

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C. J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.762 AND 758 OF 2023.

(From the judgment and order dated the 16th day of February, 2023 passed by the High Court Division in Writ Petition No.9107 of 2014).

Md. Nasirul Alam and others	:	. . . Petitioners (In C.P. No. 762 of 2023)
Bakhteyar Ahmed and others	:	. . . Petitioners (In C.P. No. 758 of 2023)

-Versus-

The Government of Bangladesh, represented by the Secretary, Ministry of Environment & Forest, Bangladesh Secretariat, Dhaka and others	:	. . . Respondents (In both the cases)
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For the Petitioners (In both the cases)	:	Mr. Probir Neogi, Senior Advocate with Mr. Ahsanul Karim, Senior Advocate, instructed by Ms. Shahanara Begum, Advocate-on-Record
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For Respondent No.1 (In both the cases)	:	Mr. A.M. Amin Uddin, Attorney General, with Mr. Mohammad Saiful Alam, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record
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For Respondent No.7 (In C.P. No. 762 of 2023)	:	Mr. Manzill Murshid, Senior Advocate, instructed by Mr. Md. Nurul Islam Bhuiyan, Advocate-on-Record
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For Respondent No.15 (In C.P. No. 758 of 2023)	:	Mr. Manzill Murshid, Senior Advocate, instructed by Mr. Md. Nurul Islam Bhuiyan, Advocate-on-Record
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Respondent Nos. 2-6 & 8-13 (In C.P. No. 762 of 2023)	:	Not represented
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Respondent Nos. 2-14 & 16-27 (In C.P. No. 758 of 2023)	:	Not represented
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Date of hearing and judgment : The 4th day of June, 2023

JUDGMENT

M. Enayetur Rahim, J: These civil petitions for leave to appeal are directed against the judgment and order dated

16.02.2023 passed by the High Court Division in Writ Petition No.9107 of 2014 discharging the Rule.

The relevant facts leading to the filing of the present civil petitions for leave to appeal are that, the present respondents-writ petitioners (hereinafter referred to as writ petitioners) are the established businessmen dealing with the business of brick manufacturing in their respective owned brickfields. They have been pursuing their businesses upon obtaining trade licenses issued by the Local Chairman being renewed in every year; have been paying income tax as well as VAT to the authority concerned for their respective businesses. The petitioners had been running their businesses in compliance of the “ ইট পোড়ানো (নিয়ন্ত্রণ) আইন, ১৯৮৯” (as amended in 2001) and ইট পোড়ানো (নিয়ন্ত্রণ) বিধিমালা, ১৯৮৯ respectively.

On 12.07.2010, the writ respondent No.1 issued a circular bearing No. Pobomo/poribesh-3/04/(evani)-02/2008/394 with direction, *inter-alia*, that every brickfield with 120 feet heightened permanent "Chimini" was required to be transformed under new technology i.e. hybrid Hoffman kiln, zigzag kiln, vertical shaft brick kiln, tunnel kiln etc. within 3(three) years from the publication of the said circular. In compliance thereof, the writ petitioners had upgraded their respective brickfields with new technology investing more than crore.

While the writ petitioners were pursuing their lawful businesses of brick manufacturing “ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩” Act No.59 of 2013 came into operation by publishing in Gazette on 20.11.2013. However, vide Section 8(4) of the said Act, all brickfields which were being run with Clearance Certificate and were situated within the

prohibited zone 'নিষিদ্ধ এলাকা' as defined in Section 8(1) of the Act, were required to transfer elsewhere যথাছানে ছানে ছানান্তর করিবেন within 2(two) years from the date the aforesaid Act came into force, otherwise their respective licenses would be treated to have been cancelled (অন্যথায় তাহর লাইসেন্স বাতিল হইয়া যাইবে)।

In this context, the respective petitioners made a representation on 18.08.2014 to the office of writ respondent No.3, Deputy Commissioner, Bandarban Hill District with a prayer for allowing them to transfer their respective brickfields elsewhere within a period of 2(two) years under the Act No.59 of 2013, but with no response.

