

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

**Writ Petition No. 2864 of 2003**

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:

Khan Mohammad Shahabuddin  
..... Petitioner

-Versus-

The Mayor Dhaka City Corporation and others  
..... Respondents

Mr. Aetaor Rahman, Advocate

Mr. Imran Jahangir, Advocate

Ms. Shahana Begum, Advocate

.....For the petitioner

Mr. Shahjada Al-Amin Kabir, Advocate

..... For Respondent no.1 & 3

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing: 14.06.2023

21.06.2023

Date of Judgment: 09.07.2023

**Zubayer Rahman Chowdhury, J:**

By this application under Article 102(2) of the Constitution, the petitioner has challenged the legality and propriety of the Memo dated 02.04.2003, issued by respondent no. 3. At the time of issuance of the Rule, the operation of the Memo dated 02.04.2003, as evidence by Annexure-J, was stayed till disposal of the Rule.

Briefly stated, facts relevant for disposal of the Rule are that pursuant an application dated 20.05.2001 filed by the petitioner, respondent no. 3 issued Memo dated 01.08.2001 according sanction to the petitioner for leasing out the open space with permission to undertake construction for running a restaurant on the eastern side on the roof of Kawran Bazar Arat Market under the তদানিন্তন Dhaka City Corporation (presently Dhaka North City Corporation, hereinafter referred to as the City Corporation. An open space measuring approximately 1890 square feet was allotted to the petitioner for the purpose of the aforesaid construction and the rent was fixed at Tk. 3/= per square feet, totalling Tk. 5670/-. Accordingly, the petitioner completed the construction as per the plan approved by respondent no. 5 (Executive Engineer, Dhaka City Corporation).

While the petitioner was carrying on his restaurant business from the said premises, respondent no. 3 issued the Memo dated 24.04.2002 directing in the petitioner to remove certain portion of the structure measuring 10'x20' on the ground that the said structure was constructed by the petitioner in an unauthorized manner. The petitioner submitted his reply on 26.05.2002 stating that the said construction was made at the cost of the petitioner for the purpose of running the restaurant business.

Subsequently on 02.04.2003, respondent no. 3 issued a Memo addressed to the Commissioner, Dhaka Metropolitan Police (DMP) Raman, Dhaka with a request to deploy police forces in order to maintain the situation which was likely to arise as the Corporation was taking steps for dismantling all unauthorized constructions in Kawran Bazar area,

including that of the petitioner. The petitioner filed representations and also approached the concerned Authority, but to no avail. Ultimately, the petitioner issue a Notice Demanding Justice on 10.04.2003, yet there was no response from the Corporation. Being constrained, the petitioner moved this Court and obtained the instant Rule.

Mr. Aetaor Rahman, learned Advocate appearing in support of the Rule submits that the petitioner is carrying on the restaurant business in a lawful manner, having obtained lease of the premises from the Corporation. He submits that the additional construction that is alleged by the Corporation to have been made by the petitioner was constructed and is being used as a kitchen by the said restaurant. He submits that the kitchen, being an essential part of the restaurant, cannot be demolished, which would affect the livelihood of all the persons involved with the said business. The learned Advocate for the petitioner submits that the Corporation, in an arbitrary and malafide manner, has taken attempts to demolish part of the restaurant, thereby effectively putting an end to the petitioner business. The learned Advocate further submits that no prior notice was issued to the petitioner.

On the other hand, Mr. Shahjada Al-Amin Kabir, learned Advocate appearing on behalf of the contesting respondent no. 1 submits that the petitioner was granted a lease of an open space measuring 1890 square feet for the purpose of constructing and running a restaurant on the said premises. He submits that the rent also fixed @Tk. 3/= per square feet. However, according to Mr. Kabir, the petitioner took undue advantage of

the situation and constructed an additional space of 200 square feet for which he has not paid any rent till date.

He submits that the petitioner violated the terms of the contract and therefore, the Corporation issued the impugned order for demolishing only the unauthorized construction and not the restaurant. Furthermore, according to Mr. Kabir, the petitioner is continuing to use the premises on the very same rent that was fixed way back in 2001, although in the meantime, a period of more than 20 years had elapsed and the rent of commercial space, particularly in Kawran Bazar area, has increased manifold.

We have perused the application and considered the submissions advanced by the learned Advocate of the contending sides.

It is to be noted that during the course of hearing of the Rule, the Court granted adjournment to both the sides on several occasions to enable them to come to an amicable settlement. However, the parties were unable to come to any agreement and hence we are now concluding the matter through pronouncement of this judgment.

Admittedly the petitioner was granted lease of an open space measuring 1890 square feet in Kawran Bazar @Tk. 3/= per square feet for the purpose of running a restaurant business. It is also admitted that the additional space of 200 square feet (10'x20') is being occupied and used by the petitioner.

From Annexure-Y of the supplementary in affidavit dated 13.06.2003, filed by respondent no. 1, it appears that the Dhaka North City Corporation issued a Memo dated 29.12.2002 giving details of the

rent that is due from the petitioner till date. On a perusal of the said Memo, it appears that for the additional space being occupied and used by the petitioner, a further amount of Tk. 29,37,330/- is due and outstanding to the Corporation from the petitioner. Therefore, on account of unpaid rent, a total amount of Tk. 57,15,360/- + Tk. 29,37,330/- = Tk. 86,52,690/- is due from the petitioner as outstanding rent to the Government. This demand of outstanding rent has neither being denied not disputed by the petitioner. All that has been submitted by the learned Advocate appearing for the petitioner is that the arrear amount is excessively high, which the petitioner is unable to pay at the moment.

Admittedly, the petitioner obtained lease of an open space measuring 1890 square feet from this Corporation to run a hotel business (@of Taka 3/- per square feet). After a considerable period of time, the Corporation revised the rent to Tk. 30 per square feet, keeping conformity with the rent paid by other commercial establishments in Kawran Bazar area. It is not for this Court to decide the amount of rent that is to be paid to the landowner; that is a matter purely between the landlord and tenant. If the tenant is unable to pay the rent, then the only option that is left for him is to vacate the premises.

In our view, the Corporation was fully justified in issuing the letter demanding rent for the space initially, leased to the petitioner (1890 square feet) as well as the additional space (200 square feet) that has been admittedly used by the petitioner. It is well settled that in a commercial contract, the parties are bound by the terms and condition of

the said contract. It is only for the parties to vary or alter the terms of the contract.

Be that as it may, having regard to the facts and circumstances of the case, we are inclined to hold that the instant Rule is devoid of any substance.

In the result, the Rule is discharged.

The petitioner is directed to pay the outstanding rent due to respondent no. 1 (Dhaka North City Corporation) within a period of 06 (six) months from the date of receipt of the certified copy of the judgment passed today. If the petitioner fails to pay the outstanding total rent within a aforesaid period of 06 (six) months, the Dhaka North City Corporation shall be entitled to take necessary steps for recovery of the same in accordance with law.

The order of stay, granted at the time of issuance of the Rule stands recalled and vacated.

There will be no order as to costs.

**Kazi Ebadoth Hossain, J:**

I agree.