

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

Writ Petition No. 5162 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 (HRPB) Represented by the President of the Executive Committee Advocate Manzill Murshid, 36 Mirpur Road, Bashundhora Goli, P.S. New Market, Dhaka, Bangladesh and others.

.....petitioner

-Versus-

Bangladesh represented by the Secretary, Ministry of Planning, Sher-E-Bangla Nagar, Dhaka and others

.....Respondents

Mr. Manzill Murshid, Adv.

.....for the petitioners

Mr. M. Amir-Ul Islam, Advocate

.....for the Respondents

**Mr. A. B. M. Altaf Hossain, D.A.G with
Ms. Yehida Zaman, A.A.G**

.....for the Respondents

Heard on: 17.01.2012 and

Judgment on: 18.01.2012

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 02.06.2011, was in following terms:

æLet a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to protect the sea beach area of Kuakata, Potuakhali, from encroachment and earth filling and why a direction should not be given upon the respondents not to allow any construction of any permanent or temporary structure within the sea beach are at Kuakat, Potuakhai and/or pass such other or further order or orders as this Court may seem fit and proper.”

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

The petitioner is a Human Rights conscious body and all its members are practicing lawyer of this Hon'ble Court.

The petitioner is seeking direction upon the respondents to stop encroachment, earth filling and creation of temporary & permanent structures on the sea beach area at Kuakata, Potuakhali, violating the provisions of the Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and **জগৎ নিষ্কৃত্তি নিয়ন্ত্রণ আইন, ১৯৯৫** (amended in ২০০০ and ২০০২), and **জগৎ নিষ্কৃত্তি নিয়ন্ত্রণ আইন, ১৯৯৫** (amended in ২০০০ and ২০০২). The petitioners are also seeking direction to remove temporary & permanent structures already built on the sea beach area at Kuakata, in violation of the provisions of law. They seek aspired relief by invoking Article 102 of the Constitution as a public interest litigation.

By way encroachment, earth filling and erection of temporary and permanent structures within the territory of the sea beach area at Kuakata, violating the provisions of law, the normal existence of Kuakata sea beach has been inferally eroded. The environment has also been seriously impaired. As the issues herein involve great public importance, this petition may be treated as public interest litigation.

Millions of tourists from home and abroad visit Kuakata Sea beach area at Potuakhali, wherefor the country's exchequer has been getting enriched. Not only that, the sea beach area at Kuakata is playing a great role for our ecology. Due to continuous encroachment, earth filling and construction in the above mentioned beach, it is losing its width and affecting its natural beauty. Illegal acts of the perpetrators has plunged the beach in the verge of nihility.

Section 5 of the **জগৎ নিষ্কৃত্তি নিয়ন্ত্রণ আইন, ১৯৯৫** (amended in ২০০০ and ২০০২), **জগৎ নিষ্কৃত্তি নিয়ন্ত্রণ আইন, ১৯৯৫** (amended in ২০০০ and ২০০২), proscribes changing the nature of any land that has been earmarked as a natural reservoir. Section 8 of the said law provides punishment for such persons who act in contravention of the Act. Section 7 of the Environment Conservation Act, 1995, empowers the authority to direct any person responsible for causing damage to the ecosystem to adopt corrective measures. Due to the encroachment, earth filling and temporary and permanent structures built on the sea beach area at Kuakata, it is going to change the nature which is not only illegal but punishable offence under the law of the land.

Encroachment, erection of structures is; coupled with the authorities' failure to ensure proper implementation of laws, have already caused enough damage to the environment and adversely affected the beauty of the beach area. The respondents are legally bound to protect the sea beach area at Kuakata, in accordance with the law.

It is the duty and responsibility of the respondents to serve the people and initiate lawful steps and the respondents are also duty bound to obey the provisions of law, yet the respondents have failed to be attentive to the dictates of law and have been failing to protect the above mentioned sea beach from encroachment, earth filling and occupation.

On 01.06.2011 a report was published in the Daily Star, stating that the different places of the sea beach of Kuakata area are being forayed by interested quarters. It has been further stated that though such activities are continuing, the concerned authorities are mum and are not performing their duties as they ought to. Consequently the sea beach area at Kuakata, is going to lose it's existence and charm, something that will seriously affect the environment and the economy of the country. It has been emphasized that interested quarters have already occupied the beach area and rendered the normal existence of the beach otiose, which is seriously affecting our ecological system.

Encroachment, earth filling and building of temporary and permanent structures on the sea beach area at Kuakata is repugnant to all applicable laws of the country.

