electricity etc. by paying regular electricity and water bills in the name of Dustho Health Centre having address at West Vashantek-1 S.L. no. 3 Dhamal Court, Mirpur, Dhaka. The Government undertook a scheme for rehabilitation of the residents of Vashantek Basti and other Basti which were implemented jointly by the Ministry of Land and North South Property Development Limited (NSPDL) but the said scheme/project was subsequently stopped. One land grabber is trying to grab this land. They have already hanged a notice board titled Chandpur Shomity (Abul Kashem and others) and they are threatening the people to vacate the said Basti immediately. The existence of the said Basti is well-known among the government Ministries and departments including the Ministry of Public Works, Ministry of Home Affairs, Ministry of Women's Affairs and the NGO Affairs Bureau. The Government is actively involved in alleviating the distressed conditions of the destitute people particularly women and children residing in the Basti through various programmes, awareness and co-operation of various government Ministries and agencies. The N. G. O. Affairs Bureau, Ministry of Women and Children Welfare Affairs and various other departments are conducting informal education programmes, primary health care, family planning programme, sanitation and micro-credit programmes in the slums in and around Dhaka City including the said Basti. The slum dwellers of the Basti are able to access credit programmes offered by different N.G.OS. such as, Foundation for disadvantaged women, and Organization for Social Enlistment (OFSU) [ed correction: OFSE] and Dushto Shasto Kendro who have started a micro credit programme for the economic empowerments of the vulnerable and destitute women of the said Basti which are duly approved by the Government. There is a clear and positive duty cast upon the Government under the Constitution to provide for the people inter alia, the basic necessities of life (including food, clothing, shelter, education and medical care), the right to work and the rights of social security, which read together, with the fundamental rights guaranteed by the Constitution, assured to the petitioner nos. 2-5 and the other dwellers of the Basti, the protection of their right to life, [ed correction: .] In spite of such part taken by the Government, some of the interested persons are trying to evict the inhabitants of the basti immediately. Such action for eviction would be violative of the fundamental rights of the petitioner nos. 2-5 and other residents of the said Basti, [ed correction: .]

Feeling aggrieved by such action of the respondents for eviction from the said Bash [sic], the petitioners preferred this writ petition and obtained this present Rule.

The Respondent nos. 1-8, 10 and 11 did not appear to oppose the Rule.

The Rule is contested by the respondent No. 9 by filing affidavit-in-opposition contending inter alia that the land in question including other lands of Mouza Joarghahara [sic], Mirpur, Dhaka were acquired vide L.A. Case No, 159 of 1961-62 for the purpose of establishing modern Sattellite [sic] Town and after duly completing all the legal formalities, Gazette Notification was finally published on 5-11-1970. Thereafter, the

same were transferred and the possession thereof was also handed over to the Housing and Settlement Directorate and as such, the petitioners have no right, title and interest over the Government acquired land and the writ petition has been filed with a malafide intention to frustrate the implementation of the due process of handing over possession to the respective allottees by the concerned authority of the Government. It is also stated that total 1.44 acres of acquired land of C.S. Plot nos. 2 and 3 of Mouza Damal Court and C.S. Plot nos. 776 and 777 of Mouza Joarshahara [sic] was allotted to “Thikana Chandpur” vide allotment letter dated 24-4-2001 and thereafter the Ministry of Land resumed 0.66 acres of land for rehabilitation of Bhasantek [sic] slum-dwellers and the rest 0.78 acres of land remains for allotment. The inhabitants are illegally residing upon the government acquired land as trespassers and the papers showing payment of electric bills and water bills are all created papers for the purpose of filing this writ petition.

The Rule is also contested by the respondent no. 12 by filing affidavit-in-opposition stating that the respondent no. 12, on 31-5-1998 applied for allotment of 5 acres of land to the Hon’ble Minister of Housing and Public Works for establishment, of a housing area, [ed correction: .] The respondent no. 2 by its office letter dated 29-6-1998 requested the Chief Engineer, Directorate of Public Works to give a detailed report. Thereafter, complying with all formalities, in the meeting of land allotment committee, the office of the Commissioner of Settlement dated 13-12-1998 decided to allot 5 acres of land from plot No. 1/7 of Block-D of Section 15, Mirpur, in the name of respondent no. 12. Thereafter the office of the Commissioner of Settlement by allotment letter dated 24-4-2001 allotted 1.44 acres of land to the respondent no. 12 for 99 years. The slum dwellers are occupying the government acquired land illegally. After obtaining allotment letter dated 24-4-2001 the respondent no. 12 deposited Taka 25,09,056/- by treasury chalan [sic] dated 23-5-2001 which was duly received by the office of the Commissioner of Settlement and thereafter respondent no. [ed correction: 2] by its office letter dated 3-6-2001 requested the Chief Engineer of the Directorate of national Housing to hand over the possession to the respondent no. 12. The inhabitants are illegally residing upon the allotted land of the respondent no. 12.

