

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

**WRIT PETITION NO. 5161 OF 2011.**

**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**

... Petitioner

-Versus-

1. Bangladesh and others

..... Respondents

**Mr. Manzill Murshid**

.....For the Petitioner

**Mr. A.S.M. Nazmul Haque, D.A.G.** with  
Mr. Md. Jahangir Alam, A.A.G.

... For the Respondent No.6.

Heard on: 23.2.2015, 23.2.2015, 10.3.2015 and  
30.6.2015.

Judgment on: The 5<sup>th</sup> day of July, 2015

**Present:**

**Mr. Justice Md. Rezaul Hasan**

**And**

**Mr. Justice Farid Ahmed**

**Md. Rezaul Hasan, J:**

In this application, filed under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule has been issued calling upon the respondents' to show cause as to why the respondent's failure to protect the reserve forest of Shakhipur at Tangail, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to remove all kinds of unauthorised saw mills, which is situated

inside the reserve forest area at Shakhipur, Tangail and/ or pass such other or further order or orders as to this Court may seem fit and proper.

2. That facts relevant for disposal of this rule, in brief, are that the indiscriminate falling down of the trees within the territory of reserve forest area at Shakhipur, Tangail, violating the provisions of law, has jeopardized the very existence of the said forest and has seriously affected the surrounding environment. This is a matter of grave public concern, so this petition may be treated as public interest litigation; that showing utter disregard to the laws and Rules, some unauthorised saw mills are functioning there, owing to failure of the Respondents to ensure proper implementation of laws and Rules and that has caused serious damage to the said reserve forest as well to the ecosystem, in consequence. Under these circumstances, the respondents are legally bound to protect the reserve forest located at Shakhipur, Tangail, in accordance with the applicable law and the rules; that it is the legal duty and responsibility, conferred upon the respondents, to initiate lawful steps as per law, and to protect the reserve forest as well as the environment surrounding the forest. But the respondents have failed to perform their duties as well as the responsibility conferred upon them and have also failed to protect the said reserve forest; that on 05.06.2011, a report was published in news paper, namely the Daily Star that, at different places of the reserve forest area, many illegal saw mills have been installed and are functioning by a vested quarters, though unlawfully. It has also been stated in the said report that, such kinds of illegal activities are going on, but the concerned authority is silent and not performing their duties properly. Consequently, thousands of trees in the reserve forest area, at Tangail, are falling down and being removed illegally by the miscreants and that is seriously affecting the ecosystem in that area as well as causing loss to the national economy, based on forest resources; that there are thousands of Shal, Gojari and Segun and others threes in the reserve forest at Tangail; that owing to the inaction on the part of the respondents in protecting the same and in stopping the illegal cutting and removing of timbers is intended to secure unlawful gain to the interested quarters; that the respondents are remaining silent and are violating and flouting the laws by their inaction; that the respondents have miserably failed to administer the applicable laws and to protect the forest resources and the national assets; that the most of the respondents are the public servants and are very much aware of the rules and law of the land; that the respondents are aware of the duties entrusted upon them, but have failed to perform their duties in protecting the reserve forest at Shakhipur, Tangail and to stop installation and functioning of unauthorized Saw Mills. Under these circumstances, a public interest issue has arisen, which is always in the notice of the respondents, but for their inaction necessary directives may be issued to protect and preserve the said reserve forest, as well as to maintain the ecosystem in that area.

3. The Respondent Nos. 6 and 9 have filed an Affidavit-in-Opposition stating that the area of total forest land under Shakhipur Upazilla, Tangail, under the control of the Forest Division of Tangail is 47,714.59 acres, out of which 38,232.29 acres has been declared as reserve forest, in 1927 and 1928,

