

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 9592 of 2010

IN THE MATTER OF :

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

AND

IN THE MATTER OF

**Human Rights and Peace for Bangladesh (HRPB)
and others**

.....petitioner

-Versus-

Bangladesh represented by the Secretary, Ministry of
Cultural Affairs, Bangladesh Secretariat, P.S.
Shahbag, Dhaka, Bangladesh and others

.....Respondents

Mr. Manzill Murshid, Advocate.

.....for the petitioner

Mr. A. B. M. Altaf Hossain, D.A.G with

Ms. Yehida Zaman, A.A.G

.....for the Respondent

Heard on 17.01.2012

Judgment dated 19.01.2012

Present:

Mr. Justice A.H. M. Shamsuddin Choudhury

And

Mr. Justice Jahangir Hossain

A. H. M. Shamsuddin Choudhury, J:

The Rule under adjudication, issued on 07.12.2010, was in following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why inaction of the respondents from taking necessary steps to stop any kind of construction work adjacent to the Mohasthangor ancient monument, should not be declared illegal and without lawful authority and why direction should not be given upon the respondents to implement the provisions of section 12(c) of Antiquities Act, 1968 and article 24 of the Constitution of Bangladesh in case of construction work near Mohasthangor ancient monument and /or pass such other or further order or orders as this Court may deem fit and proper.”

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

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

The petitioners are practicing lawyer of this Hon'ble Court, human rights activists and conscious citizen of the country. They are challenging the passivity the respondents in respect to their duties to stop construction activities in areas adjacent to the historical place, named, Mohasthangor which is a rare relic of our heritage. The petitioners also seek to bring this application by invoking Article 102 of the Constitution as a public interest litigation to ensure protection of this great place that reminisces our tradition and history, by preventing illegal construction work in the vicinity of the Mohasthangor ancient monument.

The matter involves immense public importance. The Mohasthankor has a great significance in our history. It is also a public place which is now under the governance and protection of the Government of People Republic of Bangladesh. Nevertheless, recently few people are encroaching upon it and making construction on the property adjacent to this protected historical monument. They are constructing buildings violating the provisions of law, which is illegal and without lawful authority. The matter invokes interest of the common people as this historical place belongs to them. The Government is under a duty to protect the interest of the people by protecting the historical place. The affected people are unable to come forward to protect this historical site of sentimental importance and hence the petitioners resolved to move this Public Interest Litigation (PIL) before this Hon'ble Court.

A report was published in the Daily Prothom Alo and Kaler Kontho on 06.12.2010 on this illegal Construction. It has been reported that few powerful local musclemen under the leadership of the respondent no. 6, have been carrying on the construction work on the land adjacent to Mohasthankor, violating the provisions of law. It has been further stated that the provisions of Antiquities Act are not being followed. Even after repeated objection by the proper authority, the respondents have failed to stop the illegalities.

The Custodian of the Mohasthankor Ancient Monument has sent a letter to the Mazar Committee to stop on going construction work. Yet no action has been taken by them. It is certainly the duty of the local police to stop any illegal construction within their jurisdiction, though surprisingly enough they have preferred to keep mum and shelve off the duties the laws have imposed upon them, for reasons best known to them.

As per section 12 of the Antiquities Act 1968, it is the duty of the Government to protect historical sites. Section 12(c) of the Act imposes a duty upon Government to proscribe any sort of construction activity near the listed immovable properties.

The respondent No. 3 has filed an affidavit penning following statements:

The respondent No. 3 the Deputy Commissioner, Bogra (henceforth the DC) issued official order on 05.12.2010 to the respondent no. 6 and others, after receiving a letter from the Archeological Department, asking the latter to stop the construction work at the Mahasthankor Mazar. He also issued another office order to the respondent No. 4 and other related functionaries to execute the direction as emanated from the Hon'ble High Court Division on 07.12.2010, on the construction work at the Mohasthankor Mazar as per the news published in daily newspapers. The respondent no. 3 has also issued office order to the SP, and the Commandant, RAB-12, Bogra, to ensure police patrolling and fulltime police force engagement at the Mahasthankor Archeological area. The respondent no. 3 is a law-abiding officer and acted in accordance with the direction of this Hon'ble Court. The respondent no. 4 i.e. SP, Bogra informed the respondent no. 3 that police had lodged an FIR against the accused persons.

