

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

WRIT PETITION NO. 6306 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**

..... Petitioners

-Versus-

1. Bangladesh, represented by the Secretary,
Ministry of Planning and others

..... Respondents

Mr. Manzill Murshid with
Mr. Sanjoy Mandal, Advocates

... For the petitioners.

Mr. A.K.M. Zahirul Huq, D.A.G. with
Ms. Samira Tarannum Rabeya A.A.G.

.... For the Respondents

Heard on: The 2nd, 7th, 8th, 9th August, 2016

Judgment on: The 16th August, 2016.

Present:

Mr. Justice Md. Rezaul Hasan

And

Madam Justice Kashefa Hussain

Md. Rezaul Hasan, J:

On this application, filed under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi has been issued, calling upon the respondents to show cause as to why directions should not be given upon the respondents to protect the river Kornofuli at Chittagong, from encroachment and earth filling and why the respondents should not be directed to remove all permanent and temporary structures made within the river Kornofuli if they are found to have been constructed in breach of the law and / or pass such other or further order or orders as to this Court may seem fit and proper.

Facts stated in the writ petition, in brief, are that the petitioners are seeking direction upon the respondents to stop encroachment, earth filling, construction of temporary and permanent structures and buildings on the Banks of River Kornofuli, at Chittagong, that were being made or done violating the provisions of the Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, 2000. The petitioners have filed this petition, under Article 102 of the Constitution, as a public interest litigation in order to take necessary steps against the violation of the provisions of law as well as for a direction upon the respondents to take necessary steps to protect the river Kornofuli and its banks from unlawful encroachment that has been obstructing the natural course of water flow in the said river as well as has been adversely affecting the environment; that lives of millions of people residing in Chittagong Metropolitan City area and on both sides over the banks are depending on the existence of Kornofuli River. Moreover, the biggest port is dependent on the natural course of water and navigability of this river. But, due to continuous illegal encroachment, earth filling and building of structures in the above

mentioned river and on its banks, day by day it is losing its width, depth and navigability, affecting the business and riverian lives in that area; that these unlawful encroachments are preventing pluvial waters from running into the river, that results in inundation of public paths, residential and commercial zones and many areas of the port city; that the river is playing an effective role in protecting the environment. But, due to illegal acts of the law violators, this river can not make its geo-physical contribution in conserving the environment; that Section 5 of মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, 2000, prohibits any change in the nature of any water body like river; that pursuant to section 8 of the said Act, any person who acts in contravention of the Act is liable to suffer imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000. Moreover, under section 7 of the Environment Conservation Act, 1995, the authority has been empowered to direct any person, responsible for causing damage to the ecosystem, for adopting corrective measures; that due to illegal encroachment, earth filling and building of temporary and permanent structures on the banks of River Kornofuli, the nature of the river has been changed, which is a clear contravention of section 5 of the Act No. 36 of 2000; that under these circumstances the respondents are legally bound to protect the River Kornofuli, in accordance with law; that, duties and responsibilities are vested upon the respondents to protect and conserve the river and to initiate lawful steps as per provisions of the Acts, aforementioned. But, the respondents have failed to perform the duties and responsibilities as vested upon them and also failed to protect the River Karnofuli from illegal encroachment, earth filling and occupation; that on 14.07.2010 a report was published in a news paper, namely- 'Daily Zonokontho', wherein it has been reported that the river banks of Kornofuli are being encroached by earth filling and building temporary and permanent structures by a quarter of people, though it is unauthorized. It was also stated in that report that though such kind of activities were continuing, but the concerned authority was silent and was not performing their duties properly. Consequently, the very existence of the river Karnofuli is exposed to serious risk. It was further reported that, the interested quarter occupied the river and created obstruction to the normal flow of water in the River, which is seriously affecting the ecological system. That an ATN News broadcast, on 29.06.2010, that the encroachment was continuing, but no step was taken by the

administration; that the encroachment, earth filling and building of temporary and permanent structures on the river banks are contrary to the provisions of the laws mentioned above; that the respondents are silent and are flouting the obligations entrusted upon them and they have miserably failed to enforce the law and to protect public interest; that owing to the failure to ensure proper implementation of laws by the respondents, enough damage to the environment and the city dwellers have already been caused and, due to their inaction, functioning of Chittagong Port may be seriously hampered. Under these circumstances the respondents are legally bound to protect the river Kornofuli in accordance with law and that necessary directions may be given to that end.

Hence this writ petition has been filed, as PIL by the petitioners and the instant Rule, quoted at the inception, has been issued.

The respondent No. 13 has appeared in this matter and filed an affidavit-in-compliance supporting the case of the petitioners and further stating that the office of the Respondent No.13 is always aware to save the government property and to look after public interest and have already completed several eviction activities within short time. List of some illegal settlers have already been prepared. Now the demarcation process is going on. After completion of demarcation, the illegal settlers will be evicted. The cases of trespassing and encroachment upon government property are brought to the notice of the authority promptly for taking legal action against the trespassers and encroachers; that from the office record of Bakalia Bhumi Office it is found that the river Karnofuli is flowing in Mouza Bakalia under P.S- Bandar of Chittagong District. The said river has been recorded as government Khash land in B.S. Khatian No. 1 with B.S. Plot No. $\frac{8}{966}$, $\frac{3848}{4791}$, $\frac{6810}{6980}$ & 8651 with an area of 153.50+176.50+129.00+147.10 respectively with classification of land as Nodi (River), with remarks as Kornafuli river in remarks Column of the B.S. Khatian. Some people have filed several civil suits claiming their ownership in the property of above river in different civil courts, against the government, seeking declaration that the B.S. record is incorrect and to declare the right and title of the plaintiffs in the suit land (i.e. Kornafuli River). This office is contesting the cases carefully by submitting the S.F. through the proper authority, in time. This Bhumi Office has submitted