under section 20 of the Forest Act, 1927. Later on, in 1983 and 1984, an additional area of 9,482.30 acres of forest land has been declared as reserved forest, by publishing a gazette notification under sections 4 and 6 of the Forest Act, 1927; that the management, development and conservation programs of 47,714.59 acres forest land under Shakhipur Upazila are carried out by 12 Forest Beats, including 05 Beats of the Range of Hotia, 05 Beats of the Range of Boheratoil, 01 Beat of the Range of Bastoil and 01 Beat of the Range of Dolapara within Tangail Forest Division. There are 2/3 forest guards & other forest staffs are working under the control of the Beat officer (Forester/ Deputy Ranger) in charge of a Beat. The working force is not sufficient composed to the requirement to protect the Forest property; that forest land of the Shakhipur Upazilla is and scattered one. Due to amalgamation of forest land and private land and some disputes regarding private ownership, the public access could not be restricted at all. There are public roads running across the forest area and, as a result, the forest has lost all the particularities of nature. Local dwellers are gradually encroaching into forest land for the extension of crop field. Besides, these, some miscreants are attempting to encroach into the forest land due to explosion of population. The forest personnel, including the high officials and field staffs, are trying their level best to resist encroachment departmentally or with the help of district administration and local Police. Moreover, social forestry program is being launched to save the forest and to recover the forest land encroached upon, and to bring the same under the control of Forest Department, since 1987-88 to 2014-15. That, 8511.00 acres of illegally occupied forest lands has been recovered at the first phase. Then 9420.00 acres and 1605.00 acres have been recovered, in the 2<sup>nd</sup> and 3<sup>rd</sup> phases and those areas have been converted into Social Forest. The activities to recover all land in the current year is in progress. As this afforestation has been operated successfully, therefore, biodiversity is conserved properly. As a result, this afforestation is playing an important role to minimize the negative influence of the climate change. That aside, 123 cases have been filed before 2010-11 against the unauthorisedly installed Saw Mills within Shakhipur Upazilla. These cases are pending before the court. At times, revenues were earned by selling the seized articles, parts of the illegal Saw Mills and the forest products through auction and the said revenue were deposited into the Government treasury. A campaign was operated in May, 2010 by the then Divisional Forest Officer of Tangail Forest Division. That 25 cases have been filed after stopping the illegal Mills operation. Among them, 24 Saw Mills have been evicted by the local Forest Officers and Forest Guards, between 15.5.2011 to 3.6.2011. Moreover, the Deputy Commissioner, Tangail, appointed an Executive Magistrate in order to evict the illegal Saw Mills. At the field level, campaign and operations against the illegal Saw Mills are going on by the forest officers and forest guards, under the co-ordination of the Upazila Nirbahi Officer, Shakhipur. That, 7 cases have been filed in 2011-12, 4 cases filed in 2012-13 and 16 cases in 2013-14 by the Forest Department. Moreover, Mobile Court was conducted by Executive Magistrates in Shakhipur Upazila and that has imposed fine of Tk. 2,40,000.00 against 16 illegal Saw mills and deposited the proceeds into the Government treasury, during the period of June, 2013 to November, 2014.

Recently, in presence of Deputy Commissioner, Police Super and Divisional Forest Officer, Tangail, eviction operation was conducted between 1.3.2015 to 15.3.2015 and 14 illegal saw mills have been evicted and 14 cases have been filed before the Court of the Chief Judicial Magistrate, Tangail, and these activities are also continuing. The legal action, including seizure and eviction of the illegal saw mills, have been performed by the Forest Department. That upon receipt of the order passed this Hon'ble Court, the officers and staffs of Forest Department, enhanced their vigilance and no negligence regarding the duties of forest personnel, including the officials, staffs and the guards, has been observed in protecting the forest resources. Other respondents including, Deputy Commissioner Tangail, Superintendent of Police, Tangail and O.C. Shakhipur, are also giving proper importance to protect the forest resources and trying their level best for compliance of the direction from the Hon'ble High Court Division.

4. Learned Advocate Mr. Manzill Murshid, appearing along with Advocate Sonjoy Mandal, having placed the petition along with the documents annexed, first of all submits that, the duties and responsibilities are vested upon the respondents to serve the people and to initiate lawful steps, as required by law, has to be performed. But, the respondents have failed in and refrained from performing their duties and responsibilities, entrusted upon them, by way of allowing installation and functioning of unauthorized saw mills in the reserve forest area at Shakhipur, Tangail. He next submits that, the respondent are the public servants and they are duty bound at all time to protect public property and to take legal steps towards that end as well as to maintain, preserve and protect the said reserve forest, wildlife habitats and ecosystem in that area. He further submits that, such disregard to laws and the failure to ensure proper implementation of laws have caused serious damage to the reserve forest and to the environment of the area, adversely affecting the biodiversity. Besides, their indulgence helps these culpable activities increasing extensively. Hence, he continues, the respondents are required to be directed to protect the reserve forest area at Shakhipur, Tangail, in accordance with law and to remove all unauthorised saw mills installed in the reserve forest. He emphatically points out that, a fresh and pollution free environment is inevitable requirement for healthy life, which ought to be secured as "right to life" guaranteed under Article 31 of our Constitution. In support of his contention, the learned Advocate has cited a decisions reported in AIR 1997 SC 1228L T.N. Godavarman. Thirumulkpad Vs. Union of India. He, therefore, concludes submitting that this Rule may be made absolute by issuing the directions prayed for.

5. The learned Deputy Attorney General Mr. A.S.M. Nazmul Haque, appearing along with the learned Assistant Attorney General Mr. Md. Jahangir Alam, mainly submits that the reserve forest situated at Shakhipur Tangail is not a compact forest zone. It rather comprises several forest lands and some public paths have crossed through the reserve forest area. Besides, there are small pieces of scattered private lands within this forest area. As a result, he continues, some encroachments had taken place and some illegal saw mills were installed. But, the forest personnel, with their own man power and with the help of local Police and the local administration, has

recovered substantial portion of forest lands, in 3 phases, as stated in their affidavit. Besides, illegal saw mills have been removed, seized articles were sold, mobile courts operated and the proceeds recovered have been deposited into the government treasury. He points out that, after receiving order of this court, the forest officials and personnel have become more vigilant and are properly complying with the court's order as well as continuing their operations alongwith launching programs to augment social awareness to protect and preserve the forests. He concludes, firmly submitting that, there has been no willful negligence on the part of the forest personnel in performing their duties under the Forest Acts and the Rules. He submits that the Rule may be discharged since the Respondents are duly performing their duties.

