

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

WRIT PETITION NO. 989 OF 2010.

IN THE MATTER OF :

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

A N D

IN THE MATTER OF :

Human Rights and Peace for Bangladesh (HRPB)
represented by the Secretary Advocate Asaduzzaman Siddiqui Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

... Petitioner

-Versus-

Bangladesh Represented by the Secretary, Ministry of Forrest and Environment, Bangladesh Secretariat, Police Station-Shahbag, Dhaka, Bangladesh and others.

... Respondents

Mr. Manzill Murshid, Advocate,

... For the Petitioner

Mr. Md. Humayun Kabir, Advocate,

... For the Respondent No.4.

Mr. A. B. M. Altaf Hossain, DAG with

Ms. Purabi Saha, A.A.G.

... For the Respondents.

Present:

Mr. Justice A.H.M. Shamusddin Choudhury

And

Mr. Justice Jahangir Hossain

Heard And Judgment on: 23rd October, 2011.

A.H.M. Shamusddin Choudhury, J:

The Rule under adjudication, issued on 02.02.2010, was in following terms:

“Let a Rule Nisi be issued calling upon the respondent to show cause as to why a direction should not be given upon the respondents to cancel the permission to set up dredging pipe line through Botanical Garden and Dhaka Zoo at Mirpur in order to protect environment of the area”.

Averments advanced by the petitioner are, briefly, as follows:

Human Rights and Peace for Bangladesh (HRPB), is a non profitable registered organization and the objects of the organization is to uphold the rights of the citizen and to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their rights.

The petitioner is seeking a direction upon the respondents to cancel the permission accorded to set up dredging pipe line through Botanical Garden at Mirpur in order to protect environment of the area. The petitioner seeks to bring this application as a public interest litigation in order to stop activities against environment in the vicinity of the Botanical Garden and Dhaka Zoo at Mirpur.

Violating the provisions of law, the respondents allowed a business concern to set up dredging pipe line through the Botanical Garden (henceforth the Garden) which will affect the environment of the area seriously.

The Garden at Mirpur is the only national garden in which thousands of trees, including herbs and a aquatic plants, stand rooted. In winter the Garden harbours millions of birds that fly from different parts of the world and take shelter in a lake situated within the Garden. But it could be seriously affected if the dredging pipe line is installed in the Garden. Many valuable trees could be destroyed during the setting up process.

Section 5 of the Environment Conservation Act, 1995, proscribes changing the nature of any land that has been earmarked as a natural reservoir. Section 8 of the said Act prescribes punishment for the contravention of the Act. Moreover under section 7 of the Environment Conservation Act, 1995, the authority is empowered to direct any person responsible for causing damage to the ecosystem, for adopting corrective measures. Due to the installation of the dredging pipe line, the Garden may lose its natural character which is not only illegal but punishable.

The respondents have utterly failed to perform the duties and responsibilities as vested upon them and also failed to take steps to protect the environment.

On 01.02.2010 a report was published in the Daily Star. It was stated in the report that the authority concerned allowed the setting up of dredging pipe line inside the Garden. It was also stated that considering the environment of the area, permission was refused in the past.

The respondent No. 3 has filed an affidavit in opposition, figuring the following statements:

Setting up of the dredging pipe line through the Garden has not been commenced and there is no possibility of executing the same.

The idea of setting up dredging pipe line through the Garden has already been kept in abeyance reckoning the greater interest of environmental and ecological balance which may be prejudicial to the peoples of the city.

The respondents are law abiding and conscious citizens and as such taking account of the greater interest of the people of Dhaka City, they have put in **hibernation** the plan of laying dredging pipe line through the Garden.

The respondent No. 4 has filed an affidavit in opposition, figuring the following statements:

Save for the statements that “in the meantime setting up the dredging pipe line through the garden has not been started”, rest of the statement in paragraph 5 of the affidavit-in-opposition, filed by the respondent no. 3, is misconceived. Moreover, the statement that “there is no possibility of executing the same”, indicate malafide intention on the part of the respondent No. 3 since he has no jurisdiction of making such statement.

As to the statement made in paragraph 6 of the affidavit opposition of the respondent no. 3, save the statement which reads, “the proposed plan for setting botanical Garden has not been started”, rest of the statement has been misconceived.

The said respondent’s statement, reading;

“Interest of environment and ecological balance which may be prejudicial to the peoples of the city” is misleading and therefore, emphatically denied by the added respondent No. 4. The fact is that the setting up of dredging pipe line has not been performed because of the order issued by the Hon’ble High Court Division of Bangladesh on 2nd February, 2010. In addition to that, it is pertinent to mention here that the added respondent no. 4 is allowed to install dredging pipe line through the Garden on condition that such activities would not cause any damage to the Garden, along with some other stringent conditions.

The added respondent No. 4 has not been served any notice of suspension of installing dredging pipe line through the Garden either by the respondent No. 1 or respondent No. 2. Permission of installing pipe line was granted by the Ministry of Forest and Environment, and as such, it can be cancelled by the respondent No. 1 only. Therefore, the respondent No. 3 has no authority of making such statement regarding suspension.

Statement in the said affidavit-in-Opposition that the permission has been cancelled, can not be valid.

As the Rule matured, Mr. Manzill Murshid, appearing for the petitioner took us through the reasons why dredging pipeline would be fatal to the ecology in the vicinity.

Mr. Md. Humayun Kabir on the other hand, pursued the claim that environment would not face any casualty, espoused with the assertion that since it is the Ministry of Forest and Environment that accorded permission to his client, the respondent No. 3 can not say he has cancelled the contract.

Mr. A.B.M. Altaf Hossain, the learned Deputy Attorney General supported the version advanced by the respondent No. 3.

For us, the question is not whether the respondent No. 3 can or can not cancel the project, but whether it is likely to endanger the ecological balance.

Apart from the reasons elaborated by the petitioner, the respondent no. 3, who is better equipped to assess the environmental issues, has also quite candidly stated that the installation of dredger would jeopardise ecological equilibrium, not only in the area, but also beyond.

The respondent no. 4 tried to project through its pleadings the alleged conflicting power between the Ministry and the respondent No. 3. We are least concerned with that because for us the only question is whether the proposed installation would be infernal to the ecology or not, whether the same would strip the Garden of what it should be like.

As the petitioner as well as the only official respondent have vowed that it would, we should entertain no reason to hold otherwise.

The rule is, hence, entitled to be coroneted and the same is hence, made absolute, without no order on cost, though.

The authorities are directed to rescind the idea of allowing the respondent No. 4 or, for that purpose, anyone else, to install dredging pipeline through the Garden and to dismantle, remove all structures, appliances that may have been stationed in the Garden for the above stated purpose.