list of trespassers of river Karnafuli, to ensure taking lawful action against them, to the authority and Eviction case No- 14/2009 also started under ordinance No-xxiv/1970 which is under process. Besides that, some other trespassers list has been submitted to the authority to take action against their illegal occupation of government Khash Land (Kornafuli river) from this office at different times; that from the office record of Firingibazar Bhumi office it is found that the river Kornafuli is flowing in Mouza Firinghi Bazar and Suja Katgor under P.S. Bandar of Chittagong District. The said river has been recorded as government khash land in Mouza Suja Katgor, under P.S- Bandar, B.S. Khatian no. 01, B.S. Plot No. 601 with an area of 43.1000 acre and Mouza Firinghi Bazar, B.S. Khatian No. 01, B.S. Plot No. 701 with an area of 0.7485 acre, respectively, with classification of land as Nodi (River) with remarks as Kornafuly river in remarks column of the B.S. Khatian; that from the office record of Agrabad Bhumi office it is found that the river Kornafuli is flowing through Mouza Madarbari under P.S. Bandar of Chittagong District. The said river has been recorded as government khash land in B.S. Khatian no. 01, B.S. Plot No. 1851 with an area of 0.9300 acre as Nodi (River), with remarks as Kornafuly river in remarks column of the B.S. Khatian; that from the office record of Chandgaon Bhumi office it is found that the river Kornafuli is flowing through Mouza Char Mohara P.S. Bandar B.S. Khatian No. 01, B.S. Plot No. 76 with an area of 71.00 acre and Mouza Mohara P.S- Chandgaon- B.S. Plot No. 3657/3740, 8776/10178, 10178/10179, 16215 with an area of $(0.1344+0.2850+0.5300+69.10)= 70.0494$ acre as Nodi (River), with remarks as Kornafuli river in remarks column of the B.S. Khatian; that the office of the Deputy Commissioner Chittagong is always alert about trespassers of government Khash Land as well as Kornafuli river; that the total work procedure of the Respondents after the rule issuing order dated-18.07.2010 by the High Court Division has been annexed vide স্মারক নং:০৫.৪২.১৫০০.৩০২.০৫.০০১.১৫.৩১০৮ dated-08.11.2015, where it has been reflected that the Respondents have every good intention to save the river 'KARNAFULI'.

Learned Advocates Mr. Manzill Murshid and Mr. Sanjoy Mandal, have appeared for the petitioners. Mr. Murshid, having placed the petition, submits that, the office of the respondent No. 3 has done a survey as per direction of this Division and submitted a report, along with a map, clearly showing the names of the persons unlawfully occupying the banks

of river Karnofuli that belongs to the Government. He submits that, as defined in Clause (কক) of section 2 of Bangladesh Environment Conservation Act, 1995 (BECA 1995), the river Karnofuli along with its banks comes within the definition of ‘জলাধার’. He next submits that section ‘6 Uma’ of the said Act clearly prohibits filling earth and changing the nature of any river or ‘জলাধার’, in any manner whatsoever, and the provisions of this section shall prevail over the provisions of any other laws. He next submits that, violation of any provision of this Act is punishable as enumerated in the Table, Column- 8, read with section 15 of the said Act. He further submits that, Karnofuli river comes within the definition of ‘প্রাকৃতিক জলাধার’ as defined in Clause (চ) of section 2 of the ‘প্রাকৃতিক জলাধার সংরক্ষণ আইন’, 2000 (Act No. 36 of 2000). Section 5 of this Act clearly prohibits change of nature of any ‘প্রাকৃতিক জলাধার’ (river in this case) in any manner and provides for punishment for violation of any provisions of the Act, vide section 8 of the said Act. Besides sub-section (2) of section 8 empowers the authority to require any person or any other body to demolish the illegal construction, but as has been shown in the survey report, submitted by the office of the Respondent No. 13, it is evident that there are at least 2187 illegal occupants as per R.S. record, who are illegally occupying the banks of river Karnofuli running across several mouzas namely, Bakalia, Suja Katgor, Char Mohara, Mohara, East Potenga, Motherbari, Gosaildanga, Monohorkhali and Firingi Bazar, as stated in the affidavit-in- compliance. But inspite of their having clear legal duty to prevent unlawful occupation and change of nature of ‘উন্মুক্ত জলাধার’ i.e. the river Karnofuli along with its bank, the respondents are paying no heed to the statutory duty imposed upon them under the aforesaid provisions of law. He also submits that the Government has filed affidavit-in- compliance in which the government has also recorded the names illegal occupants at several Mouzas through which the river runs. Therefore, necessary directions may be given upon the respondents to ensure compliance of the law, to protect the nature of river bank, to restore public property for the public interest, to stop environmental degradation, to maintain navigability of the river, to stop inundation of the city caused due to halting of the pluvial water by the encroachers and to ensure compliance of law. In support of his contention the learned Advocate has cited two decisions, one reported in 17 BLT 455, whereby the rule was made absolute with certain directions given upon the respondents and another judgment of the Appellate Division, reported in

62 DLR (AD) 428, that upheld 17 BLT 455. In view of the aforesaid facts and circumstances and the law declared by this court, the learned Advocate prays that the petition has merit and the rule may be made absolute with necessary directions.

The learned Deputy Attorney General Mr. A.K.M. Zahirul Huq, D.A.G. appears along with learned Assistant Attorney General Ms. Samira Tarannum Rabeya. They have made submission in support of the claim of the petitioners and supported the eviction plan from the land comprising Karnofuli in the several Mouzas namely, Bakalia, Suja Katgor, Char Mohara, Mohara, East Potenga, Motherbari, Gosaildanga, Monohorkhali and Firingi Bazar, as stated in the affidavit-in-compliance and have asserted that the Government aware of these violations and shall take step for eviction of illegal occupants.