Under the circumstances, the writ petitioners finding no other alternative filed Writ Petition No. 9107 of 2014 before the High Court Division seeking a direction upon the respondents to allow them to transfer their respective brickfields to different location in compliance of Section 8(4) of the Act, whereupon Rule Nisi was issued with an ad-interim order.

Writ respondent No.2 contested the Rule, but did not file any Affidavit-in-Opposition. It was the case of respondent No.2 that section 4 of the Act, 2013 gives a scope for the brickfield owner(s) including the writ petitioners to transfer their respective brickfields to acceptable places within 2(two) years with effect from 20.11.2013, the day of which Act, 2013 came into operation and that said 2(two) years had expired on 10.11.2015. However, the writ petitioners have filed this writ petition seeking only direction upon the writ respondents to allow them to transfer their established brickfields at different locations in compliance with Section 8(4) of the Act, 2013.

Said prayer of the writ petitioners was duly allowed by the High Court Division while passing ad-interim injunction for 2(two) years, vide order dated 16.10.2014. Hence, on the expiry of the said period on 16.10.2016, this Rule has become infructuous by operation of law.

A Division Bench of the High Court Division after hearing the Rule *Nisi* by the impugned judgment and order discharged the Rule.

Being aggrieved by the said judgment and order, the writ petitioners have preferred these civil petitions for leave to appeal before this Division.

Mr. Probir Neogi, learned Senior Advocate, appearing on behalf of the petitioners submits that the High Court Division pleased to get apprised by the learned Advocate for respondent No.2, Department of Environment that as per Section 8(3)(gha) of the aforesaid Act, 2013, the "Parbotto Zelar Poribesh Unnoyon Committee" and also, "Zela Poribesh O Bon Unnayan Committee" were constituted and later the committee had taken a decision on 08.11.2022 for selection of designated area for establishment of brickfield and also, for making recommendation towards issuance of license for running the businesses of the brick manufacturing, meaning thereby, the High Court Division requires to pass an order of direction upon the respondents to make the declaration of the designated area to which, the petitioners may transfer their business setup pursuant to Section 8(4) of the aforesaid Act, 2013.

The learned Advocate also submits that the High Court Division erred in fact that other than writ respondent No.2, no Government respondents have contested the Rule, in as

much as, writ respondent No.2, Department of Environment did not file any Affidavit-in-Opposition except added party, private respondent and yet, the High Court Division went beyond the periphery of the affidavits available for adjudication of the matter and gave findings that the writ petitioners have been causing environmental hazards.

Mr. Neogi further submits that the High Court Division erred in law in giving findings that the petitioners in the writ petition only sought for a direction in the form of writ of mandamus to allow them to transfer their respective brickfields to different location under Section 8 (4) of the aforesaid Act, inasmuch as the petitioners' contention as the পৰ্বত্য জেলার পৰিবেশ উন্নয়ন কমিটি has not yet identified/fixed designated place (নিৰ্ধাৰিত স্থান) as per Section 8 (3) (gha) of the Act, 2013 has no leg as pursuant to the ad-interim injunction the petitioners were and are still running their respective brickfields within the prohibited/restricted area for more than 9 (nine) years from the date of promulgation of the Act, 2013 whereas vide Section 8 (4) of the Act, they had only 2 (years) time to transfer their respective brickfields elsewhere; whereas, the High Court Division erred in law in interpreting that Section 8 (4) of the Act, 2013 is dependent on the obligations as set on the shoulder of the respondent Government that to constitute the পৰ্বত্য জেলার পৰিবেশ উন্নয়ন কমিটি and said committee is under legal compulsion to designate an area, to which, the petitioners would transfer their brickfields business setups as stipulated in Section 8 (3) (gha) of the Act. Thus, considering the same, the impugned judgment and order is liable to be aside.

