

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

WRIT PETITION ON 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:

Public Interest Litigation (PIL).

AND

IN THE MATTER OF:

1. Human Rights and Peace for
Bangladesh (HRPB), represented by it's
President, Advocate Manzill Murshid, Hall

No. 2, Supreme Court Bar Association

Bhaban, Dhaka, Bangladesh.

2. Advocate Asaduzzaman Siddiqui, Hall

No. 2, Supreme Court Bar Association

Bhaban, Bangladesh.

3. Advocate Aklasuddin Bhuiyan, Hall

No. 2, Supreme Court Bar Association Hall,

Dhaka, Bangladesh.

4. Advocate Mahbulul Islam, Son of

Md. Mofijuddin, of House LA-56, Badda,

Post Office Road, Gulshan, Dhaka 1212,

Bangladesh.

.....Petitioners.

-VERSUS-

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

2. The Secretary, Ministry of Home
Affaires, Bangladesh Secretariat, P.S-
Shahbag, Dhaka.

3. The Secretary, Ministry of Land,
Bangladesh Secretariat, P.S- Shahbag,
Dhaka.

4. The Director General, Archaeological
Department, Archaeology Bhaban, F-4/A,
Agargoan Administrative Area, Sher-e-
Bangla Nopor, Dhaka-1207, Bangladesh.

5. The Deputy Commissioner of
Ponchagor, Post & P.S. Ponchagor, Dist.
Ponchagor.

6. The Superintendent of Police (S.P.),
Ponchagor, Post & P.S. Ponchagor, Dist.
Ponchagor.

7. The Officer in Charge (O.C),
Ponchagor Sadar Thana, Post & P.S.
Ponchagor, Dist. Ponchagor.

8. Assort Plus Limited, Model Hat,
Bhitargor, Post.- Model hat, Amorkhana,
Union, P.S.- Ponchagor Sadar, District-
Ponchogor.

9. Selilan Tea Estate Ltd., Bhitargor,
Ponchagor, Head Office: - Pullhat, District-
Dinajpur.

..... Respondents

AND

IN THE MATTER OF:

For a direction upon the respondents to
protect the historically important place
namely "Bhitorgarh" fort-city functioning
in 6th century at Ponchagarh District as per

the provisions of Article 24 of the
Constitution of Bangladesh and to take steps
as per the provisions of Section 12 of
Antiquities Act 1968 and

To

Mr. Justice Md. Muzzammel Hossain, the Hon'ble Chief Justice of
Bangladesh and his companion Judges of the said Hon'ble Court.

The humble petition of the above named
Petitioners most respectfully-

S H E W E T H:

1. That the organization Human rights and Peace for Bangladesh is a non profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work

for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights etc. That the organization is engaged in promoting and defending human rights, supporting the victims rights violations. It also works to protect environment and to protect health of the citizen and to establish rule of law.

2. That the petitioners are the practicing lawyer of this Hon'ble Court, human rights activist and conscious citizen of the country. They are challenging the inaction of the respondent to preserve and to stop construction activities in the areas of a historical place namely, Bhitargarh under Ponchagarh District, which carry very significant importance in the history of the nation. The petitioners also seek to bring this application by invoking Article 102 of the constitution as Public interest litigation in order to take necessary steps against the

people who are liable for performing the illegal construction work on the Bhitorgarh ancient fortified city.

3. That it is stated here that after being informed from the report the Human Rights and Peace for Bangladesh has decided to take steps to protect this important historical landmark. For which this organization decided to seek direction of this Hon'ble court to protect this historical place by directing the respondents to perform their duty to protect the historical place of Bhitorgarh Fort.

4. That the Respondent No. 1 is Bangladesh represented by the Secretary, Ministry of Cultural Affairs, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh. Respondent no. 2 is The Secretary, Ministry of Home Affairs, Bangladesh Secretariat, P.S- Shahbag, Dhaka. Respondent no. 3 is The Director General, Archaeological Department, Archaeology Bhaban, F-4/A, Agargoan Administrative

Area, Sher-e-bangla Nogor, Dhaka-1207, Bangladesh. Respondent no. 4 is The Deputy Commissioner of Ponchagor, Post & P.S. Ponchagor, Dist. Ponchagor. Respondent no. 5 is The Superintendent of Police (S.P.) of Ponchagor, Post & P.S. Ponchagor, Dist. Ponchagor. Respondent no.6 is The Officer in Charge (O.C), Ponchagor Sadar Thana, Post & P.S. Ponchagor, Dist. Ponchagor. Respondent no. 7 is Assort Plus Limited, Model Hat, Bhitargor, Post:- Model hat, Amorkhana, Union, P.S.- Ponchagor Sadar, District- Ponchogor. Respondent no. 8 is Selilan Tea Estate Ltd., Bhitargor, Ponchagor, Head Office: - Pullhat, District- Dinajpur. Respondent no 9 is Dr. Shahnag Husne Jahan, Archeologist and Assistant Professor, University of Liberal Arts Bangladesh, Sat Moshjid Road, Dhanmondi, Dhaka, Bangladesh. That the addresses of the petitioners and the respondents given above are correct for the purpose of service of notices.