However, both the parties, on query from the Bench, admit that some areas of the river bank, as per R.S. record, appears to have been used for the public purpose and that those areas may be excluded from the order, inasmuch as, the constructions in the said area have been made by involving public money and was done in the public interest.

We have heard the learned Advocates appearing for both sides, perused the petition, the affidavit-in-compliance and other materials in the record.

Facts leading to issuance of the rule have been stated herein above, in brief.

Having perused the survey report, we find that, the survey report lists as many as 2187 illegal occupants, who are illegally seizing the banks of river Karnofuli at several mouzas, namely- Bakalia, Suja Katgor, Char Mohara, Mohara, East Potenga, Motherbari, Gosaildanga, Monohorkhali, Firingi Bazar etc. under P.S. Bandar, District- Chittagong, and thereby, they have changed the nature and character of the said river consisting of its banks and the natural flow of water in the said river, by making illegal constructions and by way of illegal encroachment.

Next, we have turned our attention to “মহানগরী, বিভাগীয় শহর ও জেলা শহর-র পৌর এলাকা সহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০”, in brief the Act No. 36, 2000, and have consulted the definitions of ‘কর্তৃপক্ষ’, and of ‘প্রাকৃতিক জলাধার’ given under section 2 of the Act. The definitions are quoted below:

“ধারা-২ (গ): ‘কর্তৃপক্ষ’ অর্থ রাজধানী উন্নয়ন কর্তৃপক্ষ, চট্টগ্রাম উন্নয়ন কর্তৃপক্ষ, খুলনা উন্নয়ন কর্তৃপক্ষ, রাজশাহী উন্নয়ন কর্তৃপক্ষ এবং আপাতত: বলবৎ অন্য কোন আইনের অধীন প্রতিষ্ঠিত কোন শহর উন্নয়ন কর্তৃপক্ষ, সিটি কর্পোরেশন এবং বিভাগীয় ও জেলা শহরের পৌরসভাসহ দেশের সকল পৌরসভা।

“ধারা-২(চ): ‘প্রাকৃতিক জলাধার’ অর্থ নদী, খাল, বিল, দীঘি, বাধা বা জলাশয় হিসাবে মাষ্টার প্লানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্যা প্রবাহ এলাকা হিসাবে ঘোষিত কোন জায়গা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমিও ইহার অন্তর্ভুক্ত হইবে;” (underling is ours).

Having consulted the definitions quoted above, we find that ‘Karnafuli River’, including its banks, flowing from its head to mouth, comes within the definition of ‘প্রাকৃতিক জলাধার’ as defined in section 2(চ) of Act No. 36 of 2000. We also find that the Respondent No. 8, the Chittagong City Corporation (CCC) as well as the Chittagong Development Authority (CDA), are also the proper authorities, as defined in the said Act, on whom statutory obligations have been imposed under section 5 of the Act, to enforce the provisions of this Act.

We have also consulted section 5 of the Act 36 of 2000, which reads as follows:-

“ধারা-৫ খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান ও প্রাকৃতিক জলাধারের শ্রেণী পরিবর্তনে বাধা নিষেধ।- এই আইনের বিধান অনুযায়ী ব্যতীত, খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার হিসাবে চিহ্নিত জায়গার শ্রেণী পরিবর্তন করা যাইবে না বা উক্তরূপ জায়গা অন্য কোন ভাবে ব্যবহার করা যাইবে না বা অনুরূপ ব্যবহারের জন্য ভাড়া, ইজারা বা অন্য কোন ভাবে হস্তান্তর করা যাইবে না। (emphasis supplied).

We have, next, gone through the provisions of consulted section 8 of Act No. 36 of 2000, which reads as follows:

“ধারা-৮ শাস্তি, ইত্যাদি।- ১) কোন ব্যক্তি এই আইনের কোন বিধান লঙ্ঘন করিলে তিনি অনধিক ৫ বৎসরের কারাদণ্ডে বা অনধিক ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডনীয় হইবে।

(২) ধারা ৫ এর বিধান লঙ্ঘন করিয়া যদি কোন জায়গা বা জায়গার অংশবিশেষের শ্রেণী পরিবর্তন করা হয়, তাহা হইলে সংশ্লিষ্ট কর্তৃপক্ষ নোটিশ দ্বারা জমির মালিককে অথবা বিধান লঙ্ঘনকারী ব্যক্তিকে নোটিশে উল্লেখিত জায়গার শ্রেণী পরিবর্তনের কাজে বাধা প্রদান করিতে পারিবে এবং নির্ধারিত পদ্ধতিতে অননুমোদিত নির্মাণ কার্য ভাঙ্গিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উক্তরূপ ভাঙ্গিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুকনা কেন, উক্তরূপ ভাঙ্গিয়া ফেলিবার জন্য কোন ক্ষতিপূরণ প্রদেয় হইবে না।”

(৩) এই আইনের বিধান লঙ্ঘন করিয়া যদি কোন নির্মাণকার্য সম্পাদিত বা অবকাঠামো তৈরী হইয়া থাকে সেই সকল অবকাঠামো আদালতের আদেশে সংশ্লিষ্ট কর্তৃপক্ষের বরাবও বাজেয়াপ্ত হইবে। (emphasis supplied)

We have then consulted the relevant provisions of the Environment Conservation Act, 2005 (BECA, 1995 or Act 1 of 1995). We find that Clause (কক) of section 2 defines the word ‘জলাধার’ as follows:

(কক) ‘জলাধার’ অর্থ নদা, খাল, বিল, হাওড়, দীঘি, পুকুর, ঝর্ণা বা জলাশয় হিসেবে সরকারী ভূমি রেকর্ডে চিহ্নিত ভূমি, বা সরকার, স্থানীয় সরকার বা সরকারী কোন সংস্থা কর্তৃক সরকারী গেজেটে প্রজ্ঞাপন দ্বারা ঘোষিত কোন জলাভূমি, বন্যা প্রবাহ এলাকা, সলল পানি ও বৃষ্টির পানি ধারণ করে এমন কোন ভূমি; (emphasis added)

Thereafter, we have considered section 4 of the Environment Conservation Act, 1995. That reads as follows:-

“৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলি।- (১) এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহাপরিচালক তৎকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত নির্দেশ দিতে পারিবেন।

We have, thereafter, examined the provisions of section ৬৩ of the Environment Conservation Act, 1995. That reads as follows:

“৬৩) জলাধার সম্পর্কিত বাধা-নিষেধ।--আপাতত: বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুকনা কেন জলাধার হিসেবে চিহ্নিত জায়গা ভরাট বা অন্য কোনভাবে শ্রেণী পরিবর্তন করা যাইবে না। ত-ব শর্ত থা-ক যে, অপরিহার্য জাতীয় স্বার্থে অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে জলাধার সম্পর্কিত বাধা নি-ষধ শিথিল করা যাই-ব।”(emphasis supplied).

We have also noted that, section 4(ka) of the Environment Conservation Act, 1995, enables the Director General of the, Department of Environment, and any other persons authorized by him, to require assistance of any government or any statutory body, who are bound to render the assistance requested for.

We thus find that, river Karnafuli, from its head to mouth, comes within the meaning of “ প্রাকৃতিক জলাধার ” as defined in section 2(চ) of Act 36 of 2000, as it falls within the meaning of “ জলাধার ”, defined under section 2(কক) of BEPC Act, 1995. As such, the DG, DOE, the CCC, the CDA and other statutory bodies having any entrustment or obligations under the said Acts, including the CPA (Respondent No. 9), the BIWTA

(Respondent No. 10), are all responsible and duty bound to protect the river, its banks, its natural character as well as the navigability.

We find from the survey reports and the river profile that, the encroached area, as per R.S. and B.S. Survey, belongs to the government, as recorded under Khash Khatian No. 1, under several mouzas namely, Bakalia, Suja Katgor, Char Mohara, Mohara, East Potenga, Motherbari, Gosaildanga, Monohorkhali and Firingi Bazar, under P.S. Bandar, District- Chittagong, across which the river runs. Therefore, the government, represented by the Deputy Commissioner (D.C), Chittagong, as well as the concerned Ministry are equally duty bound to preserve and protect the river and its banks, along with other respondents, by stopping and evicting all unauthorized constructions and encroachments, done by way of earth filling or building any kind of structure or in any other manner whatsoever. It has to be noted with due concern that, section 5 of BECA, 1995, prohibits not only changing the character of “খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং জলাধার”, but also prohibits the grant, lease or transfer of the same. (emphasis added).

We have also consulted the judgment passed in Writ Petition No. 3503 of 2009, reported in 17 BLT(HCD) 455 HRPB Vs. Bangladesh. That writ petition was filed alleging encroachment into the area of the rivers Burigonga, Turag, Balu and Shitalakhya. It is evident that the High Court Division(HCD), having considered the provisions of the above mentioned statutes and all relevant aspects, made the rule absolute in that case and certain directions were given upon the respondents for removal of all illegal constructions. This judgment of the HCD was challenged in CPLA Nos. 761, 767, 769, 772-773 and 781 of 2010, before the Appellate Division. It appears from the judgment, reported in 62 DLR (AD) 428: City Sugar Industries Ltd. and ors Vs. HRPB and ors, that the apex court have considered the factual and legal issues of the case, dealt within the impugned judgment passed by the HCD and upheld the judgment passed by the HCD.

It further appears that, it was contended before the Appellate Division, on behalf of the petitioners in CPLA No.781 of 2010 that, there was some constructions made within the area of those rivers with the necessary permission obtained from the concerned authority and that the High Court Division illegally included the lawful constructions also for demolition

and therefore acted illegally. In CPLA No. 761 of 2010, it was submitted that, there cannot be any mandamus against law and that since licence was given in favour of the petitioners (of CPLA No. 761 of 2010) as per law, the judgment of the High Court Division, by way of mandamus, was without jurisdiction.

However, among other, it was held by the Appellate Division, that it is true that, “mandamus” cannot be issued against law, but the fact remains that Act XXXVI of 2000 has provided for non-obstante clause in section 12(2) providing that notwithstanding any provision in any other law for the time being in force the provisions of Act XXXVI of 2000 shall prevail and since rivers are “joladhar” (জলাধার) within the meaning of the Ain, the law relating to Act XXXVI of 2000 must prevail over all other laws and the High Court Division rightly issued the directions in order to save the rivers from encroachments and pollution”.

Alongside, we find that the views expressed by the Supreme Court of India, in the case reported in (1997) 1 Supreme Court Cases 388: M.C. Mehta Vs. Kamalnath, is of great persuasive value and is an extended dimension of the environmental jurisprudence. It was held in that case that, “The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment

protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system- based on English common law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural 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. Thus the Public Trust doctrine is a part of the law of the land.” (underlines supplied).

The facts that have led to initiation of the case of M.C. Mehta Vs. Kamal Nath, (1997) 1SCC, 388, in brief are that, a news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularized and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future flood. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were be a serious act of environmental-degradation on the part of the Motel. (underlines supplied)

Before parting of, we do place on record our appreciation for doing this Herculean task by the office of the Deputy Commissioner, Chittagong, by preparing two sets of ‘survey reports’ along with the map (river profile), submitted in compliance of direction of this court. The Map and these 2(two) sets of survey report shall be treated as appendices to this judgment and be kept with record accordingly.

