

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:

Advocate Khan Himayat Uddin, C/O. Dr.

Nadira Khan , Rizia Bhaban (5th floor),2/C,

Nobab Habibullah Road, Shahbagh, Dhaka.

.....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 Chief Conservator, Forest Directorate, Bonhaban, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh.
4. The Deputy Chief Conservator (Dev), Forest Directorate, Bonhaban, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh.

5. The Director General, Department of Environment, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh.

6. The Director General, agriculture Extension Department, Khamarbari, Dhaka, Bangladesh

....Respondents.

AND

IN THE MATTER OF:

Failure of the respondents to carry out the social forestation project in way to make it useful for the public and not implementing the plan as recommended by the Ministry

of which is design for public and
environment development.

To,

Mr. Justice A. B. M. Khairul Haque, 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. The petitioner is a lawyer and well acknowledged tree-lover. He had an extensive knowledge on cultivation of land and tree. His theory on "poverty relieve by fruit plantation", is already well-known plan through newspapers and appreciated by the many level of the government. As a conscious citizen, the petitioner sought to enforce the application under Article 102 of the Constitution of Bangladesh as

a Public Interest Litigation as the matter concern directly affect the people and environment of Bangladesh.

2. The petitioner being conscious citizen and respectable member of Khulna Bar Association are applying to execute a workable social forestation plan. The petitioner seek to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to playing a role to fulfill the nutrition of the citizen..

3. That the respondent no. 1 is the Bangladesh, represented by the Secretariat of the Prime Minister's Secretariate, Tejgaon, P.S.: Tejgaon, District: Dhaka. The respondent no.2 is The Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S.: Ramna, District: Dhaka. Respondent no. 3 The Chief Conservator, Forest Directorate, Bonhaban, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh. Respondent no. 4 is The Deputy Chief Conservator

(Dev), Forest Directorate, Bonhaban, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh. Respondent no. 5 is The Director General, Department of Environment, Agargaoan, Sher-E-Bangla Nagar, Dhaka, Bangladesh. Respondent no 6 is The Director General, agriculture Extension Department, Khamarbari, Dhaka, Bangladesh. The addresses of the petitioner and respondents given in the cause title are correct for the purpose of services of notice upon them.

4. That it is stated that forestation has been a part of “Daridro Bimochon Kormoshuchi” (DBK). However, this movement which has been taken by the government has proven fruitless as the trees has been planted are not useful to the people. As it can be seen that previously the government took project to “forest” trees, thereafter, later government little altered that one “forest” and one “fruit” trees, required to be planted. Then the present government came and took initiatives that one “forest”, one “fruit” and one “organic” tree

required to be planted. Provided that “forest” and “fruit” plant cannot cultivate together. The “forest” and “fruit” trees if cultivate together then the “fruit” trees will merely grow but will not produce any fruit, so this trees will not contribute to the public, which is the foremost purpose of the entire scheme that failed.

5. That it is stated that the petitioner has personal knowledge and experience regarding tree plantation as being son of a farmer and from personal interest on plant. He has published a book naming “Daridromukto Desh Gorbar Ongikar – (Sohogtomo Daridro Bimochon Kousholpotro)” as translate in English, “Promise to create a poverty free Country – Easiest Technique to Overcome Poverty”.

Where in summery he identifies the causes of poverty in Bangladesh, reasons of why the tree plantation scheme of the government has failed and in which technique a successful forestation could be done in a way to make a poverty free Bangladesh.

5. That it is stated that in 1977 the petitioner had submitted his book and explained his technique to the then President and he showed his interest and assured that the petitioner's plan will be implemented. Nevertheless that did not stop the petitioner with the help of his friends in Khulna District Lawyer's association and the District Commissioner (D.C.) Abdur Rahim Chowdhury and Divisional Commissioner, facilitate him to organized several seminars on his techniques and plan. Then, they send an application to the President to employ the petitioners' plans on 1983. A memo letter No. 20 (2) (GOP) 84-651/1, were sent to the Khulna Lawyer Association from President's office informing that an order 20.(2) has been passed to planning office to execute the plan of the petitioner.

