

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

PRESENT :

Mr. Justice Mohammad Anwarul Haque.

And

Mr. Justice A.H.M. Shamsuddin Chowdhury.

WRIT PETITION NO. 6235 OF 2006.

IN THE MATTER OF:

Human Right and Peace for Bangladesh (HRPB),  
represented by it's President Advocate Manzill Murshid  
of 36, Mirpur Road, Dhanmondi, Dhaka- 1205 and  
another.

.....Petitioner.

-V E R S U S-

The Mayor, Dhaka City Corporation and others

.....Respondents.

Md. Manzill Murshid, Advocate.

----- For the Petitioner.

Mr. M.A. Baqui, Advocate.

----- For the Respondent.

Heard on 11.11.2009 and  
Judgement on 17.11.2009.

Mohammmad Anwarul Haque:J.

On an application under article 102 of the Constitution of People's Republic of Bangladesh filed by Human Rights and peace for Bangladesh (HRPB). represented by it's President Advocate Manzill Murshid and Advocate Asaduzzaman Siddique, Director Human Right and Peace for Bangladesh (HRPB) this Rule was issued calling upon the respondents to show cause as to why the step of the respondents to construct a new road through the Azimpur Graveyard by destroying thousands of graves should not be declared illegal and without lawful authority and/or pass such other order as to this court may seem fit and proper.

The petitioner have filed this writ petition as public interest litigation where they have claimed that violating the statutory provision laid down in section 125 of the Dhaka City Corporation Ordinance, 1983 respondent No. 3 in connivance with each other has undertaken this work of construction of a new road across the oldest grave-yard,

known as Azimpur Graveyard in order to ease the traffic load. It is further stated that Respondent No. 2, Dhaka City Corporation, took a project to construct a new link road through the Azimpur Graveyard by demolishing 1000 of graves ignoring religious sentiment which also stands against the statutory provisions of law, laid down in section 125 of the Dhaka City Corporation Ordinance, 1983. It is further stated that at the instance of the then local Member of Parliament such project was undertaken destroying the existing thousands of graves including martyr of language movement. So, they have filed this writ petition to protect the graveyard with direction to maintain as it is.

On the other hand Dhaka City Corporation has filed Affidavit-in-opposition admitting their misdeed which touched the public religious sentiment and finding no other alternative they had to stop the road construction work more.

Mr. Manzill Murshid, the learned Advocate appearing on behalf of the petitioners, at the very outset, submits that section 125 of the Dhaka City Corporation Ordinance, 1983 does not allow city corporation to construction the link road through the graveyard connecting New Market road to Palashi road on the plea of easing the movement of the Vehicles, Mr. Manzill Murshid has candidly pointed out that in no circumstance Dhaka City Corporation preserves any right to destroy any grave with an intention to construct link road there. The law only permits the City Corporation to take necessary measure for maintenance or administration of the graveyard but construction of the public road does not come within the frameworks of maintenance or of administration. So, respondent No. 2 cannot be allowed to run with the road construction work to facilitate the public to ply their vehicle through the graveyard. Moreover, religious sentiment also does not allow doing the same for which Municipal Corporation had to review their decision and have stopped the work on 18.06.2006.

On the other hand, Mr. Hasnat Quayum, the learned Advocate appearing on behalf the Respondent Nos. 2-4 also literally found it very weak to oppose the Rule though the respondent Nos. 2-4 have filed affidavit-in opposition.

In fact, at the time of hearing the learned Advocate did not find any materials to oppose the Rule. The learned Advocate for the respondents goes to argue that honoring the public sentiment Dhaka City Corporation also took the matter and issued a letter asking the Contractor not to proceed with the contraction work of the road and subsequently the present Rule has been issued. Moreover, he has conceded that the construction of link road does not come within the work of maintenance and administration of the graveyard as contemplated in section 125 of the Dhaka City Corporation Ordinance, 1983.

On the face of the submission of the learned Advocates of both the parties we have gone through the provision laid down in section 125 of the Dhaka City Corporation Ordinance, 1983 which is quoted below :-

“125(1) The Corporation may and if so required by the Government shall, provide suitable places for the burial and burning of the dead, and **shall take necessary measures for the proper maintenances and administration of such burial and burning places. (underline is ours)** (2) The Government may, by notification in the official Gazette, declare that any burial or burning place which is open to public for burial shall vest in the Corporation, and there upon such burial or burning place shall

vest in the Corporation, and the Corporation shall take all measures necessary for the proper maintenance and administration thereof.”

The above provisions of law has only empowered the Dhaka city Corporation to take necessary measure for proper maintenance and administration of such graveyard where thousands of graves including the graves of martyrs of language movements where the entire nation places floral wreath in order to pay homage on 21<sup>st</sup> February, every year. In such circumstance violating the above law destruction of the graves for the purpose of construction of alleged public Road for the benefit of the contractor is not only to be condemned but also the action of the Municipal Corporation should be equally deprecated for such heinous work

In on way any graveyard can be allowed to be used for other purpose even like construction of public road. It is absolutely against the statutory provisions of law as contemplated in section 125 of the Dhaka City Corporation Ordinance, 1983. The Map filed by the respondent, the Dhaka City Corporation, clearly speaks that the proposed road construction work will go to destroy thousands of existing graves including the grave of martyrs which cannot be allowed to be done for alleged public benefit. So, the Dhaka City Corporation has rightly considered the public benefit. So, the Dhaka City Corporation has rightly considered the public sentiment and stopped the work of the Contractor which should not interfere with. The action taken by the Dhaka City Corporation to stop the construction work should not be withdrawn in any future occasion. In fact, keeping the provisions of law as contemplated in section 125 of the Ordinance, 1983 alive Dhaka City Corporation has got no authority to undertake such a project of construction of a road through graveyard for the cause of any one’s benefit.

Considering these facts and circumstances, we find good substance in this Rule and accordingly it is liable to be made absolute.

In the result, the Rule is made absolute without any order as to costs. The steps of the respondents to construct alleged connecting road through the Azimpur Graveyard by demolishing thousands of graves is hereby declared illegal and without any lawful authority and is of no legal effect. This type of projects cannot be allowed to run in future also.

At the same time Dhaka City Corporation is directed to remove all the materials for construction of the road including Pillars, if any, available in the grave-yard within 3(three) months from the date of receipt of this judgment and also to construct a boundary wall which has been demolished by the contractor within such period.

Stay granted earlier by this court is hereby vacated.

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