Taking advantage of the silence of the concerned authority, the encroachment, earth filling and temporary & permanent structures building on the sea beach area at Kuakata is continuing.

The respondent No. 8 has filed an affidavit in compliance figuring the following statements: In obedience to the mandate of the court, the respondent no. 8 on 24/8/2011 formed a 5(five) members advisory committee and 10(ten) members team to identify and demarcate the sea beach area of Kuakata and to draw draft sketch map of the location and to prepare a list of illegal structures thereon. The respondent no. 9, the Superintendent of Police, Patuakhali, has also formed a 3(three) members committee to deploy police force on the sea beach area, so that illegal trespass, earth filling, permanent and temporary structures can be prevented. The aforesaid committees and teams made spot visit on the area. During their visits, the technical officials accompanying the team, also drew a draft trace map on the sea beach area.

The committee and the team members along with technical officials conducted thorough survey on the sea beach area and ultimately specified and demarcated the sea beach wherein 3624.06 acres of land are khas land and 1100.57 acres of land are private land. The committee found 228 illegal structures, out of which 208 structures have been demolished and the remaining 20(twenty) could not be demolished owing to the order of injunction and status-quo granted in 2(two) civil suits, pending in the Patuakhali Judgeship, pendency of one civil revision and one writ petition, pending before the Hon'ble High Court Division.

The respondent no. 8, in compliance with this Hon'ble Court's order, on 13.10.2011, submitted a report, addressed to the Solicitor with a copy to the learned Attorney General for Bangladesh with attention of Mr. M. K. Rahman, the learned Additional Attorney General, for consideration of the same by your Lordships and for further order.

Since the draft map of the sea beach area is a very big one, it could not be annexed hereto but the deponent begs to place the same before your Lordships at the time of hearing.

The respondents No. 9 and 10 have filed a conjoined affidavit in opposition, figuring the following statements:

The respondents No. 9 and 10 of this Writ petition received the notice with order dated 02-06-2011 passed by the Honorable High Court Division of the Supreme Court of Bangladesh. In compliance with the direction of the Honorable court, the respondents have formed a police team consisting of 15(fifteen) members for sea beach area at Kuakata, so that no one can encroach, commit earth filling or build any permanent or temporary construction within the sea beach area and office order signed by S.P. Patuakhali has been served upon the concerned officers and members of police on 18-08-2011. The police team commenced their duties from the date of their formation.

The respondent Nos. 7-10 filed their pleading stating that they are the lawful owners of the land of the S.A. Khatian No. 1227, marked as Plot No. 5178/10002 and Plot No. 5180/10003 scheduled as J.L. No. 34 Latachapli in the District of Ptua khali. They and others being the owners of a total of 5.03 acre of land from the same Khatian, their property was lawfully registered in the Sub-Registrar Office, Kolapara, and the same is not located on the beach and the beach area is neither defined nor demarcated. No law contemplates the removal of the hotel, owned and built on the owners' duly purchased land.

On 03.06.2007, a letter was sent to the applicants by the Deputy Commissioner of Patuakhali, asking the earlier to vacate the land, claiming the land as Khas Land. Being aggrieved by the said letter, the applicant No. 1 filed a Writ Petition No. 5910 of 2007 on the same day and was able to obtain an order of status quo in respect of the possession of the land in question for a period of 30(thirty).

On 29.08.2007 the applicants filed a Civil Suit which was registered as Civil Suit No. 168 of 2010 in the Court of the Joint District Judge, 2nd Court, Patuakhali, a for declaration of the title and possession of the land, to stay the execution of the notice and also for a permanent injunction.

On 24.11.2010 the Learned Joint District Judge, 2nd Court, Patuakhali, accepting the application, stayed the execution of the notice, and passed an order granting temporary

injunction till disposal of the case and also to restrain the defendant nos. 1-5 from interfering with the construction work of the applicants' land/building.

Human Rights and Peace for Bangladesh (HRPB) filed the Writ Petition No. 5162 of 2011 as a Public Interest Litigation before the Bench comprising Mr. Justice A.H.M. Shamsuddin Choudhury and Mr. Justice Gobinda Chandra Tagore. The Hon'ble Bench was pleased to issue a Rule Nisi on 02.06.2011 and directed (i) the respondents to demarcate the sea beach area, (ii) the respondent Nos. 9-10 to arrange police force for the area so that no one can encroach, commit earth filling or built any permanent or temporary construction within the area, (iii) the respondent Nos. 8-1 to demolish/remove all the temporary and permanent structures within the sea beach area.