Mr. Neogi further submits that the High Court Division in its findings stated that the writ petitioners have miserably failed to show from the writ petition that they have taken steps so far for transferring of their respective brickfields elsewhere, whereas, the High Court Division miserably failed to understand the failure of the respondent Government Administration for designating a specific location as stipulated under Section 8(3)(gha) of the aforesaid Act, 2013 within 2 (two) years of time and thereafter, only then, the writ petitioners could transfer their brickfield establishments to the 'নির্ধারিত স্থান' otherwise, wherever, the writ petitioners would transfer their business setups then said area would be treated as prohibited zone. The learned Advocate lastly submits that it is apparent from the Resolution of Bandarban Hill District Environment and Forest Development Committee that the Government has already taken steps in order to fix/designate a place for transferring the brickfields of the district as per section 8(3)(gha) of the Act, 2013, thus, unless and until the Government fix/ designate a place to transfer in compliance to the given laws then the present petitioners cannot able to transfer their brick fields establishment to the same

place and thereby, till the respondents designate the place, they may kindly be directed not to interfere with the brickfield business of the petitioners.

Mr. A.M. Amin Uddin, learned Attorney General, appearing for respondent No.1 in both the cases made submissions in support of the impugned judgment and order of the High Court Division. He also submits that at present the petitioners have no legal or valid permission/license to run the brickfields, and taking the advantage of pendency of the litigation they are running their brickfield business causing public hazards which is detrimental for the ecological balance.

Mr. Manzil Murshid, learned Senior Advocate, appearing for respondent No.7 in C.P. No. 762 of 2023 and respondent No.15 in C.P. No.758 of 2023 also makes submissions in support the impugned judgment and order of the High Court Division.

We have considered the submissions of the learned Advocates for the respective parties, perused the impugned judgment and order of the High Court Division and other connected papers available on record.

Having regard to the fact that the Government enacted 'ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩' which came into force on 20.11.2013. Section 4 of the said Ain prohibits to run the brickfields without license. Section 4 of the said Ain runs as follows:

৪। লাইসেন্স ব্যতীত ইট প্রস্তুত নিষিদ্ধঃ- আপাতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ইটভাটা যে জেলায় অবস্থিত সেই জেলার জেলা প্রশাসকের নিকট হইতে লাইসেন্স গ্রহণ ব্যতিরেকে, কোন ব্যক্তি ইটভাটায় ইট প্রস্তুত করিতে পারিবেন না।

Section 8 of the said Ain prohibits to run brickfields within some specific areas. Section 8 of the said Ain runs as follows:

৮। কতিপয় স্থানে ইটভাটা স্থাপন নিষিদ্ধকরণ ও নিয়ন্ত্রনঃ- (১) আপাতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, ছাড়পত্র থাকুক বা না থাকুক, এই আইন কার্যকর হইবার পর নিম্নবর্ণিত এলাকার সীমানার অভ্যন্তরে কোন ব্যক্তি কোন ইটভাটা স্থাপন করিতে পারিবেন না, যথাঃ-

(ক) আবাসিক, সংরক্ষিত বা বাণিজ্যিক এলাকা;

(খ) সিটি কর্পোরেশন, পৌরসভা বা উপজেলা সদর;

(গ) সরকারি বা ব্যক্তি মালিকানাধীন বন, আভয়ারণ্য, বাগান বা জলাভূমি;

(ঘ) কৃষি জমি;

(ঙ) প্রতিবেশগত সংকটাপন্ন এলাকা;

(চ) ডিগ্রেডেড এয়ার শেড (Degraded Air Shed)।

(২) এই আইন কার্যকর হইবার পর, নিষিদ্ধ এলাকার সীমানার অভ্যন্তরে ইটভাটা স্থাপনের জন্য পরিবেশ অধিদপ্তর, বা অন্য কোন কর্তৃপক্ষ কোন আইনের অধীন কোনরূপ অনুমতি বা ছাড়পত্র বা লাইসেন্স, যে নামেই অভিহিত হউক, প্রদান করিতে পারিবে না।

(৩) পরিবেশ অধিদপ্তর হইতে ছাড়পত্র গ্রহণকারী কোন ব্যক্তি নিম্নবর্ণিত দূরত্বে বা স্থানে ইটভাটা স্থাপন করিতে পারিবেন না, যথা-

