

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

WRIT PETITION NO. 9801 OF 2012.

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 another

..... Petitioners.

-Versus-

1. Bangladesh, represented by the Secretary, Ministry of Environment 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 21st, 26th July, 2nd, 3rd August, 2016

Judgment on: The 4th 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 a direction should not be given upon the respondent to stop encroachment and earth filling in the pond, namely 'Munshipukur' situated at Chokbazar, Police Station-Pachlaish, Chittagong City Corporation, and why a direction should not be given upon the respondents to protect the same pond in accordance with law and / or pass such other or further order or orders as to this Court may seem fit and proper.

2. In the writ petition it has been stated, inter alia, that the petitioner is seeking direction upon the respondents to stop earth filling and encroachment in the hundred years old pond namely Munshibaripukur, situated at Chokbazar, Police Station- Pachlaish, under Chittagong City Corporation, 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 সংরক্ষণ আইন, ২০০০. The petitioner seeks to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to take necessary steps against the violation of provisions of law on the allegations, among other, that the area of the pond and its adjacent lands are recognized as a 'Wakf Estate', but some people of that area are trying to construct building by filling earth and dumping garbage in the said pond, clearly violating the provisions of law. That, as it involves great public importance so this petition may be treated as public interest litigation; that by way of illegal earth filling, violating the provisions of law, the normal existence of the pond has been exposed to grave risk as well as it has been seriously affecting the local environment, that the people residing at the adjacent area

of the pond are depending on the water of the pond, to meet their daily needs; that due to the encroachment and earth filling and illegal structure built in the pond, day by day, it is affecting the life of the citizen; that if such kind of activities are not stopped, in that case the continuous encroachment can not be stopped; that news item was published in the Daily Shuprovat, on 10.05.2012 and 17.03.2012, and in the Prothom Alo, dated 15.03.2012 and 17.03.2012, reporting that there is initiative to encroachment and to built multi storied building by way of earth filling in the said pond, situated at Chokbazar, Police Station-Pachlaish, within the territory of the Chittagong City Corporation; that it is the duty and responsibility vested upon the respondents to serve the people and to initiate lawful action and they are also duty bound to implement the provisions of law. But, the respondents have failed to perform the duties and responsibilities vested upon them and owing to their inaction and refusal or abstention in performing the legal duties vested upon them; enough damage to the said pond, to the environment of the area and the lives in the area has been resulted and as such the respondents are required to be directed to protect the pond in accordance with law. Hence this petition has been filed as a public interest litigation and the instant Rule has been issued.

3. None of the respondents has appeared before this court, nor filed any affidavit –in- opposition to controvert the allegations made in the petition.

4. Learned Advocate Mr. Manzill Murshid appearing along with learned Advocate Mr. Sanjoy Mandal, having placed the petition before us, along with the documents annexed, first of all has drawn our attention to the provision of “মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন” 2000 (hereinafter referred to as ‘Act 2000’) and has also drawn our attention to section 5 of the said Act. He next submits that the pond named as “Munshinaropukur” is situated at Chokbazar, under Police Station- Pachlaish, within the territory of Chittagong