6. Heard the learned Advocates for both sides, perused the petition, the affidavit-in-opposition and other materials on record.

7. It is admitted that the reserved forest situated at Shakhipur, Tangail, covers thousands of acres of land, but the reserve forest is not a compact forest zone. It comprises some pieces of forest lands. It is also admitted that, some encroachments have taken place in the reserved forest areas, though the blame is attributed to the inadequacy of manpower and alleged existence of some public paths and pieces of private lands situated within the reserve forest area. However, in a defensive style, it has also been asserted in the affidavit-in-opposition that, the concerned forest authority, with help of local police and the administration, has recovered a substantial portion of lands from the illegal occupants, in 3 phases, as described in the affidavit-in-opposition. It has also been stated, by the Respondent Nos. 6 and 9, in their affidavit that, some cases have been filed before the court of Chief Judicial Magistrate, against some persons who had illegally installed saw mills or had removed / stolen trees etc. Besides, it has been claimed too, by these respondents that, some illegally installed saw mills were removed as well as seized and the seized articles were sold in auction. Alongside, mobile courts were launched to oust the illegal occupants, to remove the unauthorized saw mills and to preserve the forest lands and its resources.

8. Be that as it may, the version of the Respondent Nos. 6 and 9, if considered in the light of extensive damage done to the forest, as reported in the news papers and as admitted in the affidavit-in-opposition, we are find these actives are inadequate. Rather, to a large extent, the facts and circumstances of this case, as revealed from their (Respondents) own admission and by the news papers reports, prove prima facie case of serious neglect of duty, for which the officials concerned may have to be brought to the book.

9. The reserve forest is not only the national assets, of which the respondents stands in the position of trustees, but the existence and growth of natural forestry is an integral part of the ecosystem, that is indispensable for healthy human lives, to preserve the wildlife habitats and to ensure a sustainable forestry. Preservation of natural environment and the resources is indispensable not only for its contribution to the national economy, but also for preventing natural disasters and adverse changes in the climate, while it provides opportunities for experiencing natural beauty and solitude.

10. We are, however, faraway from being satisfied with the explanation offered in the affidavit-in-opposition filed by the Respondent Nos. 6 and 9, while others respondents did not even appear to deny the allegations made in the writ petition or to deny the reports published in the news papers. This shows a panicky look of the diminishing reserve forest, situated at Shakhipur, Tangail. We respectfully agree with the views expressed in AIR 1997 SC 1228, wherein it has been held that, “running of Saw Mills of any kind including veneer or play-wood mills and mining are non-forest activities”. The Supreme Court of India, in that case, also directed some State Governments to file reports, within 2 months, on some factual aspects as pointed out by the court and have also issued certain directives to ensure protection of the trees in the forest and for strict adherence of forest law.

11. We have considered this case in its totality and we find substance in the allegations that the respondents are abstaining from performing their duties as required of them under the Forest Act 1972 and the Saw-Mills Rules, 2012.

12. We have nothing in the record to show the number and classes of the trees existing in the reserve forest or of the number of unauthorized Saw-Mills installed and said to have removed. The Respondents ought to have given a list of licenced and unauthorized Saw-Mills. We are even not aware how many trees are being harvested or planted there in each year or how many trees are being cut and at what age, as per law. Cutting of the aged or fully grown up trees might be required to ensure new plantation and their growth. We even do not know if there is any policy regarding the reserve and other forests, so that adequate and proper directives could have been issued accordingly. We even do not know whether these respondents or the concerned Ministry has any study or plan on environmental economics and about the environmental condition.

13. Be that as it may, we find merit in this Rule.

### **ORDER**

In the result, the Rule is made absolute with following directions, given pursuant to Article 112 read with Article 109 of the Constitution of the People’s Republic of Bangladesh.

#### Directives:

1: Respondent Nos. 3, 4, 5 and 7 are hereby directed to take all necessary steps to preserve and protect the nature and wild habitat in the reserve forest of Shakhipur at Tangail, in an effective manner and in accordance with law.

2. Respondent Nos. 9, 8, 2 and 7 are hereby directed to form a monitoring committee to monitor the forest area so that no one can illegally cut or remove the trees or damage/ destroy the existence of the Shakhipur Forest and to file report to the Respondent No. 4 in every month. Respondent No. 4 is directed to take step, if necessary, based on such monthly report.

3. Respondent Nos. 6 and 7 are directed to conduct mobile court within the area of Shakhipur Forest to prevent and punish violation of

any provisions of Forest Law, Environment Law and the Saw-Mills (License) Rule, 2012, as and when it becomes expedient.

4. Respondent Nos. 6-10 are directed not to allow any Saw-Mills license, for installation of any Saw-Mill, within 10 kilo meters of the said Forest area.

5. Respondents are directed to take all necessary steps to diligently conduct the trial of the pending cases in different courts and to ensure speedy disposal of the same.

<sup>l</sup> It is also to be recorded here that the directives given above are continuous in nature and shall remain in force even after disposal of this matter.

Let copies of this judgment be sent to the Respondent Nos. 3, 4, 5, 9 and 10, for their information and compliance.

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