5. That it is stated here that Bhitorgarh fortified city is not only significant for the history of Bangladesh but also it has very importance in the history of this subcontinent. Moreover, people of Bangladesh have emotional attachment with this place. It is significant that by constructing buildings within the perimeter and adjacent to its perimeter of the Bhitorgarh, the existence of this archaeological site is being dangerously affected. Also construction of buildings on this place is hampering the protection of this place and making it endangered. So such construction is without any lawful authority and unlawful as per the Antiquities Act. 1968.

6. That the petitioners are seeking direction upon the respondents to take measures as per Article 24 of the Constitution of Bangladesh. The petitioners seek to bring this application by invoking Article 102 of the Constitution as public interest litigation for a direction upon the

respondents to take necessary steps for the protection of the historical place where in 6th century Bhitorgarh fortified city situated.

7. That it is stated that from January, 2007, some archaeological expedition on Pachogarh area of Bangladesh has been made. 16 KM away from Panchogarh Sadar Thana, 14 century old, which means of 6th century fort city, was found. According to findings there has been inhabitants even before that and bear a significant importance in history for the reason that it was the centre of the trade route Tibbat, Bhutan, Sikkim, and Asham. It is to be noted that by further intensive study and research can reveal the complete history of that ancient city but for that proper environment is required. An Archaeological Park on that place is essential to construct to ensure the protection of this 1400 years old mud-fort, unless we will lose the last remaining of Bhitorgor which could have given us details of our history.

8. That it is stated that many national daily news paper has publish many news articles regarding the finding of the historically significant Bhitorgor Fort City of Panchogor. Some of the news articles are mentioned below;

a. In 11th October 2008 news has been published on “Daily Prothom Alo” with a heading that “The Archaeological site of Bhitorgor is near to be destroyed”. Where it was reported that, the archaeological site of Bhitorgor is being destroyed, dew to lack of shelter. It has been found that the local firms and industries are taking away the soil of the archaeological site. Even some are selling the soil too, when asked they replied that they selling soil from their registered land. Many people have built their houses by cutting the wall of the fort. Peoples are also taking away and selling bricks of wall of the Bhitorgor fort, due to which in many places the there are no signs of the wall.

Assistant Professor of University of Liberal Arts Dr. Shahnaj Husne said that the priceless archaeological wealth is being destroyed there

just because of ignorance. Professor Dilip Kumar of Cambridge University has mentioned this site as the most important site early middle age to middle age. Dr. Sufi Mostafizur of Jahangirnagar University said it is the largest Fort city of Bangladesh and probably the largest in whole Indian Sub Continent, 25th September in Nazrul Pathagar a seminar name “Wari boteshor: A search for rout” all speakers demand for the protection of the archaeological sites of Bangladesh and intensive research on them.

b. 3rd February 2009 in Daily Jugantor news article has been published with the heading “7th centuries’ temple and 12 spot in discovered in Bhitorgor of Panchogor” where is reported that the Assistant Professor Shahnaz Hosne of University of Liberal Arts Bangladesh with her 19 student has made a 15 days long archaeological expedition in Panchogor where they have found a temple of about 7th or 8th century and discovered more 12 spot of the Fort city of Bhitorgor in Panchogor.

c. 4th February 2009 an article was published in Daily Prothom Alo with heading “Ancient temple in Panchogor?” where it was reported that by digging the earth on Amborkhana union of Panchogor Sadar Upzilla some portions of an ancient temple has been found by a expedition tea of University of Liberal Arts Bangladesh. The custodian of Rangpur Tajhat Museum was present at that time and he said that the archaeological finding seems to be of 500 years old and the leader of the expedition teams Dr. Shahnaz said at least three years will be required to complete the total digging of that site.

Copies of the paper cutting are annexed here

with and marked as **‘ANNEXURE-A**

Series.’”