6. That it is stated here that thereafter the Ministry of Environment and Forest has contact with him several times. On 11/08/2008 a letter No.- POBAMA/SHA BON-2/FORESTATION-34/03(PART-1)/383

was sent to Chief Forest Protector requesting to give his opinion on the book of Adv. Khan Hemayet Uddin, a copy was sent to the petitioner. On 14/01/2009 a letter No.-PABAMA/SHA BON-2/PARTFORESTATION-34/03(Part-1)/29 was sent along with the book of Adv. Khan Hemayet Uddin to The Chairman of Bangladesh Forest Industry Development Corp., Motijhil, Dhaka; The Chief Forest Protector, Forest Director, Agargaon, Dhaka; and The Director, Bangladesh Forest Institution, Sologhar, Chittagong. On 15/01/2009 a letter no. - PABAMA/SHA BA-2/PART FORESTATION-34/03(PART-1)/28 were sent in The Director General (D. G.) of Directorate of Agricultural Extension, Khamarbari, Dhaka, a copy was sent to Adv. Khan Hamayet Uddin.

Copies of the letters dated 11.08.2008, 14.01.2009 and 15.01.2009 are annexed here as **“ANNEXTURE - A, A-1 AND A-2”**.

6. That it is stated here that the petitioner's interview and his techniques has regularly covered by the print media and his techniques has widely been supported.

a. It was reported in "Daily Jonokontho" with a heading that, "it is possible to make two corer people self dependent by cultivating "Khajur" and "Tal" seed. Only by planting "khajur" and "tal" seed two cores unemployed person can be employed without any capital. Not only that every year one core metric ton sugar can be produce from that which can be exported after fulfilling the domestic need without need of any extra land. This project can be done in sidelines of highways, river banks, etc.

b. It was reported in "Weakly Rob-bar" with the heading that "The villages have to turn as centre of all businesses".

c. It was reported in "Daily Prothom Alo" on 12th August 2010 that the Minister of Agriculture Motia Chowdhury has mention "Eukaliptus" and "Akashmoni" as useless trees which have been

planted in the name of “social forestation” on recommendation of foreign donor and she insisted to planting native trees such as mango, jackfruit, “date” and “palm”.

Copies of the news paper articles are annexed here as “**ANNEXTURE - B, B-1**”.

7. That it is stated here that the “social forestation” under “Daridro Bimochon Kormoshuchi” has been failed due to government’s wrong choice of trees and wrong plans. This is evidently clear that the trees which have been successfully planted in any foreign countries need not to have the same effect on our country. The weather, soil texture and water every need to be same as the tree’s inhabitant country. For Bangladesh according to its weather, position, soil texture and water “date” and “palm” and other trees plantation will have a very

significant effect, as it will be easy to grow and it will produce a lot of fruits.

8. That it is stated here that fruit is the most essential part of human nutrition however in present day because of the lack of national fruit resource, fruit has to import from abroad and that is why available fruits are so expensive which has made fruit from a necessity to a luxury which can only be consumed by rich people.

9. That it is stated here that it is stated here that a demand of justice notice has been served to the respondents to take steps to take an effective plan for social forestation in order to ensure the nutrition of the citizens who are living there. They have been requested to set the plan within 10 days and take similar steps. But nothing was communicated.

A copy of the demand justice notice is annexed herewith and marked as **“ANNEXURE - C”**.

13. That it is submitted that the nutrition is a part of right to life under Article 31 of Constitution of Bangladesh. In Dr. Mohiuddin Farooque v. Bangladesh, 48 DLR 438 it was held that “protection of health” is guaranteed as fundamental right under article 31. So failure to use the Khas lands, which is used for forestation, to be used to produce nutrition for the citizens is a failure to provide the protection under Art. 31.