Sara **Kamal** [ed correction: Hossain], the learned Advocate appearing with Mr Md. Idrisur Rahman, Advocate for the petitioners, supports the Rule and submits that the petitioners are paying rents, bills and peacefully possessing the said Basti for long 20 years. She adds that they have acquired a vested and legal right to be treated in accordance with law and eviction of the petitioners, without proper notice and without allowing sufficient time is arbitrary, illegal, without lawful authority and being violative of section 5 of the East Pakistan Government Land and Buildings (Recovery of Possession) Ordinance, 1970. In support of her contention, she refers a good number of decision of Indian Jurisdiction namely, State of Maharashtra Vs Alka B Hingde AIR 1998 SC 2342; Shiv Sagar Tiwari Vs Union of India (1997) 1 SCC 444; Ahmedabad Municipal Corporation Vs Nawab Khan Gulab Khan (1997) 11 SCC 121, JP Ravidas Vs Navyuvak Haijan Uthapan Multi Unit Industrial Co-op Society Ltd. & others AIR 1996 SC 2151, U P. Avas Evam Vikas Parishad and another Vs Friends Co op Housing

Society Ltd AIR 1996 SC 114, Chameli Singh Vs State of U.P. (1996) 2 SCC 549, State of Karnataka Vs Narsimhamurthy and others (1995) 5 SCC 524, P.G. Gupta Vs State of Gujarat (1995) Supp (2) SCC 182, M/s. Shantistar Builders Vs Narayan Khimlal Totame & others AIR 1990 SC 630, Block Bastuhara Committee & others AIR 1987 Cal 1251, Olga Tellis and others Vs Bombay Municipal Corporation and others AIR 1986 SC 180. In the above decisions cardinal principle has been laid down to the effect that the right [sic] to life which is guaranteed under the constitution includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction, is tantamount to deprivation of their life and is hence, unconstitutional.

Mr. Md. Jatar [sic] Imam, the learned Assistant Attorney General appearing for the respondent no. 9 opposes the Rule and submits that the aforesaid land including other lands of Mouza Joarshahara, [sic] Mirpur, Dhaka were acquired by the Government in L.A. Case no.159 of 1961-62 and some portion of the acquired land was allotted to “Thikana Chandpur” and rest of the land resumed for allotment to others. He adds that the inhabitants of the said Basti are illegally residing upon government acquired land as trespassers, they have no right, title and interest over the said land.

Mr. A.K.M. Nazrul Islam, the learned Advocate, appearing for the respondent no. 12 submits that after complying with all formalities 1.44 acres of land was allotted to the respondent no. 12 for a period of 99 years and after obtaining allotment letter dated 24-4-2001, the respondent no. 12 deposited Tk. 25,09,050/- by treasury chalan [sic] dated 23-5-2001 but they are not getting possession, as the inhabitants of the Basti are illegally residing as trespassers. The learned Counsel lastly submits that this Rule having no cause of action is liable to be discharged.

In order to appreciate the submissions of the learned Counsels, we have gone through the writ petition, affidavits-in-opposition and other materials on record and given our anxious consideration to their submissions.

Now, the question calls for consideration is, whether the impugned action for threatening to evict the petitioners from the aforesaid Basti was in accordance with law:

On going through the materials on record we find that admittedly the land in question including other lands of Mouza Joarshahara, [sic] Mirpur, Dhaka were acquired vide L.A Case no. 159 of 1961-62 for the purpose of establishing modern Sattellite [sic] Town and after completing all legal formalities Gazette Notification was published on 5-11-1970. Thereafter, the land in question including other lands were transferred and the possession thereof were also handed over to the Housing and Settlement Directorate. It appears to us that total 1.44 acres of acquired land of C.S Plot nos. 2 and 3 of Mouza Damal Court and C.S Plot nos. 776 and 777 of Mouza Joarshahara [sic] was allotted to “Thikana Chandpur” vide allotment letter dated 24-4-2001 and thereafter the Ministry of Land resumed 0.66 acres of land for rehabilitation of Bhashantek [sic] Slum-dwellers and

the rest 0.78 acres of land remains for allotment. The fact remains that the petitioner nos. 2-5 along with 127 families are living in the Basti for about 20 years by developing low lands and by making tiny slums over the bamboo made platform.