8. That it is stated here that the Director General of Archaeological Directorate has grant a permission of experimental

archaeological expedition to the Dr. Shahnaz Husne Jahan the assistant Professor of University of Liberal Arts Bangladesh on 4.10.2009. The letter of permission was then forwarded to District Commissioner of Panchogor and to Area Director of Rajshahi Division, Bogura, for their knowledge and to take required steps.

Copies of the notifications dated 04.10.2009 and 05.08.2009 are annexed here with and marked as **‘ANNEXURE-B and B-1.’**

9. That it is stated that the district commissioner of Panchogor has made an application to the Secretary of the Ministry of Cultural Affairs and this was also forwarded to Director General of Archaeological Directorate to declare the Bhitorgor of Panchogor District as an Archaeological Park, by notifying that the largest fort city of Bangladesh has been found here by archaeological expedition

and many priceless archaeological wealth is here which requires to be preserved and much more is to be discovered.

Copies of the Application dated 31.03.2010

is annexed here with and marked as

‘ANNEXURE-C.’

10. That it is stated here that an article with heading “Archaeological Investigations at Bhitargor in Panchagor District” by Dr. Shahnaz Husne Jahan has been published by Journal of Bengal Art by the International Centre for Study of Bengal Art Dhaka, Bangladesh. In this Article Dr. Shahnaz has made account of the finding of her archaeological expedition on the site of Bhitorgor Fort city and gave an elaborate history of the city according to the early archaeologist such as Francis Hamilton, known as Francis Buckhannon, Robert Montgomery Martin, W.W Hunter, Rakhaldas

Bandopadhyay, A.K.M. Zakariah, Nazimuddin Ahmed, Dilip K.
Chakrabati, S.M. Rahman, Md. Nazrul Islam and Nazmul Haque and
so on.

Copy of the Journal is annexed here with
and marked as ‘ANNEXURE-D.’

11. That it is stated here that Dr. Shahnaz has acknowledged that the existence of the ancient fort city of Bhitorgor has been mentioned by many early archaeologists on their scholarly writings on the history of this sub-continent. Some of such writings of archaeological scholar are mentioned below:-

a. W. W. Hunter on his book “A Statically Account of Bengal” mentioned that the ruin city of Bhitorgor was found by Prithu Raja which was partly within the jurisdiction of Division of Sanyasikata and Boda, which is situated some distance to the east of Karatoya

river. While giving the description of the fortification of the city Hunter made an assumption that the kingdom seems to be very insecure and said the Raja (king) was attacked by an impure tribe of Khichaks or Gypsies and afraid of having his purity sullied by contact with them, he precipitated himself into the tank at this spot.

b. A. K. M. Zakariah on his book “the Archaeological Wealth of Bangladesh” gave a brief illustration of Bhitorgor he mentioned it to be the greatest creation of ancient time and previously it was under the Kamrup Kingdom. He also said the name of Panchogor district came from the existence of five Gor’s (Fort’s) in this area, and the Bhitorgor is one of them. He also enclosed a possible sketch of the city on the book.

c. Dr. Nazimuddin Ahmed on his book “Discover the Monuments of Bangladesh” mentioned the city as a mud fort with a complicated defence mechanism. He said it is difficult to ascertain the total outer work of the fort but it seems to have originally occupied of 12 square

miles area and the river Talma is traceable on its west. The city also interests him because of using the natural defence of water and a source of water for the different moats inside the fort.

d. Dr. Dilip K. Chakrabarti of Cambridge University on his book “Ancient Bangladesh” mentioned of Bhitorgarh and consider it as unique to all fort of Bengal because of the nature of its fortification, which is situated on bank of Talma river.

e. In the “Banglapedia: National Encyclopaedia of Bangladesh, Volume 2” by Asiatic Society of Bangladesh also mentions the Bhiratgor Fort which formed a part of early medieval mud-fort with a complicated defence system. Also named the five forts of the Panchogor area, which are, Bhiratgor, Bodheswargarh, Migasrh, Hossaingarh and fifth is unfound.

f. Nazmul Haque in his book “The history and folk culture of Panchogor” categorised the Bhitorgor as the most endangered ancient

fort of this sub-continent. He also ensured that it is situated on almost 12 square miles area and erected by Prithu Raja.

Photo copies of the books are annexed here

with and marked as **'ANNEXURE-E, E-1,**

E-2, E-3, E-4 and E-5.'

12. That it is stated here that the Department of Archaeology, Bangladesh has made a survey on the Dinajpur district and published a report named "Archaeological Survey Report of Greater Dinajpur".