The respondent No. 3 issued official orders to the concerned authorities i.e. respondent no. 4 and 6 and others respectively on 05.12.2010, 07.12.2010, 22.01.2011, 09.02.2011, 10.02.2011, 17.02.2011 asking them to protect the Mahasthankor Archeological Antiquitic area without delay after receiving official order from the concerned authorities as well as from the Hon'ble High Court Division.

The respondent No. 3 issued official orders to the SP, Bogra, UNO, Sadar, UNO Shibganj, OC, Sadar and Shibganj, Bogra to stop and ensure all kinds of construction works at the Mahasthankor Ancient Monument area and at present no such construction work is going on at the disputed place. The respondent No. 3 himself is visiting the place regularly.

Fulltime police force and police patrol along with RAB-12, Bogra, is ensured through official order, issued by the respondent no. 3 to the respondent no. 4. The respondent no. 3 is always executing the order of the Hon'ble High Court Division.

Some three incidents occurred at Mahasthangar, Bogra. They are, 1) a little digging for the expansion of the Mohasthangar Mazar Mosque, 2) the path construction work by one Sabuj Sarkar and Khokon Sarkar and 3) a very minor splitting of three inches concrete layer at the Mahasthangar Mazar, Shibganj, at night (as per newspaper report). To combat all these three incidents, the DC, has issued official orders, both orally and in black and white, to all concerned authorities/persons, requiring them to stop all illegal works and to take necessary legal actions against those people who were engaged in digging activities at Mahasthangar. The above mentioned incident no. 1 was stopped immediately and has remained so till date. The incident no. 2 was also stopped by the respondent no. 3 without delay and has remained stopped. No. 3 incident occurred recently, but the orders from the DC, went down very sharply and adequately to ensure necessary steps against the concerned people. Duty to enforce law lies with the Police Department/RAB-12, and they have executed orders issued by DC, and are still pursuing their duties at the disputed area through fulltime police engagement and patrolling.

Following a direction issued by High Court Division in Writ Petition No. 9592 of 2010, he has taken all necessary steps to protect the Monument both in his personal capacity and as the Deputy Commissioner and also by instructing the officials of Bogra Sadar Upazila and Shibganj Upazila in writing to arouse public awareness amongst the local people. Further steps have already been taken by circulating the same through miking.

The respondent no. 3 undertakes to resort to measures that shall be required for the protection of the monuments, including archeological views.

Actions have already been taken in respect to the incidents published in the Daily Kaler Kantha by filing cases and by arresting 2 persons, including a labour engaged by the Administrative Officer of the Mazar Committee, who are now in jail custody.

The police personnel and the Rapid Action Battalion (RAB) have already been deployed and they are on random patrol duty in the area.

The respondent No. 4 has filed an affidavit, figuring almost identical averments as have been recorded in the respondent no. 3's pleading. This respondent has, however, inked some additional averments, which are summarised below;

The report compiled by the Officer-in-Charge, Bogra Sadar P.S, reveals that a committee was formed for Gokul Union's poor people at the instance of the Ministry of Food and Disaster Management and the said Committee undertook a project for construction of Nala Siting by the side of the tank of Ahia Ali Sarker of Gokul Sarker Para. The said project was a government project. At the time of the completion of the project, some portion of the historical monument was damaged due to earth digging and some portion of the digged earth was placed on the slopping portion of the Dhibi, near the Nitai Dhobani Ghat Dhibi. Police force have been deployed and the historical monument site is fully protected.

For damaging the Historical place of Nitai Dhobani Ghat in Gokul under Bogra Sadar P.S and for theft of the valuable stones, police have prosecuted the accused persons under section 19(1) of the Antiques Act, 1968 and thereafter one case has taken off under section 447/427/379/186/34 of the Penal Code, against some accused.

