

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

WRIT PETITION NO. 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
Secretary Asaduzzaman Siddiqui, Hall No.

2, Supreme Court Bar Association Bhaban,
Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. Bangladesh represented by The Secretary,
Prime Minister's Secretariat, Tejgaon, P.S.:
Tejgaon, District: Dhaka.

2. The Secretary, Ministry of
Environment and Forest, Bangladesh
Secretariat, P.S.: Ramna, District: Dhaka.

3. The Director General, Department of
Environment, Agargaon, Sher-E-Bangla
Nagar, Dhaka, Bangladesh.

4. The Deputy Commissioner, Chittagong,
Post and District –Chittagong.

5. The Police Super, Chittagong, Post and District- Chittagong.

6. The Upazila Nirbahi Officer(UNO), Bashkhali, Post and P.S-Bashkhali, District- Chittagong.

7. The Officer in charge (O.C.), Bashkhali, Post and P.S-Bashkhali, District- Chittagong.

....Respondents

AND

IN THE MATTER OF:

Failure of the respondents to protect hills of Bashkhali and others Upazial of Chittagong District and inaction of the respondents to stop cutting the hills .

To,

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

The humble Petition of the Petitioner above named most respectfully;-

S H E W E T H:

1. That the organization 'Human Rights And Peace For Bangladesh (HRPB)' is a non profitable registered organization and the objects of the organization is to uphold the 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 and activities against the environment etc. Moreover the organization is also working to protect environment and take legal steps against the activities of destroying environment as well as in case of violation of law.

2. That the respondent no. 1 is Bangladesh represented by The Secretary, Prime Minister's Secretariat, Tejgaon, P.S.: Tejgaon, District: Dhaka. Respondent no. 2 is The Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S.: Ramna, District: Dhaka. Respondent no. 3 is The Director General, Department of Environment, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh. Respondent no. 4 is The Deputy Commissioner, Chittagong, Post and District – Chittagong. Respondent no. 5 is The Police Super, Chittagong, Post and District- Chittagong. 6. The Upazila Nirbahi Officer(UNO), Bashkhali, Post and P.S-Bashkhali, District- Chittagong. Respondent no. 7 is The Officer in charge (O.C.), Bashkhali, Police Station, P.S. Bashkhali, District- Chittagong. The addresses of the petitioner and respondents given in the cause title are correct for the purpose of services of notice upon them.

3. That the petitioner is seeking direction upon the respondents to stop the cutting of hills in Bashkhali and others Upzilla of Chittagong District, violating the provisions of law. The petitioner also seeking direction to take legal action against the persons who are liable for those hill cutting. 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 provision of law as well as for a direction upon the respondents to take necessary steps to protect hills at Bashkhali and others Upazila of Chittagong District.

4. That it is stated here that by way cutting hills in the different Upazillas of Chittagong, violating the provisions of law, the normal existing of hills has been threatened as well as seriously affected the environment and as it, involves great public importance so this petition may be treated as public interest litigation.

5. That disregard to laws and legal provisions peoples are cutting hills of those area's and constructing houses and failure to ensure proper implementation of laws caused enough damage to the environment and adversely affecting the hills. Under these circumstances the respondents are legally bound to protect the hills of Bashkhali and others Upazilla of Chittagong District in accordance with law.

6. 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 hills', which is illegal.

7. That it is stated here that one Leda Mia son of Late Kabir ahamed of Khedamura, Jungle Kokdandi, Bashkhali, Chittagong, sent a copy

of the letter addressing to the petitioner and was received by the petitioner. In the letter it was stated that a group of people is destroying the environment by cutting hills. It was also annexed a photocopy of the paper cutting in which a report was published for the same. It was reported in that news paper that the hills are cutting in the Bashkhali upazila by a group people though it is unauthorized. It was stated in the report that though such kinds of activities are continuing but concern authority is silent and not performing their duties properly. Consequently many hills are destroying in Chittagong area so the nature is going lost and which is seriously affecting the environment.

Paper clipping dated 20.06.2011 and letter dated 26.06.11 are annexed here with and marked as **“ANNEXURE-A and A-1,**

8. That it is stated here that there are some hills are situated in Chittagong and inaction to protect of the same is contrary to all applicable laws of the country. For the benefit of the interested quarter the respondents are silent and violating and flouting all legal requirements, the respondents have miserably failed to administer law and protect public interest.

9. That it is stated here that disregard to laws and failure to ensure proper implementation of laws the respondents have caused enough damage to the environment and the country is adversely affecting. Under these circumstances the respondents are legally bound to protect the hills and stop cutting the hills at Bashkhali, in accordance with law.