City Corporation, and is a Wakf Estate. However, the said Pukur comes within the definition ‘প্রাকৃতিক জলাধার’ as defined in Clause- (চ) of section 2 of the Act, 2000. He has also drawn our attention to the definition of ‘কর্তৃপক্ষ’ given in Sub-clause (গ) of section 2 of the Act, 2000. He next submits that the definition of ‘কর্তৃপক্ষ’ i.e. authority given in the Act clearly includes the Chittagong City Corporation (CCC) and the Chittagong Development Authority (CDA). He continues that it is duty of these authorities to ensure enforcement of 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(briefly). The nature of the aforesaid pond cannot be changed by any person by way of dumping garbage or filling earth or in any other manner. He has drawn our attention to sub-section (2) of Section 8 of the said Act that provides for punishment, that extend to maximum 5 years imprisonment and to fine of Tk. 50,000/- or both, for violation of the provision of section 5 or any other provisions of this Act. He then points out that sub-section (2) of Section 8 of the Act clearly requires the authorities to stop causing any change of the nature. But, the Annexure- A, which is a report published in the daily “ সুপ্রভাত বাংলাদেশ ” dated 10th May, 2011, shows that an interested quarter has encroached upon the said pond on the face of the authorities and due to inaction of the authority in performing their duties, required of them by the provisions of the said Act. He has next placed before us the Environment Conservation Act, 1995 and drawn out attention to the definition of “ জলাধার ” (Water Body), given in clause (কক) of section 2 of the Environment Conservation Act, 1995. He then read out before us section 4 of the said Act that imposes duty upon Director General, Department of Environment, to enforce the provisions of this Act and to give necessary directions to that end, to any person, who has complicity in polluting or otherwise causing any change in the area of the said pond. As per provisions of section ‘4A’ of the Environment Conservation Act, 1995 any person authorized by Director General as well as the Director General can require any other Government or statutory body to render necessary assistance to the Department of Environment. He emphasises that, as required by law, it is duty of the respondents to perform their duty

and to stop filling earth into the said pond as well as to stop any attempt to change the nature of the said pond, by any person whosoever. Therefore, he asserts that, necessary directions should be issued upon the respondents to perform their duties as required under the provisions of the aforesaid two Acts to save the public interest as well as to ensure compliance of those provisions. In support of his contention the learned Advocate has referred to a decision cited in 62 DLR (AD) 428, in which the provisions of Environment Conservation Act has been taken into consideration by the apex Court while delivering the judgment and the judgment of High Court Division, reported in (2009) 17 BLT (HCD) 455 was upheld. The learned Advocate for the petitioner accordingly concludes his submission with the prayer to make the Rule absolute with appropriate directions to be given upon the Respondents, as prayed for.

5. Mr. A.K.M. Zahirul Huq, learned Deputy Attorney General and Ms. Samira Tarannum Rabeya, the learned A.A.G. are present. They did not oppose the Rule.

6. We have heard the learned Advocates, perused the writ petition along with the documents annexed, as well as consulted with the relevant laws referred to and the decision cited before us.

7. The facts leading to issuance of this Rule has been stated above, in brief.

8. It has also be recorded that none of the respondents has appeared before this Court, nor filed any affidavit –in- opposition denying the facts narrated in the writ petition. As such, the allegations made in the writ petition remains uncontroverted undisputed.

9. We have, thereafter, turned our attention to the Natural Water Body Preservation Act, 2000 (Act 36, 2000) and have consulted the definitions, of ‘ কর্তৃপক্ষ’, and of ‘প্রাকৃতিক জলাধার’. The c 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.

(B) ধারা-২(চ): 'প্রাকৃতিক জলাধার' অর্থ নদী, খাল, বিল, দীঘি, বর্ণা 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).

10. Having consulted the definitions quoted above, we find that 'Munshipukur', situated at Chowkbazar area under Police Station-Pachlaish, comes within the definition of 'প্রাকৃতিক জলাধার' as defined in section 2(চ) of the said Act. We also find that Respondent No. 2, the City Corporation as well as the Chittagong Development Authority are the proper authorities on whom statutory obligations has also been imposed under Act, 36, 2000 to enforce the provisions of the Act.

11. We have also consulted section 5 of the Act 36 of 2000 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).

12. We have next paid our attention to section 8 of the said Act, 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)

13. We have also perused 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 নদী, 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)

14. Having considered the above quoted definitions, we find that the water body named ‘Munshipukur’ situated in Chowkbazer area, under Police Station- Pachlaish, within the territory of the Chittagong City Corporation comes within the definition of ‘প্রাকৃতিক জলাধার’ and ‘জলাধার’ respectively, under those two Acts.

15. 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। We find that the provision of the said Act clearly requires the Department of Environment to protect and preserve the environment, to reduce pollution as well as to enforce the provisions of the Act. (underline supplied)

16. We have next turned our attention to the provisions of section ৬৬ of the Environment Conservation Act, 1995, that reads as follows:

“৬৬) 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।” (emphasis supplied).