The respondent No. 6 has filed an affidavit assimilating following statements:

The respondent no. 6 is the President of Bangladesh Awami League, Bogra District, President of Chamber of Commerce, Bogra, Director FBCCI, President Mohasthangorh Mosque, Mazar Development Committee and a renowned freedom fighter. There is an independent management committee for the Mazar and the Mosque in the subject vicinity.

Pursuant to a decision, the Mazar Committee took a decision to construct a 3-storeid building for the accommodation of male and female musullies, demolishing the present Tin Shed structure and in that event and, prior to the issuance of Rule in the above Writ petition, some digging work had been occasioned, but immediately on receipt of the message through electronic media, the Mazar Committee, as well

as the Mazar Development Committee, stopped all kinds of works, including earth digging.

Pursuant to the direction issued by High Court Division, the respondent no. 6 personally appeared on 2.2.2011 and gave an undertaking that no further work will be prosecuted within the Mazar and the Mosque area and within the knowledge of respondent no. 6 no work has been carried on ever since. The respondent no. 6 had no prior knowledge of the alleged incident, reported in daily Kaler Kontho. Immediately upon hearing the same, the respondent no. 6 visited the place which is about 9 Kilometers away from his residence.

The respondent no. 6 is a very respectable social leader of the area and has got full understanding about the value of the archeological relics and cultural heritage of Mohasthangorh area. He has highest and profound respect for law as well as direction of the Courts.

The respondent no. 6 undertakes that he will extend all co-operation to the authorities, inclusive of the Department of Archeology, for protecting and preserving the archeological and cultural heritage of the area and further undertakes that there shall be no further construction work within the Mazar area in future without due sanction of law.

The Mohasthangorh Mazar Committee is a distinct committee for overall administration and management of Mohasthangorh Mazar and Mosque and the respondent no. 6 is the President of the said Mosque Unnayan Committee which is engaged in the development of the Mosque only and immediately after this Hon'ble Court issued its direction, all kinds of works relating to the development of the Mosque has been stopped.

Just before the Rule matured to hearing we received the report, a committee headed by Prof Muntasir Mamun complied as per our order dated As the matter come up for hearing.

The Deputy Attorney General submitted that the report compiled by Dr. Muntasir Mamun's Committee is a superb one and the problem will be resolved if the authorities are directed to implement the report in its totality.

Mr. Manzill Murshid, on behalf of the petitioner, supported the report, and added that the report is a comprehensive one and is quite progressive and that if the report is implemented, problem surrounding Mahastangor shall subside. He reiterated his emphasis for the protection of the Mahasthangorh.

The question we are to address is indeed an exceptionally susceptible one; whether or not we should pass infallible direction to the functionaries concerned to insulate Mahasthangorh.

This Mohasthangorh Monument is not only significant for the history of Bangladesh, it also infuses profound importance in tracking and tracing the history of this subcontinent. It is a relic of a highly developed city, subsequently ruined, that existed few centuries ago, and was used as the capital during the Gupta, Pal and Sen dynasties. It tells us of the exquisiteness of the civilisation that we have inherited. This represents an iconic symbol of our pride. The people of Bangladesh have emotional attachment to this place. For centuries together tourists from within and abroad had been visiting this place of immense historic attraction. It is pitiable, grotesque and weird that by constructing buildings in the vicinity of the place of profound sanctity, the beauty and the gradiouse character of this monument is being irretrievably devastated and waned. Construction of buildings so close to this monument is posing as a stumbling block on the way of protecting this monument and is thereby putting its very existence in peril. If it is allowed to be perished, a glorious part of our history of civilisation, we deserve to be proud of, shall be effaced. Such construction is axiomatically without lawful authority and is violative of the provisions contained in Section 12(c) of the Antiquities Act, 1968.

Allegation of foray and onslaught upon this place of national pride and glory has not been denied. Authenticity of media report has remained vindicated. Muntasir Mamun committees report lend unequivocal support to the aspersions as have been reported in the media.