In view of the foregoing deliberations and the decisions cited above, we find merit in this rule and, in our considered opinion, the rule should be made absolute with appropriate directions upon the respondents.

ORDER

In the result, the Rule is made absolute.

With reference to the provisions of Article 112 and Article 111 of the Constitution of the People's Republic of Bangladesh, we do hereby issue the following directions, namely-

(i) The Deputy Commissioner, Chittagong, D.G., DOI, the Chief Executive Officer of the Chittagong City Corporation(CCC), the Secretary of the Chittagong Development Authority (CDA) and the Chairman BIWTA are hereby directed to publish notices, with reference to the directions given in this judgment and order in two vernacular local daily news papers requiring all illegal occupants to remove their installations, buildings and constructed establishments from the banks of river Karnofuli, within 90 days from the date of publishing the notice. The notice shall refer to the concerned Moujas alongwith the Police Station and concerned Khatian number and shall be published by all respondents within 7 days of the receiving this judgment and orders. The notices shall be published on the same day, upon consultation among themselves.

(ii) The Deputy Commissioner, Chittagong, the Director General, Department of Environment, the CEO, CCC and the Chairman CDA are hereby directed to evict illegal occupants, as per the survey report based on R.S. survey, in a joint effort to be taken under the action plan of Deputy Commissioner, Chittagong, within the next 90 days to be counted from the date of expiry of the above mentioned notice period.

(iii) The Police Commissioner, Chittagong, including other law enforcing agencies, shall render all assistances to the action to be taken by the respondents towards implementation of the directions given hereinabove. They should act in aid of the action plan.

(iv) All the respondents are directed to render such co-operation as may be required by the Respondent No. 12 , Director General, DOE as may be required of them as per provision of section 4(ঐ) of Bangladesh Environment Conservation Act, 1995.

(v) The Deputy Commissioner, Chittagong, Respondent No. 13 is hereby directed to furnish authenticated copies of the survey reports (2 sets) showing the illegal occupants as per R.S. record to the CEO, Chittagong City Corporation, the Chairman, Chittagong Development authority, the Chairman- CPA, Chairman BIWTA and to the Director General, DOE, within 3 working days of receiving copies of this judgment and order.

(vi) All concerned respondents are directed to submit affidavit-in-compliance, accordingly, after expiry of the above mentioned time frame, to the Registrar of the High Court Division, subject to such other or further order or orders as to this court may seem fit and proper.

(vii) All the respondents are directed to ensure enforcement of section 5 and section 8 of ‘মহানগরা, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, 2000’ as well as the provisions of section 6B read with section 15 of Bangladesh Environment Conservation Act, 1995 and of other laws that may impose upon the respondents similar obligations.

(viii) The authorities in charge of or concerned with 1) বি এন আর আর ক্যান্টিন (নেভি ক্যান্টিন) আর আর বি বাংলা-দশ নৌবাহিনী. (area of land occupied 1.30 acres) ২) বাংলা-দশ বিমান বাহিনী, (বিমান বন্দ-রর রানও-য়র অংশ) (area of land occupied 10.00, ৩) নৌ বাহিনী বোট ক্লাব (area of occupied land 1.80 acres), situated under R.S. Khatian No. 1, Mouja- East Patenga, District- Chittagong and ৪) চট্টগ্রাম বন্দর কর্তৃপ-ক্ষর নির্মিত জেটি ও টাওয়ার (সিসিটি বার্থ অফিস, নিউ-মারিং জেটি, এনসিটি-২, সিকিউরিটি লে-ভল -০১, ৪ নং জেটি, (আর এস ম-ত কর্ণফুলী নদীর অভ্যন্ত-র উপ-র ভাসমান পল্টুন/ বার্থ, -জেটি ও স্থাপনা নি-চ প্রবাহমান নদী) (occupied area 2.20 acres), ৫) চট্টগ্রাম বন্দর কর্তৃপ-ক্ষর নিয়ন্ত্রনাধীন ক্যাপিটাল ড্রেজিং ও ব্যাংক প্র-টেকশন ম্যা-নজিং এ-জন্ট প্যাসিফিক মেরিন সার্ভিস, চট্টগ্রাম and হাউজ বিল্ডিং ফাইন্যান্স ক-র্পা-রশন বিল্ডিং আগ্রাবাদ, চট্টগ্রাম (মৌজা: মাদারবাড়ী)(occupied area 1.80 acres) and এবং ৬) মনোহরখালী অভয়মিত্র ঘাট ক্যাপিটাল ড্রেজিং ও ব্যাংক প্রটেকশন এবং প্লাটফরম (মৌজা: ম-নাহরখালী ও ফিরিস্তী বাজার) (area occupied 07.00 acres) are hereby exempted from the eviction operation, since these constructions are apparently made in the public interest. However, these authorities are directed to obtain clearance from the Office of the Director General, DOE, as required under the proviso to section 6B of BEC Act, 1995, unless they have obtained the same in the meantime. The Director

General, DOE shall consider their request if these constructions are done in the indispensable national interest. (অপরিহার্য জাতীয় স্বার্থ).

(ix) The Deputy Commissioner, Chittagong, the DG, DOE, the CEO of CCC, the Chairman CDA, the Chairman CPA and the Chairman BIWTA shall take or cause to taken all such steps as may be required of them under the provisions of law imposing statutory duty on them to protect the river Karnaphully in accordance with the ‘river profile’.

(x) The respondents shall continue to perform their duties and shall implement the directions given herein above untill the court directs otherwise.

(xi) We further record that these directions shall be treated as continuous mandamus and this court may, suo motu or otherwise, pass such order as may be considered just and proper.

Let copies of this judgment and order be sent immediately to the Respondents and persons named in clause (ix) above for their information and compliance.