Needless to say that the inhabitants of any slum are the misfortunes of the society, homeless and provisionless, may be due to river erosion, flood, drought, natural calamity, etc. and became floating rural population, having no profession, no provision for food, shelter and being poverty-stricken migrate to the urban area in quest of those necessities for their living on the earth for breathing its fresh air. Their impoverishment lead them to float and flock together in certain areas where vacant space is available and start by constructing huts in slums engaging themselves in the jobs of Rickshaw pulling, day labourer and Garments workers, maids etc. The Government and the non-Government organization sometimes come to their succour in a very un-planned manner for their rehabilitation making some poor; poorer and some poor idle turning them into misguided terrorist/mastaans/drug traders/traffickers and violent arms cadre. So, the misfortune remains with them until their death.

Our Constitution, both in the Directive State Policy and in the preservation of the fundamental rights provided that the State shall direct it's policy towards securing that the citizens have the right to life, living and livelihood. Thus our country is pledge bound within its economic capacity and in an attempt for development to make effective provision for securing the right to life, livelihood, etc. as to the fundamental State Policy which is not enforceable and regarding fundamental rights the Indian Supreme Court held in the case of Olga Tellis Vs Bombay Municipal Corporation AIR 1986 SC 180= (1985) 3 SCC 454 that Article 37 provides that the directive principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the Country. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative actions, be compellable to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of his right to livelihood, except according to just and fair procedure established by law, can challenge the deprivation as offending the right to live conferred by Article 21.

The merits and demerits of the existence of slums in the Metropolitan City of Dhaka have not been disputed but the slum dwellers of necessity for physical rehabilitation for their living have flocked together forming slums on the land of the Government and some other semi-Government or autonomous body, mostly on the road side, way side, wall side and near the Railway lines. Their such type of living not only endangers themselves but also renders the life of the City dwellers hazardous. They no doubt are contributing to the national economy by engaging themselves as day labourers, rickshaw pullers, garment workers, handicrafts workers and as house maid etc. But for a

peaceful growth of City life for a country like ours they have to be taken away from their slums and should be rehabilitated as far as possible in the spirit of our constitutional commitments attaining democracy, socialism, realising through democratic process a socialistic society from exploitation honouring the rule of law, fundamental human rights and freedom securing equality and justice.

Although the petitioners have alleged that the only provision for eviction of the slum dwellers is the provision of section 5 of the East Pakistan Government Land and Building (recovery of possession) Ordinance, 1970 by serving notice asking them to vacate the premises in occupation within the period of thirty days from the date of service thereof, but under the prevailing circumstances of the slum dwellers the notice that has been contemplated is not possible to be served upon them due to their floating nature and having no permanent hut as they live mostly in basti and having no fixed number and address. The Government has asserted that they have notified them for eviction. True that in the facts and circumstances of the present case of the slum dwellers, it was not possible to issue notice to all of them under the provision of section 5 of the Ordinance but may be that they are the slum dwellers and it is the humanity which a poor country like ours is most concerned with and they need to be evicted under certain specific rehabilitation programme which should work as a guideline in the matter. There should be a survey of all the families residing in any particular slum. There should be master plan or rehabilitation scheme or pilot projects to rehabilitate the slum dwellers. The slum dwellers should be given option either to go and live at their respective rural villages or to stay in urban area. If they so opt to go to the urban areas, to have rehabilitated thereby providing them with funds/loan for construction of houses and small scale income generating projects for sustainance [sic] with proper and regular monitoring by the State and until they are fully rehabilitated in any profession to provide them with food if possible under the VGF project of the government. Similarly in case of slum dwellers who do not opt for going to the rural home because of their dislocation by flood and river erosion, natural calamity, etc. they should be given choice either to live in slum or to go elsewhere to live on therein. In case of their choice to stay in slums they should be rehabilitated bearing in mind the vicinity of their working place and communication facilities and if they are not employed making provision for providing them by erecting huts in any localised area earmarked for rehabilitation to start with and subsequently rehabilitate in any low cost flats/houses either of nominal price and arrange for vocational training or any work or employment on the basis of the principal from each according to his ability to each according to his work by the authority concerned.