While people all over the globe jealously and dearly guard their national heritage, some unscrupulous people seem to be out their to destroy the same for reasons best known to them. Their filthy and move remind us of the Taleban action in Afghanistan, vindictively destroying a large statue of Budha.

In the same vicinity two other important places have been co-existing for decades together. One is a holy Masque, a place of high spiritual reverence and devotional importance and, a Mazar of old origin.

Indeed they are also part of our heritage and history and must be protected equally well.

Given that these two holy places have co-existed with the Mahasthan garh Monument for ages, we find no reason to think that there should be any problem in this regard. The holy Masque is staying where it has always been without problem. It is understandable that the growth of population has necessitated expansion of the Mosque. Again there is no problem. We have been given to believe by those who appeared before us that there are plenty of land, as just a little away from the Mohasthan garh area, where extension of the Mosque can be erected with causing any encroachment upon the Mohasthan garh. In this way, while the Mohasthan garh area shall be preserved and protected, the need of the devotees shall also be squarely met. Indeed the Committee headed by Prof. Muntasir Mamun, who, to our knowledge, is a devout and pious Muslim, has quite assiduously elaborated how all of the three places of utmost importance in the area can be protected, stating;

1. gnv`vbMo Gj vKvi fngi `Z; gwj Kvbv I fngi e`envi
- K. gnv`vbMo Ges cvk@Zr@ Gj vKvq AwZ, iZcY@ m@ebvgq cZ@vbmgnfni fngi gwj Kvbv AwAMhtYi gva`tg cZ@Ej; Awa` Bti i AbKtj Avbvi c`qRb i`qtQ|
- L. c`hvr` t`fti mi Kvx Lvm Rwg hv Awa` Bti i bq tm, tj v Avs` gS`yjq `evtKi gva`tg fng gS`yjq nZ cZ@Ej; Awa` Bti i AbKtj Avbvi D` VM tbqv DPr|
- M. AwAMhY mgvB bv nlqv chS` (2-3 eDi) "Antiquities Act 1968" Gi Avtj vtK e`v` gwj Kvbvxb Rwg gwj tKi mvt_ mgtSvZv Pr`i gva`tg cZ@wEjK w` k@ mj` qvi e`v` Kiv c`qRb| c`hvr` t`fti Pvlvev` i RwtZ cZ@w` k@ i`ft_`km` qWZc`Y (Crop Compensation) c`vtbi e`v` Kiv thZ cvti |
2. I qvKd`f` vtb G ai`bi epr wbg`Yi t`fti I qvKd` ckvm`Ki Kvhj` tqi wbeo Z` vi`K Ges wbgqZ AwWU Kvhj`g tRvi` vi Kiv GKvbS` c`qRb|
3. cZ@Ej; Awa` Bi, `vbxq ckvmb, `vbxq mi Kvi c`Z@vb (BDwbq cwi l` /Dc`Rj v cwi l`) I Rbmavi`Yi gta` cZ@wEjK HwZn`, Acwi mxg, iZj I w` gvb AvBbmgn m`u`K cvi` uwi K tevSvov (Understanding) epx` Kiv c`qRb| me`ntj gnv`vbMo I cvk@Zr@msi`qZ Gj vKvi cZ@wEjK Acwi mxg, iZj I m`ebv m`u`K mvgwRK m`PZbZvl (Social Awarness) epx` Kiv Avek`K|
4. gnv`vbMo Ges Ges cvk@Zr@Gj vKvi cZ@wEjK w` k@, tj vi eZ@vb Ae`v m`ut`K`nvj bMv` Rwi c/Abj`v`v Kiv thZ cvti |
5. 18 kZ`K wbgZ gnv`vbMtoi GKm`R weikó gmwR` wji mj` qv I msi`ftYi (Conservation) e`v` tbqv c`qRb| tm`fti 1968 m`bi cZ@vBtbi Abjmi`Y Deviation, Expansion t`tK weiz` vKv c`qRb, hvZ Kti Gi HwZnmK I b`w` w`k `eikó` AwKZ Ae`vq msi`qZ nq| G cwi`t`fti Kvgw gtb Kti th, fiel` tZ cZ@wEjK, iZj m`ub`Bgvi Zmgfni m`u`hvi Y, cwi eZ@ I cwi ea@ hvZ tKD Ki`Z bv cvti tm` vel`tq gnv`vb` Av` vj` tZi m`bw` @ w`b` Rbv c`qRb|
6. gmwR` I gvRvti AvMZ gnj` * I f`e`j` i m`thvM m`eav epx` i j`fti` weKí` vtb h`vh` AeKvvtgv wbg`Yi cwi Kí bv tbqv thZ cvti |