17. Therefore, we find that, there is clear prohibition, imposed by law, in filling up any water body or to change it’s nature and character, in this case the ‘Munshipukur’ by filling earth, dumping garbage or in any other manner.

18. Accordingly, having considered the relevant provisions of both the Acts, quoted herein above, we find that the respondents are under statutory duty to prevent unlawful dumping of garbage base or filling earth into ‘Minshipukur’ and to prevent any encroachment done or

attempted to be done into the area of the pond, including its bank. They are also duty bound to stop any change in the nature of the said pond.

19. We have also noted that section '4 Ka' of the Environment Conservation Act, 1985, that enables the Director General, Department of Environment, and any other person authorized by him, to require assistance of any Government or statutory body and all such persons and authorities are bound to render the assistance requested for.

20. We have further noted that the said pond is a 'water body' and exists since the time immemorial and that the preservation of the said pond is very much indispensable for protection of the nature of the said pond, to ensure the protection of environment, to serve public interest and to secure enforcement of the provisions of the aforesaid two Acts quoted herein before, more so when the pond itself is a 'Wakf' estate meant to serve public purpose.

21. Having consulted the aforesaid two decisions reported in 62 DLR(AD) (2010) 428, (City Sugar Industries Ltd. and others Vs. Human Rights and Peace for Bangladesh & others) and the decision reported in 17 BLT (HCD)455 (Human Rights and Peace for Bangladesh Vs. Bangladesh and others), we find that in 62 DLR (AD)428, the judgment reported in 17 BLT 455, has been upheld, in view of the provisions of Act 36 of 2000 and of Act No. 1 of 1995.

22. In view of the facts and circumstances of the case and the decisions cited above, we find clear 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 Article 112 and 111 of the Constitution of the People's Republic of Bangladesh, we do hereby issue the following directions namely,

(i) The Respondent Nos. 2 and 3 being the Mayor, Chittagong City Corporation (CCC) and the Chairman, Chittagong Development Authority (CDA), are hereby directed to take immediate steps to prevent all illegal encroachment by earth filling or by dumping garbage into the pond "Munshipukur", located in Chowkbazer area, within the territory of the CCC and the CDA as well as to stop causing any change in the nature and character of the 'Munshipukur' and to comply with the aforesaid provisions of law immediately, not exceeding 30(thirty) days from receiving copy of this judgment and order.

(ii) The Respondent No. 5 The Director, Department of Environment, Zakir Hossain Shorok, Police station- Khulshi, Chittagong is directed to take immediate step, as the DOE is legally bound to do, to implement the provisions of ' 6 Uma' and 15, in exercise of the powers vested in then under section 4A and 7 of the Act No. 1 of 1995.

(iii) The respondents are directed to remove all unlawful encroachments from the said pond and evict all illegal occupants within 30 days from the date of receiving the copy of this judgment and order.

(iv) The respondent No. 5 is also directed to identify the violators and to prosecute them.

(v) The Police Commissioner, Metropolitan Police, Chittagong, as well the Officer-in-charge of Pachlaish Police Station, Chittagong Metropolitan and such other authorities as may be required by the Respondent No. 5, are directed to render all necessary assistance for taking step, as per law, and if so required by sending and deploying Police force to stop the illegal encroachment, earth filling or dumping of garbage into 'Munshpukur'.

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

We further record that these directions shall be treated as continuous mandamus and that this court may, suo motu or otherwise, pass any order as may be required.

Let copy of the judgment and order be sent to the aforesaid Respondent Nos. 2,3,4,5 and 6.

Let another copy of this judgment and order be sent to the Director General, Director of Environment, Sher-E-Bangla Nagar, Dhaka for ensuring compliance by him without further delay.

All the respondents Nos. 2,3 and 5 are directed to submit or to cause submitting a compliance report within 60(sixty) days of receiving this judgment and order to the Registrar of the High Court Division of the of the Supreme Court of Bangladesh.

No order as to cost.