No order as to cost.

I agree.

Noor Hossain
Bench Officer.

(i)

ORDER

In the result, the Rule is made absolute.

With reference to the provisions of Article 112 and Article 111 of the Constitution of the People's Republic of Bangladesh, we do hereby issue the following directions, namely,

- (ii) The Deputy Commissioner, Chittagong, D.G., DOI, the Chief Executive Officer of the Chittagong City Corporation(CCC), the Secretary of the Chittagong Development Authority (CDA)and the Chairman BIWTA are hereby directed to publish notices, with reference to the directions given in this judgment and order passed, in two vernacular local daily news papers requiring all illegal occupants to remove their installations, buildings and constructed establishments from the banks of river Karnofuli, within 90 days from the date of publishing the notice. The notice shall be published by all respondents within 7 days of the receiving this judgment and orders, notices shall be published on the same day, upon consultation among them..
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In the result, the Rule is made absolute.

With reference to the provisions of Article 112 and Article 111 of the Constitution of the People's Republic of Bangladesh, we do hereby issue the following directions, namely,

- (iii) The Deputy Commissioner, Chittagong, D.G., DOI, the Chief Executive Officer of the Chittagong City Corporation(CCC), the Secretary of the Chittagong Development Authority (CDA)and the Chairman BIWTA are hereby directed to publish notices, with reference to the directions given in this judgment and order passed, in two vernacular local daily news papers requiring all illegal occupants to remove their installations, buildings and constructed establishments from the banks of river Karnofuli, within 90 days from the date of publishing the notice. The notice shall be published by all respondents within 7 days of the receiving this judgment and orders, notices shall be published on the same day, upon consultation among them..

(v)

(vi)

Noor Hossain
Bench Officer.

“ধারা-২ (গ): ‘কর্তৃপক্ষ’ অর্থ রাজধানী উন্নয়ন কর্তৃপক্ষ, চট্টগ্রাম উন্নয়ন কর্তৃপক্ষ, খুলনা উন্নয়ন কর্তৃপক্ষ, রাজশাহী উন্নয়ন কর্তৃপক্ষ এবং আপাতত: বলবৎ অন্য কোন আইনের অধীন প্রতিষ্ঠিত কোন শহর উন্নয়ন কর্তৃপক্ষ, সিটি কর্পোরেশন এবং বিভাগীয় ও জেলা শহরের পৌরসভাসহ দেশের সকল পৌরসভা।

“ধারা-২(চ): ‘প্রাকৃতিক জলাধার’ অর্থ নদী, খাল, বিল, দীঘি, ঝর্ণা বা জলাশয় হিসাবে মাষ্টার প্লানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্যা প্রবাহ এলাকা হিসাবে ঘোষিত কোন জায়গা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমিও ইহার অন্তর্ভুক্ত হইবে;” (underling is ours).

12. Having consulted the definitions quoted above, we find that ‘Karnafuli River, including its banks’, flowing from its head to mouth, comes within the definition of ‘প্রাকৃতিক জলাধার’ as defined in section 2(চ) of Act No. 36 of 2000. We also find that the Respondent No. 8, the Chittagong City Corporation (CCC) as well as the Chittagong Development Authority (CDA), are also the proper authorities, as defined in the said Act, on whom statutory obligations has been imposed under section 5 of the Act, to enforce the provisions of this Act.

13. We have also consulted section 5 of the Act 36 of 2000, that reads as follows:-

“ধারা-৫ খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান ও প্রাকৃতিক জলাধারের শ্রেণী পরিবর্তনে বাধা নিষেধ।- এই আইনের বিধান অনুযায়ী ব্যতীত, খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার হিসাবে চিহ্নিত জায়গার শ্রেণী পরিবর্তন করা যাইবে না বা উক্তরূপ জায়গা অন্য কোন ভাবে ব্যবহার করা যাইবে না বা অনুরূপ ব্যবহারের জন্য ভাড়া, ইজারা বা অন্য কোন ভাবে হস্তান্তর করা যাইবে না। (emphasis supplied).

14. We have next consulted section 8 of Act No. 1 of 1995(BECA 1995), which reads as follows:

“ধারা-৮ শাস্তি, ইত্যাদি।- ১) কোন ব্যক্তি এই আইনের কোন বিধান লঙ্ঘন করিলে তিনি অনধিক ৫ বৎসরের কারাদণ্ডে বা অনধিক ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডনীয় হইবে।

(২) ধারা ৫ এর বিধান লঙ্ঘন করিয়া যদি কোন জায়গা বা জায়গার অংশবিশেষের শ্রেণী পরিবর্তন করা হয়, তাহা হইলে সংশ্লিষ্ট কর্তৃপক্ষ নোটিশ দ্বারা জমির মালিককে অথবা বিধান লঙ্ঘনকারী ব্যক্তিকে নোটিশে উল্লেখিত জায়গার শ্রেণী পরিবর্তনের কাজে বাধা প্রদান করিতে পারিবে এবং নির্ধারিত পদ্ধতিতে অননুমোদিত নির্মাণ কার্য ভাঙ্গিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উক্তরূপ ভাঙ্গিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুকনা কেন, উক্তরূপ ভাঙ্গিয়া ফেলিবার জন্য কোন ক্ষতিপূরণ প্রদেয় হইবে না।”

(৩) এই আইনের বিধান লঙ্ঘন করিয়া যদি কোন নির্মাণকার্য সম্পাদিত বা অবকাঠামো তৈরী হইয়া থাকে সেই সকল অবকাঠামো আদালতের আদেশে সংশ্লিষ্ট কর্তৃপক্ষের বরাবরে বাজেয়াপ্ত হইবে।

(emphasis supplied)