4.2 gnv`vb` nvB`KvU`e`fv`Mi w`b` Rbv-2
Prescribe ways to accommodate increasing number of people who visit the mosque to offer their prayer.

KvgwUj ch`j` vPbv I ch`e`qY wba`j`c
gnv`vbMtoi` w`qY-ce`ftKv`Y gNj mgwU diit` wkv`fti i kvmbvgtj (1717-1727wLt) wbgZ GK M`R (7wg. x 7wg. AvqZb) weikó gmwR` i`qtQ| gmwR` wU`Z gnj`xi msKj vb nq cDq 15-18 Rb| gmwR` wji D`Ei cvk@ i`qtQ kvn mj` Zvb ej Lx gvxmvl qvi (int) Gi gvRvi | gmwR` I gvRvi cwi Pj` bvi Rb` GKwU KvgwU i`qtQ| GB KvgwUj mfv`vZ tRj v ckvmK I m`m` m`Pe msk`o` Dc`Rj v wbe`fx KgR`Z` gmwR` I gvRvti AvMZ gnj` ox, f` Abj`v`v gmwR` I gvRvti gvBZ I `vb wntmte A`q I Lv` mvgM@ cD vb Kti `vtK| GB `vtbi A`KvgwUj gva`tg e`q nq| eZ@v`b Rgyi w` tb gnj`xi mSL`v AvbgywbK 2000-2500 Rb Ges Zv µgk epx` cvt`Q| c@Pxb gmwR` wU`K gta`` ti`L Dj`e`

(Vertical) I mgvšÍ ij fvtē (Horizontal) BtZvgta" gmmR` ewaZ Kiv ntqtQ hv cZzwmEj `ewko" ¶bKti tQ|

GB cPxb gmmR` wJi tKvb Astk mæúñvi tbi AeKvk we`gvb bvB| Avtj vP" wbgZe" febiU (msj vM-8) gmmR` t_tK cÓq 65 dU` ði Aew_Z| GB feb I gmmRt` i gvSLvtb gvRvti i Ae`vb| Avtj vP" febiU gmmRt` i bvgvRi `vb wntmte MY" bq| GB feþb gj Zt AvMZ gvnj vt` i wektgMvi, gmj øx I f³t` i `vb Lqi vtZi msi ¶tYi Rb" ðnwÜLvbv I GwZgLvbn Kivi cÖ Íwebv itqtQ etj Rvbn hvq|

bvgvR Av`vqKvi xt` i `vb mskj vtbi Rb" Avi tKvtbv bZþ AeKvWtgv wbg¶Y ev mæúñvi Y Kiv ntj D³ `vtbi cZzwmEj AbymÜvb, Lbb I GZ` mspvšÍ Mtēlyv Kivi Avi tKvb mthvM `vKte bv| GiU GKwU msi w¶Z cZzwmEj GjvKv Zvb GKgvÍ ce`w K e`Zix Ab" tKvtbv w tKB bvgvR Av`vqKvi µgea¶vbKj RbmsL`vi Rb" `vb mskj vtbi wbg¶E bZþ tKvtbv AeKvWtgv wbg¶Y A`ev mæúñvi Y mæe bq| Gt¶t gnv`vb msj MognvotKi ce`w tK, gmmR` ti AvbgwbK 200 MR` tZj fvg AwMhY/ µq Kti bZþ gmmR` wbg¶Y Kiv thZ cvti Ges cPxb gmmR` I gvRvi `tj `^Qþ` Avmv hvl qvi Rb" gnvotKi Dcti I fvi etR I AvaybK AeKvWtgv wbg¶Y Kiv thZ cvti | AvMZ gvnj øx f³e,` cyiyl gvnj vt` i wektg, Lvevi mjeav, GwZgLvbn BZ`w` mthvM-mjeav GB `tj wbg¶Y Kiv thšw³K nte| Gt¶t RvZxq ch¶qi L`wZ mæúñv`cwZ I cÖKškj xt` i civgk¶bqv thZ cvti |

