

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

**Writ Petition No. 2629 of 2005**

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 :

Ujjol Ahmed

..... Petitioner

-Versus-

Bangladesh represented by its Secretary,  
local Government Division, Ministry of  
Local Government, Rural Development and  
cooperatives, Bangladesh Secretarial, Dhaka  
and others.

.....Respondents

Mr. Intiaz Mahmood , Advocate

.... For the Petitioner

Mr. Md. Shajahan, Advocate with

Mrs. Niru Shamsun Nahar Siddique ,  
Advocate

..... For Respondent no. 2

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 03.04.2023

Date of Judgment : 05.04.2023

**Zubayer Rahman Chowdhury, J :**

By this application under Article 102(2) of the Constitution, the petitioner has challenged the action of Respondent no. 2 and 3, threatening to demolish the passenger shed and the shop located therein, which was taken by the petitioner on lease from Bangladesh Road Transport Corporation.

Mr Intiaz Mahmood, the learned Advocate appears in support of the Rule, while the same is being opposed by Respondent no. 2 by filing an affidavit-in-opposition, on whose behalf Mr. Md. Shahjahan, the learned Advocate appears along with Mrs. Niru Shamsun Nahar Siddique, Advocate.

Sometime in 1990, Bangladesh Road Transport Corporation (briefly, BRTC) decided to construct passenger sheds at various locations in Dhaka city to provide facilities to the passengers travelling by public buses. Accordingly, BRTC obtained approval from respondent no. 2 (Dhaka North City Corporation, erstwhile Dhaka City Corporation) and respondent no. 4 (Commissioner of Police, Dhaka Metropolitan Police, Dhaka)

After obtaining necessary permission from the concerned respondents, an agreement was executed by BRTC with the predecessor of the petitioner on 19.09.1995, whereby an allotment order was issued allotting a shop on the side of the road going along

Dhaka Shishu Hospital for a period of one year. It was further stated in the said allotment order that the cost of construction amounting to Taka One Lac and Thirty five thousand was to be borne by the allottee. It is to be noted that although the allotment order stipulated that the shop was to be used for the sale of drinking water, biscuits and cigarettes, admittedly, the said premises was also used to run a pharmacy. While the petitioner was running his business upon payment of rent and other utility charges, some persons, claiming to be officials of respondent no. 2, threatened to demolish the shop on the ground that the business was being carried on in an unauthorised manner. Being constrained, the petitioner moved this Court and obtained the instant Rule.

Mr. Mahmood, the learned Advocate appearing in support of the Rule submits that the action of respondent no. 2 is not only arbitrary, it is also malafide. Mr. Mahmood submits that the agreement in question was executed by the petitioner with BRTC and not with the City Corporation, which is only responsible for maintaining the roads and public places and they do not have any authority to evict the petitioner from his business premises.

Referring to the supplementary affidavit dated 05.03.2023, filed by the petitioner, Mr. Mahmood submits that the during pendency of the instant Rule, the agreement executed with the petitioner has been extended by BRTC from time to time and lastly,

it was extended for a period of three years from 01.04.2022 upto 31.03.2025. Mr. Mahmood contends that the petitioner is very much a lawful lessee under the Corporation, having paid the rent and all other taxes.

With regard to the Courts query as to how the petitioner was running a Pharmacy business in violation of the original allotment order, Mr. Mahmood submits that as the said shop is located next to the Shishu Hospital, the Pharmacy business is being run by the petitioner upon obtaining a Trade License as well as a Drug License from the concerned Authority. Mr. Mahmood lastly submits that if there be a violation of the terms of the allotment order, it is only BRTC that is competent to take any action against the petitioner.

On the other hand, Md. Shahjahan, the learned Advocate appearing from on behalf of respondent no. 2 submits that the petitioner is running his business in an unauthorised manner and therefore, the impugned action of respondent no. 2 is in accordance with law.

We have perused the application and the Annexures. We also consider the submission advanced at the Bar.

The issued that is required to be decided in this application is short and simple-whether respondent no. 2 has any authority to take steps to demolish the passenger shed and the shop in which the

petitioner is running his business. The answer is in the negative. The reasons are as follows:

In the instant case, on 19.09.1995, BRTC granted permission to the petitioner's predecessor to construct a passenger shed and run a small business. Admittedly, the shed in question is located next to the Dhaka Shishu Hospital. Therefore, on account of its location, the petitioner also set up a pharmacy by the name of Azim Pharmacy.

From Annexure F to the supplementary affidavit dated 09.05.2022, it appears that BRTC had renewed the agreement with the petitioner for a further period of three years from April 2022 upto March 2025. From Annexure G, it appears that the Dhaka North City Corporation issued an E-Trade License on 09.01.2023 in the name of "Azim Pharmacy", wherein the name of the owner is mentioned as Uzzal Ahamed (the petitioner herein). It is equally important to note that in the same E-trade License, the address of the business premises has been mention as "শিশু হাসপাতালের সামনে যাত্রী ছাউনি"। It is therefore evident that the petitioner is not only operating the Pharmacy upon obtaining license from respondent no. 2, but the said license was issued in respect of the very same Pharmacy which is located within the passenger shed in question.

From Annexure H, it appears that the petitioner has also obtained a Drug License issued by the Directorate General of Drug Administration, Heath and Family Welfare Ministry, Dhaka; which

has been issued in the name of Azim Pharmacy located at “শিশু হাসপাতালের সামনে যাত্রী ছাউনি” Mohammadpur, Dhaka.

The learned Advocate for respondent no. 2 has referred to the “যাত্রী ছাউনি স্থাপন, রক্ষণাবেক্ষন ও ব্যবস্থাপনা নীতিমালা ২০১৩” and submits that the City Corporation has been vested with the authority to grant permission to individuals to run business concerns from the passenger shed.

In reply thereto, Mr. Mahmood submits that the said policy was promulgated in 2013, whereas the impugned action was taken 2005. Moreover, according to Mr. Mahmood, no action can be taken by the Government or a statutory body affecting the right of an individual, which tantamount to violating his constitutional right. In support of his contention, Mr. Mahmood has referred to a decision reported in 51 DLR (AD) (1999) 84, (Brahamanbaria Pourashava vs Bangladesh), where the apex Court held that:

“no action detrimental to the vested right of an individual or corporate body can be taken, except in accordance with law.”

(Per B. B. Roy Choudhury, J.)

The learned Advocate for respondent has referred to a judgment dated 18.03.2014 passed in Writ Petition no. 225 of 2005 (unreported), wherein a Division Bench of this Court discharged the Rule. In the aforesaid case, the agreement in question was executed for 25 years by the petitioner with the City Corporation itself, which expired in December 2012. Thereafter, the judgment was pronounced in 2014, by which time the lease had expired. Accordingly, the Rule

was discharged. The present case is very much distinguishable from the case referred to above. Be that as it may, having regard to the facts and circumstances of the case, we are inclined to hold that the instant Rule merits positive consideration.

In the result, the Rule is made absolute.

The impugned action of respondent no. 2 (Dhaka North City Corporation) in attempting to demolish the passenger shed and the shop located on the main road adjacent to Dhaka Shishu Hospital, Dhaka is declared to be without lawful authority.

There will be no order as to cost.

**Kazi Ebadoth Hossain, J:**

I agree.