10. That it is stated here that Human Rights And Peace For Bangladesh (HRPB) is an organization working on different issues

and many public interest litigations have been filed by them. In many cases the Hon'ble High Court Division has passed judgment such as i) VAT collection from the patient declared illegal, ii) directed to constitute civil vacation court during civil vacation in every December in subordinate court, iii) directed not to set up any cattle hat on the street in Dhaka City during Eid-Ul-Azha and removing all slaughtering materials within 24 hours with a hygienic manner, iv) directed to form an inquiry commission about murder/rape /persecution/torture committed immediate after parliament election of 2001 upon the then opposition supporter and minorities, v) directed to set up food court in every city in order to prevent food adulteration, vi) directed to form an "Earthquake Preparedness And Awareness Committee" and collected the necessary earthquake rescue equipments as per their recommendation, vii) directed to protect river Buriganga, Balu, Turag and Shitallakha and to stop encroachment in the rivers as well as directed to remove all the structure from inside

the rivers and etc. Many others cases are pending before the Hon'ble High Court Division. The organization is always bearing all the cost of the cases by it's own fund which is raised by the donation of the members. The organization received no fund from abroad or from any citizen of the country except the lawyer members. Due to present high volume of cases it is not possible to bear the cost of the cases filed before the Hon'ble High Court Division as public interest litigation. Under these circumstances it is necessary to exempt the cost of the cases filed by the organization as public interest litigation. Hence a direction may be given to the office to register the application as a writ petition and also notices may be served at the cost of office.

11. That it is stated here that the most of the respondents are the experienced public servant and very much aware of the rules and law of the land. The respondents are aware about the duties vested upon them but failed to perform to protect the hills at Bashkhali and others

Upazillas of Chittagong District. 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 legal notice for taking steps.

12. That it submitted here that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and they 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 by way of violating the provision of law hills are cutting in at different Upazila of Chittagong, which is illegal.

13. That it is submitted here that the respondent are the public servants and they are duty bound at all time to serve the people and to perform the public duties. But they have failed to do their duty

because no steps has been taken in spite of illegal hill cutting are continuing at Chittagong.

14. 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 environment of the area and adversely affecting the environment of the country and as such the respondents are required to be directed to protect the hills in accordance with law and to stop all cutting and house building works therein.

15. That it is submitted that fresh and pollution free environment is inevitable requirement for healthy life, which is also ought to be secured as “right to life” under Art. 31. In *Mehta v. India* (1998) 9 SCC 589 it was held that “protection and improvement of environment” is also guaranteed under Art. 31. Hence stopping the hill cutting activities can best protect the environment of Bangladesh.

Also in *World Saviours v. India* (1998) 9 SCC 247, it was held that “protection and conservation of forest” is also protected under Art. 31 as part of the fundamental right “right to life”.

15. That it is submitted that as per section 3 of the Building Construction act 1952 no one is allowed to cut hill without the previous approval. But some vested quarter is building their house by way of cutting hills, which is illegal.

16. That being aggrieved by and dissatisfied with for not taking the any effective measure to stop hill cutting, which is very essential for the environment of the country and having no other alternative, efficacious remedy begs to move this application before Your Lordships on the following amongst other-

GROUND S

I. For that disregard to laws and legal provisions and failure to ensure proper implementation of laws the respondents have caused

enough damage to the environment and the country is adversely affecting. Under these circumstances the respondents are legally bound to protect the hills at Chittagong in accordance with law.

II. For that the duty and responsibility vested upon the respondents to serve the people and initiate lawful steps and they 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 by way of violating the provision of law hills cutting are continuing in the Chittagong, which is illegal. Hence a direction may be given upon the respondents to hills cutting within the territory of Chittagong District.

III. For that the environment is being continuously endangered and threatened by various illegal activities such as cutting hills in the Chittagong area. The unauthorized activities are the main causes for environmental degradation. Taking advantage of the silence of the

concern authority, the illegal activities is continuing and as a result the environmental is destroying.

IV. For that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the environment of the area and adversely affecting the environment of the country and as such the respondents are required to be directed to protect the hills of Chittagong District, in accordance with law.

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 inaction of the respondents to protect the

hills of Bashkhali and other Upazila of Chittagong District should not be declared illegal and without lawful authority and Why a direction should not be given upon the respondents to stop hill cutting at Bashkhali and Others Upazila of Chittagong District.

C) Pending hearing of the Rule directs the respondent No. 4-7 to arrange continuous monitoring in the hill area of Bashkhali upazila and others hill area of Chittagong District, so that no one can destroy/cut/damage the hill .

D) Pending hearing of the rule directs the respondent no. 5 and 7 to take legal steps who are cutting hills at Bashkhali, and

others Upazilla of Chittagong District and file case against them in accordance with law and submit a compliance report before this court through Registrar within 10 days.

E) Pending hearing of the rule direct the respondent no. 4-7 to take appropriate steps to fill the soil of the Gunagari hill at bashkhali within 6 months by way of collecting the cost from the people who are liable for that damage.

F) Direct the office to serve notices and copies upon the respondents at the cost of office.

G) 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 Petitioner as in duty bound shall ever pray.

Name of the Petitioner-

Advocate Asaduzzaman Siddiqui -----

Submitted By-

Manzill Murshid
Advocate
গব্বরজ তগবি তম`
Supreme Court of Bangladesh.

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I N D E X

Sl.	Description of the paper or document	Date	Page
1.	Power		
2.	Writ Petition		
3.	Paper clipping and letter are annexed here with and marked as <u>“ANNEXURE-A and A-1.”</u>	20.06.11	
4.	Back Sheet		

Manzill Murshid
গব্বরজ তগব্বি তম`
Advocate
Supreme Court of Bangladesh.

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Bangladesh and others.

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Manzill Murshid
গভীর জগৎ
Advocate
for the Petitioner.

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.....Petitioner.

-V E R S U S-

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
গব্বরজ তগবি তম`
Advocate
Supreme Court of Bangladesh.