- 1. gnv`vbMo gmmR` I gvRvi ewaZKiY bZþ gmmR` `M`bMtii evBti gnvotKi ce`w tK (200-300 MR ce`w tK) `ði (msj vM-9) `Zwi Kiv thZ cvti |
- 2. I qvKd f³ `vtb G ai tbi epr wbg¶Yi t¶t I qvKd cÖkvtKi Kvñ¶ tqi wboeo Z`vi wK Ges wbg¶Z AwWU Kvñ¶rg tRvi `vi Kiv GKvš-c¶qvRb|".

It is obvious from the aforementioned dossier that the demand and the need of growing number of devotees can very cogently be met by acquiring land 200 feet away from the present Mosque on the eastern direction and then by setting up an additional Mosques on the acquired land and then connecting the two Mosques through an over bridge over the highway. Resting places for men and women, eating areas, orphanage etc for the visiting devotees can also be established on the acquired land, without erecting any extension to the original Mosque.

In that way, on the one hand the relic of the history represented through the Mohasthangarh shall remain undisturbed, and on the other hand the ancient character and the original structure and the shape of the holy Mosque shall remain intact and at the same time the aspiration of the devotees shall be fulfilled. Indeed even the respondent no. 6, having realised the worth of the Monument, has committed himself to the proposition that an additional Mosques should be set up away from the Mohasthangarh.

Hence the authorities are directed to implement the recommendation of the committee headed by Dr. Muntasir Mamun in its totality with immediate effect. The respondents, shall, in particular take infallible and inviolable steps to prevent all kinds of advance or encroachment upon the Mohasthangarh Monument area, and acquire land to set up a new Mosques at a locations 200 feet away on the eastern side of the Monument area forthwith. The respondents, particularly the Deputy Commissioner, Bogra, and the Secretary Ministry of Archeology, are directed to file affidavit in compliance by 08.08.2012.

The Rule is made absolute with the above directions. There is no order on cost. It shall survive as a continuous mandamus. The matter shall be taken up on 8th August 2012.

Report compiled by the committee headed by Prof. Muntasir Mamun shall always be referred to and relied on in its entirety.

The authorities are further directed to allay the confusion that may have permeated into the mind of the people in the locality as a result of some unfounded and imbecile **rumour** that have been aired in the area as to the future of the Mosque, through miking and other communicative device, so that the people remain assured that nobody shall touch the Holy Mosque and that it shall also be preserved and protected at all cost.

There is yet another point that needs resolution. The petitioner filed this writ petition as a public interest litigation without swearing affidavit and sought permission that the office is directed to register the application as a writ petition. The petitioner, Human Rights and Peace for Bangladesh (HRPB),

represented by its Secretary, filed the application before this Court without swearing an affidavit and sought the aforementioned permission. The petitioner relied on the ground that in the mean time many other cases have been filed before the Hon'ble High Court Division by swearing affidavit at their own costs. The organization is always bearing all the cost of the cases from its own sources, which is raised from the donation of the members. The organization received no fund from abroad or from any citizen of the country except the lawyer members. Due to the present high volume of cases, it is not possible to bear the cost of the cases filed before the Hon'ble High Court Division as public interest litigation. Under these circumstance, it is necessary to exempt the petitioner from paying cost of the cases filed as public interest litigation. So the petitioner prays that the office be directed to register the application as a writ petition and also to serve the notice at the cost of office.

We felt that the prayer is a cogent one and hence, resolved to accede to the same.