Where they have ensured the existence of the Bhiratgor, on Amarkhana Union, Panchagarh Thana and mentioned it as a biggest fort of Bangladesh. They enlisted a brief detail of the fort and list of its site found, which are, Maharaja Dighi, Maharaja bari, Maharaja kachari bari, Maharaja bhita and Hatisur. It is also to be mentioned that knowing the historical importance and exact existence of the

Bhitorgor fort the Department of Archaeology has made no steps to preserve it, which is against the law.

Copy of the survey report is annexed here

with and marked as **'ANNEXURE-F.'**

13. That it is stated here that the Bhitorgor fort consist of a large area of 12 square mile and it was surrounded by walls. The existence of the walls can still traceable from the satellite.

Copies of the satellite image is annexed here

with and marked as **'ANNEXURE-G.'**

14. That it is stated here that by digging the mud of the site the traces of the existence of he Bhitorgor Mud Fort still can be found. The local people has created the house and for that using the soil and bricks of

this very important archaeological site. The local inhabitants are endangering the existence of this highly important archaeological site. Some photographs of the present conditions of the site have been obtained.

Copies of the Photograph are annexed here

with and marked as **'ANNEXURE-H**

Series.'

15. That it is stated here that two companies namely Assort Plus Limited and Sellani Tea Estate is established on the site which is seriously hampering the Fort. The companies are digging mud on the site and constructing many buildings which will cause damage to the fort. If the construction can not be stopped immediately then the irrecoverable damage will be cause this ancient historical mud-fort.

Some photograph of the activity of these companies has been obtained.

Copies of the Photographs are annexed here

with and marked as 'ANNEXURE-I

Series.'

16. That it is stated here that Dr. Shahnaz in fear of the damage which can be done by the Assort Plus and Sellani Tea Estate to the Bhitorgor Fort, made an application to the Deputy Commissioner Panchogor Zilla and Office in Charge of the Panchogor Sadar Thana to take appropriate step to stop the activity of these companies, yet no such steps has been taken, which is unlawful, as being part of the administration it is their duty to protect such historically important site.

Copies of the Application dated 30.05.2011
and 11.05.2011 are annexed here with and
marked as **‘ANNEXURE-J and J-1.’**

17. That it is stated here that disregard to provision of law and failure to ensure proper implementation of laws, caused enough damage to the historical place namely Bhitorgor at Ponchogor District. Under these circumstances the respondents are legally bound to protect the historical places such as the place in where Bhitorgor fortified city under Bhitorgor Mouza and Sonarban Mouza in Amarkhan Union, Ponchogor district, in accordance with law.

18. That it is stated here that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and the respondents are also duty bound to obey the provisions of law.

But the respondents have failed to perform the duties and

responsibility as vested upon them and also failed to protect the above mentioned historical places, which is unlawful and illegal.

19. That it is most respectfully submitted that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the historical places and as such the respondents are required to be directed to protect the above mentioned historical places in accordance with law.

20. That it is respectfully submitted that the government is constitutionally bound by the Article 24 of Bangladesh Constitution to protect the historically important monument. As the fort is of 6th century and it is not only important for the history of Bangladesh but also important to the history of this sub-continent, so it is the duty of government to protect the site Bhitorgor Fort and any inaction to take the appropriate step to protect the place is illegal and unconstitutional.

21. That it is respectfully submitted that the government is under duty to protect the Bhitorgarh Fort under Article 24. The activities of the Assort Plus and Sellani Tea State is damaging the fort and the damages are irrecoverable, so the government is constitutionally bound to stop the works of these companies.

22. That it is submitted here that in section 2 (c) of The Antiquities Act 1968 defines the “antiquity”, where in Para (ii) any ancient site of history was defined as antiquity; and in section 10 of the same Act requires the government to declare any antiquity to be protected antiquity by gazette notification. As the Bhitorgor Fort is a historical site so it is the government must declare it as a protected antiquity and protect it.

23. That it is stated here that the respondent are the experienced public servant and very much aware of the rules and their duties to

protect the Bhitorgor mud-fort. More over the issues of Protection of Bhitorgor Fort are always reporting in media, so it is not out of the knowledge of the respondents. Under these circumstances in such a public interest issues which is always in the notice of the respondents, is not necessary to bring his notice again by way of sending any legal notice.

24. That being aggrieved by and dissatisfied with the inaction of the respondents and having no other equally efficacious remedy the petitioners beg to move your Lordships on the following amongst others;-

G R O U N D S :

I. For that disregard to provision of law and failure to ensure proper implementation of laws, caused enough damage to the

historical place namely Bhitorgor at Ponchogor District. Under these circumstances the respondents are legally bound to protect the historical places such as the place in where Bhitorgor fortified city under Bhitorgor Mouza and Sonarban Mouza in Amarkhan Union, Ponchogor district, in accordance with law.