15. We have next consulted the relevant provisions of the Environment Conservation Act, 2005 (Act 1 of 1995). We find that Clause (কক) of section 2 defines the word ‘জলাধার’ as follows:

(কক) ‘জলাধার’ অর্থ নদা, খাল, বিল, হাওড়, দীঘি, পুকুর, ঝর্ণা বা জলাশয় হিসেবে সরকারী ভূমি রেকর্ডে চিহ্নিত ভূমি, বা সরকার, স্থানীয় সরকার বা সরকারী কোন সংস্থা কর্তৃক সরকারী গেজেটে প্রজ্ঞাপন দ্বারা ঘোষিত কোন জলাভূমি, বন্যা প্রবাহ এলাকা, সলল পানি ও বৃষ্টির পানি ধারণ করে এমন কোন ভূমি; (emphasis added)

16. Thereafter, we have turned our attention to section 4 of the Environment Conservation Act, 1995. That read as follows:-

“৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলি।- (১) এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহাপরিচালক তৎকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত নির্দেশ দিতে পারিবেন।

17. We have, thereafter, turned our attention to the provisions of section ৬৩ of the Environment Conservation Act, 1995. That reads as follows:

“৬৩) জলাধার সম্পর্কিত বাধা-নিষেধ।--আপাতত: বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুকনা কেন জলাধার হিসেবে চিহ্নিত জায়গা ভরাট বা অন্য কোনভাবে শ্রেণী পরিবর্তন করা যাইবে না। তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থে অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে জলাধার সম্পর্কিত বাধা নি-ষধ শিথিল করা যাই-ব।”(emphasis supplied).

18. We have also noted that section 4(ka) of the Environment Conservation Act, 1995, enables the Director General of the, Department of Environment, and any other persons authorized by him, to require assistance of any Government or any statutory body, who are bound to render the assistance requested for.

19. We thus find that, river Karnafuli, from its head to mouth, comes within the meaning of “ প্রাকৃতিক জলাধার ” as defined in section 2(চ) of Act 36 of 2000, as it falls within the meaning of “ জলাধার ” defined under section 2(কক) of BEPC Act, 1995. As such, the DG, DOE, the CCC, the CDA and other statutory bodies having any entrustment or obligations under the said Acts, including the CPA (Respondent No. 9), the BIWTA (Respondent No. 10), are all responsible and duty bound to protect the river, its banks, its natural character as well as the navigability. Besides, since the increased area, as per R.S. and B.S. Survey, belongs to the government, as recorded under Khash Khatian No. 1, under several mouzas namely, Bakalia, Suja Katgor, Char Mohara, Mohara, East

Potenga, Motherbari, Gosaildanga, Monohorkhali and Firingi Bazar, under P.S. Bandar, District- Chittagong, across which the river runs, therefore, the government, represented by the Deputy Commissioner (D.C) Chittagong as well as the concerned Ministry is equally duty bound to preserve and protect the river and its banks by stopping and evicting all unauthorized constructions and illegal encroachments, done by way of earth filling or building any kind of structure or in any other manner whatsoever. It has to be noted with due concern that, section 5 of BECA, 1995, prohibits not only changing the character of “ খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং জলাধার,” also prohibits of all these in any other manner as well as the grant, lease or transfer of the same.

20. We have also consulted the judgment passed in Writ Petition No. 3503 of 2009, reported in 17 BLT(HCD) 455 HRPB Vs. Bangladesh. That writ petition was filed alleging encroachment into the area of the rivers Burigonga, Tugag, Balu and Shitalakhya. It is evident that the High Court Division, having considered the provisions of law and all relevant aspects, made the rule absolute in that case and certain directions were given upon the respondents for removal of all illegal constructions. This judgment was challenged in CPLA Nos. 761, 767, 769, 772-773 and 781 of 2010, before the Appellate Division. It appears from the judgment, reported in 62 DLR (AD) 428: City Sugar Industries Ltd. and ors Vs. HRPB and ors. That the apex court have considered the factual and legal issues of the case, dealt with the impugned judgment passed by the High Court Division, and upheld the judgment passed by this Division.

21. It further appears that, it was contended before the Appellate Division, on behalf of the petitioners in CPLA No.781 of 2010 that, there was some constructions made within the area of those rivers with the necessary permission obtained from the concerned Authority and that the High Court Division illegally included the lawful constructions also for demolition and therefore acted illegally. In CPLA No. 761 of 2010, it was submitted that, there cannot be any mandamus against law and that since licence was given in favour of the petitioners (of CPLA No. 761 of 2010) as per law, the judgment of the High Court Division, by way of mandamus, was without jurisdiction.

22. However, among other, it was held by the Appellate Division, that it is true that, mandamus cannot be issued against law, but fact remains

that Act XXXVI of 2000 has provided for non-obstante clause in section 12(2) providing that notwithstanding any provision in any other law for the time being in force the provisions of Act XXXVI of 2000 shall prevail and since rivers are “joladhar” (জলাধার) within the meaning of the Ain, the law relating to Act XXXVI of 2000 must prevail over all other laws and the High Court Division rightly issued the directions in order to save the rivers from encroachments and pollution”. We do place on record our appreciation for doing this Herculean task by the office of the Deputy Commissioner, Chittagong by preparing two sets of ‘survey reports’ along with the map, submitted in compliance with direction of this court. The Map and these 2(two) sets of survey report shall be treated as appendices to this judgment and be kept with record accordingly.

23. We find the views expressed by the Supreme Court of India, on the case reported in (1997) 1 Supreme Court Cases 388: M.C. Mehta Vs. Kamalnath, is of great persuasive value and an extended dimension of environmental jurisprudence. It was held in that, the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally

beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system- based on English common law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural 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. Thus the Public Trust doctrine is a part of the law of the land.” (underlines supplied).