(ক) নিষিদ্ধ এলাকার সীমারেখা হইতে ন্যূনতম ১ (এক) কিলোমিটার দূরত্বের মধ্যে;

(খ) বিভাগীয় বন কর্মকর্তার অনুমতি ব্যতীত, সরকারি বনাঞ্চলের সীমারেখা হইতে ২(দুই) কিলোমিটার দূরত্বের মধ্যে;

(গ) কোন পাহাড় বা টিলার উপরিভাগে বা ঢালে বা তৎসংলগ্ন সমতলে কোন ইটভাটা স্থাপনের ক্ষেত্রে উক্ত পাহাড় বা টিলার পাদদেশ হইতে কমপক্ষে ১/২ (অর্ধ) কিলোমিটার দূরত্বের মধ্যে;

(ঘ) পার্বত্য জেলায় ইটভাটা স্থাপনের ক্ষেত্রে, পার্বত্য জেলার পরিবেশ উন্নয়ন কমিটি কর্তৃক নির্ধারিত স্থান ব্যতীত অন্য কোন স্থানে; (Underlines supplied).

(ঙ) বিশেষ কোন স্থাপনা, রেলপথ, শিক্ষা প্রতিষ্ঠান, হাসপাতাল ও ক্লিনিক, গবেষণা প্রতিষ্ঠান, বা অনুরূপ কোন স্থান বা প্রতিষ্ঠান হইতে কমপক্ষে ১(এক) কিলোমিটার দূরত্বের মধ্যে; এবং

- (চ) স্থানীয় সরকার প্রকৌশল অধিদপ্তর কর্তৃক নির্মিত উপজেলা বা ইউনিয়ন বা গ্রামীন সড়ক হইতে কমপক্ষে ১/২ (অর্ধ) কিলোমিটার দূরত্বের মধ্যে।
- (৪) এই ধারা কার্যকর হইবার পূর্বে, ছাড়পত্র গ্রহণকারী কোন ব্যক্তি যদি নিষিদ্ধ এলাকার সীমানার মধ্যে বা উপ-ধারা (৩) এ উল্লিখিত দূরত্বের মধ্যে বা স্থানে ইটভাটা স্থাপন করিয়া থাকেন, তাহা হইলে তিনি এই আইন কার্যকর হইবার ২ (দুই) বৎসর সময়সীমার মধ্যে উক্ত ইটভাটা এই আইনের বিধানাবলি অনুসারে যাথাস্থানে স্থানান্তর করিবেন, অন্যথায় তাহার লাইসেন্স বাতিল হইয়া যাইবে।”(underlines supplied)

The learned Advocate for the writ petitioners has argued that though they approached before the Bandorban Hill District Environment and Forest Department Committee by submitting representation for relocating their business place as per section 8(3)(ga) of the said Ain, but till date the said committee and the Government did not fix any place, where the petitioners' brickfields can be shifted and, as such, till fixation or re-location of the designated area the writ petitioners are entitled to run their business.

In the instant case the High Court Division issued Rule *Nisi* on the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to allow the petitioners to transfer their respective established brickfields to different locations in compliance with the provision of Section 8(4) of the ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ and/or such other or further order or orders passed as to this Court may seem fit and proper. ”

From the materials as placed before us it appears that the petitioners had approached to the district পরিবেশ ও বন উন্নয়ন

কমিটি for relocation of the new place to establish the brickfields, however the committee concerned did not relocate the designated area as yet.

In view of the Provision of section 8 (3) (Gha) of the ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ the concerned Hill District পরিবেশ উন্নয়ন কমিটি has been assigned to select/fix designated area for establishment of brickfields.

In view of the above relevant law and factual position of the present case, we are inclined to dispose of these leave petitions with the flowing directions:

পার্বত্য চট্টগ্রাম জেলার পরিবেশ ও বন উন্নয়ন কমিটি is directed to dispose of the representations of the writ petitioners following the provisions of ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রণ) আইন, ২০১৩ within 2 (two) months, if those are filed, or has already been filed.

Accordingly, both the civil petitions for leave to appeal are disposed of.

C. J.

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