II. For that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and the respondents are also duty bound to obey the provisions of law. But the respondents have failed to perform the duties and responsibility as vested upon them and also failed to protect the above mentioned historical places, which is illegal.

III. For that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the historical places and as such the respondents are

required to be directed to protect the above mentioned historical places in accordance with law.

IV. For that the government is constitutionally bound by the Article 24 of Bangladesh Constitution to protect the historically important monument. As the fort is of 6th century and it is not only important for the history of Bangladesh but also important to the history of this sub-continent, so it is the duty of government to protect the site Vitorgarh Fort and any inaction to take the appropriate step to protect the place is illegal and unconstitutional.

V. For that the government is under duty to protect the Bhitorgor Fort under Article 24. The activities of the Assort Plus and Sellani Tea State is damaging the fort and the damages are

irrecoverable, so the government is constitutionally bound to stop the works of these companies which is illegal.

VI. For that in section 2 (c) of The Antiquities Act 1968 defines the “antiquity”, where in Para (ii) any ancient site of history was defined as antiquity; and in section 10 of the same Act requires the government to declare any antiquity to be protected antiquity by gazette notification. As the Vitorgarh Fort is a historical site so it is the government must declare it as a protected antiquity and protect it.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to issue:-

A) Direct the office to register this application as a writ petition.

B) A Rule Nisi calling upon the Respondents to show cause as to why a direction should not be given upon the respondents to protect and maintain historic importance places namely "Bhitorgor Fort" situated in Bhitogor Mouja & Sonarban Mouja of Amarkhana Union, Panchogor Sadar Thana, District- Ponchogor.

AND

Why a direction should not be given upon the respondents to declare the site of Bhitorgor Fort as protected antiquity and publish it in the gazette notification as per the provisions of section 10 of Antiquities Act. 1968

C) Pending hearing of the Rule directs the Respondents no 8 and 9 to maintain status quo in respect of implementation of their project.

D) Pending hearing of the Rule directs the Respondents no 5, 6 and 7 to take necessary steps for continuous monitoring within the Bhitorgor Fort area so that no one can destroy/damage any existing position of the Bhitorgor Fort area.

E) Direct the office to serve notices upon the respondents at the cost of the office.

F) Upon hearing the cause if any shown makes the rule absolute.

G) Pass such other or further order or orders as your Lordships may deem fit and proper.

And for this act of kindness Your Petitioners as in duty bound shall ever pray.

Name of the applicants-

Advocate Manzill Murshid

Advocate Asaduzzaman Siddiqui

Advocate Aklasuddin Bhuiyan.....

Advocate Mahbubul Islam.....

Submitted by;-

Manzill Murshid
 গভীর জিগিতম
 Advocate
 Supreme Court of Bangladesh.

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INDEX

Sl.	Description of the paper or document	Date	Page
1.	Copies of the paper cutting is annexed here with and marked as <u>'ANNEXURE-A Series.</u>		
2.	Copies of the notifications dated 04.10.2009 and 05.08.2009 are annexed here with and marked as <u>'ANNEXURE-B and B-1.'</u>	04.10.2009 05.08.2009	
3.	Copies of the Application dated 31.03.2010 is annexed here with and marked as <u>'ANNEXURE-C.'</u>	31.03.2010	
4.	Copy of the Journal is annexed here with and marked as <u>'ANNEXURE-D.'</u>		
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	<u>‘ANNEXURE-F.’</u>		
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8.	Copies of the Photograph are annexed here with and marked as <u>‘ANNEXURE-H Series.’</u>		
9.	Copies of the Photographs are annexed here with and marked as <u>‘ANNEXURE-I Series.’</u>		
10.	Copies of the Application dated 30.05.2011 and 11.05.2011 are annexed here with and marked as <u>‘ANNEXURE-J and J-1.’</u>	30.05.2011 11.05.2011	
11.	Back Page		

Manzill Murshid
 গভীর জগৎ
 Advocate
 Supreme Court of Bangladesh.

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Manzill Murshid
গভীর জীবিত
Advocate
for the Petitioners.

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1. Bangladesh and others.

.....Respondents.

To
The Learned Attorney General
The Peoples Republic of Bangladesh

Dear Sir,

Please take notice that an application under Article 102 of the Constitution, will be filed and moved before this Court, a copy of which is enclosed herewith for your kind information.

Regards-

Manzill Murshid
গভীর জগৎ
Advocate
Supreme Court of Bangladesh.