It does not warrant, nor confer any authority upon the respondents 1 to 4 to use the said directions to evict and or issue notices upon the added Respondents 7 to 10 to be evicted nor does it authorise them to demolish/remove the temporary and permanent structures of the applicants'/respondents' land before demarcating the sea beach area at Kuakata, which thus frustrates the order of the High Court Division.

Due to the demolition/removal of all the temporary and permanent structures of the applicants' land before demarcating the sea beach area, their business and reputation have suffered, causing huge financial crisis for the applicants.

The applicants are the lawful owners of their land and have been possessing their land and paying all the revenues to the Government and therefore any direction upon the respondents for demolishing/removing the temporary and permanent structures of the said land without hearing the applicants will be highly prejudicial to the applicants and the same would be violative of the principles of natural of justice. The malafide action of the respondents will not only cause irreparable loss and suffering to the applicants, but they shall also adversely affect the tourism at fascinating Kuakata.

As the Rule was taken up for adjudication, Mr. Manzill Murshid portrayed the melancholic scenario of the gradual demise of Kuakata at the hands of some unscrupulous land grabbers. He expressed his utter despair in projecting the gloomy scenario and literally cried for help to protect this invaluable tourist haven.

Mr. M. Amirul Islam the learned Senior Advocate argued for respondents no. 7 through 10 that it is for the interest of Kuakata that the private land owners' right to erect structures should be fanned, so that tourists can find places to be accommodated. He insisted for a Master Plan for the area for general interest.

The solitary question that we are to address is whether we should pass the craved order.

It is obvious and, not disputed, that the land on the shore belongs to the state, not to an individual, and that the government, as the trustee of public trust, has a bounden duty to use the land for the benevolence of the country and its people. This, for as important a place as Kuakata, means the government is saddled with an onerous and **unjettisonable** duty to turn that place into a tourists' hub. The government is, therefore, under a fiduciary obligation to repel all private intruders and is, as such, bound to remove and demolish all private structures on the shore, including the people who have created a sign board on a tree on the shore land as was projected in Daily Star, dated 1st June, 2011. We would require the government to take stern action against such land grabbers, not only in Kuakata but all over the country.

The area is, obviously, property of the Republic as defined in Article 143 of the Constitution. The government holds it in trust for the people.

The Supreme Court of India in MC Mehta -v- Kamal Nath (1996 (6) Scale (SP) 10(1), came out with a mile stone decision to expound the fullest import of the English Common Law doctrine of Public Trust, holding that the Public Trust Doctrine in the English Common Law extended only to certain traditional use, such as navigation, commerce and fishing, while the American Courts had expanded the concept of Public Trust to a larger dimension and that the

Indian Legal System, based on English Common Law, includes Public Trust Doctrine as a part of its jurisprudence, expressing; æThe state is the trustee of all national resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee, is under a legal duty to protect the natural resources. These resources, meant for public use ,cannot be converted into private ownership.”

Principles enunciated in the above cited decisions, can be succinctly summed up in following terms;

The Government stands in a fiduciary relationship to the citizens in respect to the property the state owns.

This sways us to the immutable synthesis that the order sought by the petitioner is indeed a well deserved one.

Mr. M. Amirul Islam, the learned Senior Advocate, representing added respondent No. 7, through 10, submitted that his client has obtained an injunction from a competent court of civil jurisdiction. We have perused the injunction order. We are gob smacked to see that the authorities have remained idle and oblivious for more than 1 and ½ year and has taken no step whatsoever to take the injunctive order to superior courts. Such indolence is outrageous to say the least. We do therefore direct the people concerned to take immediate steps to challenge the injunctive order in superior courts forthwith.

For the reasons stated above, the rule is made absolute without any order as to costs.

Before parting we must put on record Mr. M. Amirul Islam’s, proposition that there should be a Master Plan to groom Kuakata as an enviable and spectacular tourist spot. We fully endorse Mr. Islam’s views, which is indeed a commendable and noble one. So we direct the authorities to take steps to chalk out a Master Plan to make this precious and important area of the Republic a cozy attraction for tourists. It appears from the records that a committee has already been set up to demarcate the area and they are already on the bit. We direct the authorities to implement the demarcation and protect and preserve the demarcated area, without allowing any intervention by any body. This order shall remain a continuous mandamus.

The matter shall taken up for further consideration on 15th October 2010.

Considering the plea that Human Rights Peace for Bangladesh receives no fund from within or abroad and has been filing many similar cases with their own fund, donated by its members, let their prayer be allowed so that this application can be treated as a public interest litigation, and the necessity of swearing any affidavit can be dispensed with. The office is directed accordingly.