24. The facts that have led to initiation the case of M.C. Mehta Vs. Kamal Nath, (1997) 1SCC, 388, in brief are that a news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularized and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future flood. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were be a serious act of environmental-degradation on the part of the Motel. (underlines supplied)

25. In view of the foregoing deliberations and the decisions cited above, we find merit in this rule and, in our considered opinion, the rule should be made absolute with appropriate directions upon the respondents.

ORDER

In the result, the Rule is made absolute.

With reference to the provisions of Article 112 and Article 111 of the Constitution of the People's Republic of Bangladesh, we do hereby issue the following directions, namely,

- (vii) The Deputy Commissioner, Chittagong, D.G., DOI, the Chief Executive Officer of the Chittagong City Corporation(CCC), the Secretary of the Chittagong Development Authority (CDA)and the Chairman BIWTA are hereby directed to publish notices, with reference to the directions given in this judgment and order passed, in two vernacular local daily news papers requiring all illegal occupants to remove their installations, buildings and constructed establishments from the banks of river Karnofuli, within 90 days from the date of publishing the notice. The notice shall be published by all respondents within 7 days of the receiving this judgment and orders, notices shall be published on the same day, upon consultation among them..
- (viii) The Deputy Commissioner, Chittagong, the Director General, Department of Environment, the CEO, CCC and the Chairman CDA are hereby directed to evict illegal occupants, as per the survey report based on R.S. survey, in a joint effort to be taken under the action plan of Deputy Commissioner, Chittagong, within the next 90 days to be counted from the date of expiry of the above mentioned notice period.
- (ix) The Police Commissioner, Chittagong, shall render all assistances to the action to be taken towards implementation of the directions given herein.
- (x) All the respondents are directed to render such co-operation as may be required by the Respondent No. 12 , Director General, DOE as may be required of them as per provision of section 4(ফ) of Bangladesh Environment Conservation Act, 1995.
- (xi) The Deputy Commissioner, Chittagong, Respondent No. 13 is hereby directed to furnish authenticated copies of the survey reports (2 sets) showing the illegal occupants as per R.S. record to the CEO, Chittagong City Corporation, the Chairman Chittagong Development authority,

Chairman- CPA, Chairman BIWTA and to the Director General, DOE within 3 working days of receiving copies of this judgment and order.

- (xii) All concerned respondents are directed to submit affidavit-in-compliance accordingly after, expiry of the above mentioned time frame, to the Registrar of the High Court Division, subject to such other or further order or orders as to this court may seem fit and proper.
- (xiii) All the respondents are directed to ensure enforcement of section 5 and section 8 of ‘মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং পাকৃতিক জলাধার সংরক্ষন আইন, 2000’ as well as the provisions of section 6ও read with section 15 of Bangladesh Environment Conservation Act, 1995.
- (xiv) The authorities in charge of concerned with 1) বি এন আর আর ক্যান্টিন (নেভি ক্যান্টিন) আর আর বি বাংলা-দশ নৌবাহিনী. (area of land occupied 1.30 acres) ২) বাংলা-দশ বিমান বাহিনী, (বিমান বন্দ-রর রানও-য়র অংশ) (area of land occupied 10.00, ৩) নৌ বাহিনী বোট ক্লাব (area of occupied land 1.80 acres), situated under R.S. Khatian No. 1, Mouja- East Patenga, District- Chittagong and ৪) চট্টগ্রাম বন্দর কর্তৃপক্ষের নির্মিত জেটি ও টাওয়ার (সিসিটি বার্থ অফিস, নিউ-মারিং জেটি, এনসিটি-২, সিকিউরিটি লে-ভল -০১, ৪ নং জেটি, (আর এস ম-ত কর্ণফুলী নদীর অভ্যন্ত-র উপ-র ভাসমান পল্টুন/ বার্থ, -জেটি ও স্থাপনা নি-চ প্রবাহমান নদী) (occupied area 2.20 acres), ৫) চট্টগ্রাম বন্দর কর্তৃপক্ষের নিয়ন্ত্রনাধীন ক্যাপিটাল ড্রেজিং ও ব্যাংক প্র-টকশন ম্যা-নজিং এ-জন্ট প্যাসিফিক মেরিন সার্ভিস, চট্টগ্রাম and হাউজ বিল্ডিং ফাইন্যান্স ক-র্পা-রশন বিল্ডিং আগ্রাবাদ, চট্টগ্রাম (মৌজা: মাদারবাড়ী)(occupied area 1.80 acres) and এবং ৬) মনোহরখালী অভয়মিত্র ঘাট ক্যাপিটাল ড্রেজিং ও ব্যাংক প্র-টকশন এবং প্লাটফরম (মৌজা: ম-নাহরখালী ও ফিরিঙ্গী বাজার) (area occupied .07.00 acre) are hereby exempted from the eviction operation, since these constructions are apparently made in the public interest. However, these authorities are directed to obtain clearance from the Office of the Director General, DOE, as required under the proviso to section 6ও of BEC Act, 1995, unless they have obtained the same in the meantime. The Director General, DOE shall consider their request if these

constructions are done in the indispensable national interest. (অপরিহার্য জাতীয় স্বার্থ).

- (xv) The Deputy Commissioner, Chittagong, The DG, DOE, the CCC, the CDA, the CPA and the BIWTA shall take all such steps as may be required of them under the provisions of law imposing statutory duty on them to protect the river.
- (xvi) The respondents shall continue to perform their duties and shall implement the directions given herein above until the court directs otherwise.
- (xvii) We further record that these directions shall be treated as continuous mandamus this court may, suo motu otherwise, pass such order as may be considered just and proper.

Let copies of this judgment and order be sent to the Respondent Nos.
For information and compliance.

No order as to cost.