There may be a good number of old, inferior crippled and retarded people living in the slums. They being incapable of moving/carrying on their livelihood and living are dependent on others. The government should arrange for their rehabilitation by constructing huts/infirm homes/retarded homes providing food, shelter, medical facilities and clothing and be given vocational training so that they could earn their own livelihood in course of time.

In an identical matter, this Court, in the case of *Ain O Salish Kendro (ASK) Vs Government of Bangladesh and others*, reported in 19 BLD 488 at paragraph 17, their Lordships laid down some guidelines, and referred the same to the Government for rehabilitation of the slum dwellers which reads as hereunder:

“The Government should undertake a Master plan or rehabilitation schemes or pilot projects for rehabilitation of the slum dwellers and undertake eviction of the slum dwellers according to the capacity of their available abode and with option to the dwellers either to go to their village home or to stay back leading an urban life, otherwise the wholesale demolition of slums may not solve the problem because the evicted persons from one slum may flock together to another place forming a slum or slums and thereby mounting problems for the government and the country. We have been told that ECNEC has also approved construction of residential apartments for the slum dwellers and lower income people. We appreciate the Government anxiety but considering the human aspects that is attached to the slum dwellers, we provided the guidelines to the Government to undertake a master plan rehabilitation scheme/pilot programme for rehabilitation by evicting the slums phase by phase otherwise, the wholesale removal will give rise to multiple problems for the society and the State.”

We are in respectful agreement with the aforesaid views. Moreover, in the case of *Kalam and others Vs Bangladesh and others* reported in 21 BLD-446, at paragraph no.6, his Lordships Mr. Justice A.B.M. Khairul Haque observed to the effect that:

‘Bangladesh came into being as a fulfillment of the dreams of the millions of Bangalis so that they can breathe in an independent country of their own. They knew that their country is not rich but expected that social justice shall be established and the people shall be provided with the bare minimum necessities of life. Admittedly, the petitioner nos. 1-5 and other slum dwellers do not claim any property right on any land. They are only begging for a place to hide their heads so that they can themselves earn their own livelihood just to survive in this world, created by God. It should not be forgotten that God in His unbounded mercy provides sun-shine, air, water, food and all other amenities of life for all, high or low, rich or poor, for every living being, without any discrimination. The Constitution of the People’s Republic of Bangladesh envisages a welfare state and makes all citizens equal in the eye of law. As such, all citizens have got equal rights in every sphere of life including food, shelter, health-care, education and so forth which is fundamental in nature. It is not the fault of the petitioners and slum dwellers that their Government fails to provide them with such bare necessities of life. They are only struggling a losing battle to earn for themselves and to care and provide the bare minimum necessities of life to their children which are the primary objectives of any democratic Government. After all the slum dwellers, poorest of the poor they may be, without any future or dreams for tomorrow, whose every day ends with a saga of struggle with a bleak hope for survival tomorrow, but they are also citizens of this Country, theoretically at least, with

equal rights. Their fundamental rights may not be fully honoured because of the limitations on the part of the State but they should not be treated, for any reason, as slaves or chattels, rather as equal human beings and they have got a right to be treated fairly and with dignity, otherwise all commitments made in the sacred Constitution of the People's Republic, shall prove to be a mere mockery.'

Having regard to the facts, the submissions advanced by learned Counsel for the petitioners prevail and appears to have a good deal of force.

In view of the discussions made above and the preponderant judicial views emerging out of the authorities referred to above, we are of the view that the petitioners and other slum dwellers of "Gudaraghat Basti" situated on C.S. Plot nos. 776 and 777 under mouja [sic] Zoarhahara [sic], measuring an area 1.65 acres of land, shall not be evicted without their rehabilitation according to the programmes of the Government within two years from date and within this period the Government shall take appropriate step for their rehabilitation.

With the above observations the Rule is disposed of without any order as to cost.

Communicate the order at once.

Syed Md. Ziaul Karim.

A.B. M. KHAIRUL HAQUE, J:

I agree.

A.B.M. Khairul Haque.