14. 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. Plants, which are suitable to the soil texture and environment, are best to protect the environment of the country. Hence the “Palm” and “Date” trees naturally grow in Bangladesh so these trees 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”.

14. That it is submitted that the state has duty to raise the nutrition level and health of the citizen under Fundamental Principles of State Policy, Art 18 (1). Here the “Palm and Date” trees will fulfill the essential nutrition of the citizen and thus their health. So government should seriously consider to the proposal of the petitioner as its State’s duty as “Fundamental Principles of State”.

18. That being aggrieved by and dissatisfied with for not taking the any effective measure to implement the necessary steps which is very essential for the citizens nutrition and health 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 the nutrition is part of right to life under Article 31 of Constitution of Bangladesh. In Dr. Mohiuddin Farooque v. Bangladesh, 48 DLR 438 it was held that “protection of health” is guaranteed as fundamental right under article 31. So failure to use the Khas lands, which is used for forestation, to be used to produce nutrition for the citizens is a failure to provide the protection under Art. 31.
- II. For 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. Plants, which are suitable to the soil texture and environment, are best to protect the environment of the country. Hence the “Palm” and “Date” and other trees naturally grow in Bangladesh so these trees 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”.

III. For that the state has duty to raise the nutrition level and health of the citizen under Fundamental Principles of State Policy, Art 18 (1). Here the “Tal and Khajur” trees will fulfill the essential nutrition of the citizen and thus their health. So government should seriously consider to the proposal of the petitioner as its State’s duty as “Fundamental Principles of State”.

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

a) Issue a Rule Nisi calling upon the Respondents to show cause as to why a direction should not be given upon the respondents to carry out the social forestation project in way to make it useful for the public and environment development and to implement the plantation of forest as proposed in the letter dated 15.01.2009 to raise the nutrition level and health of the citizen.

b) After hearing the parties make the Rule absolute.

c) Pass such other and further order and/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.

AFFIDAVIT

I, Advocate Khan Himayat Uddin, C/O. Dr. Nadira Khan, Rizia Bhaban (5th floor),2/C, Nobab Habibullah Road, Shahbagh, Dhaka.

aged about ---- years by faith Muslim by occupation lawyer by

Nationality Bangladeshi by birth do hereby solemnly affirm and say as

follows:-

1. That I am the Petitioner No. 1 in this case and acquainted with the facts and circumstances of this application and am competent to swear this affidavit.

2. That the statement made hereinabove in this application are true
to the best of my knowledge and belief.

Prepared in my office.

Manzill Murshid
মনজিল মোরসেদ
Advocate

(DEPONENT)

THE DEPONENT IS KNOWN
TO ME
AND IDENTIFIED BY ME

Manzill Murshid
মনজিল মোরসেদ
Advocate

SOLEMNLY AFFIRMED BEFORE
ME THIS THEDAY OF
.....:2011 AT..... AM/PM

COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.

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HIGH COURT DIVISION
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WRIT PETITION NO. OF 2011.

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1. Advocate Khan Himayat Uddin,

.....Petitioner.

-V E R S U S-

1. Bangladesh and others.

.....Respondents.

Manzill Murshid
মনজিল মোরসেদ
Advocate
For the Petitioner.

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4.	Copies of the news paper articles are annexed here as " <u>ANNEXTURE - B, B-1</u> ".	12.08.2010	
5.	A copy of the demand justice notice is annexed herewith and marked as " <u>ANNEXURE - C</u> ".		
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Manzill Murshid,
Advocate
For the Petitioner.

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Advocate Khan Himayat Uddin,

.....Petitioner.

-V E R S U S-

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 of Bangladesh will be filed and moved before this Court, a copy of which is enclosed herewith for your kind information.

Regards-

Manzill Murshid

মনজিল মোরসেদ

Advocate

Supreme Court of Bangladesh