

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 the
Secretary of the Executive Committee

Asaduzzaman Sddiqui , Advocate, Supreme
Curt of Bangladesh, Hall No. 2, Supreme
Court Bar Association Bhaban, Dhaka,
Bangladesh.

2. Advocate Md. Aklas Uddin Bhuiyan
Hall No. 2, Supreme Court Bar Association
Bhaban, Dhaka and 3 Agamashi Lane, P.S.:
Kotwali, Dhaka.

.....Petitioners.

-VERSUS-

1. The Secretary, Ministry of Environment
and Forrest Government of the People's

Republic of Bangladesh, Bangladesh

Secretariat, P.S -, Shahbag, Dhaka.

2. The Secretary, Ministry of Finance,

Bangladesh Secretariat, P.S -, Shahbag,

Dhaka.

3. The Secretary, Ministry of Local

Government and Rural Development,

Government of the People's Republic of

Bangladesh, Bangladesh Secretariat, P.S -,

Shahbag, Dhaka.

4. The Secretary, Ministry of Water

Resources, Bangladesh Secretariat, P.S -,

Shahbag, Dhaka.

5. The Chairman, BIWTA, 141-143

Mitijheel C/A, Dhaka.

6. The Director General, Department of

Environment, Paribesh Bhaban, E-16, Sher-E

Bangla Nagar, Agargaon, Dhaka.

7. The Deputy Commissioner, Comilla,

Office of the Deputy Commissioner,

Collectorate Building , Comilla.

8. The Superintendent of Police, Comilla,

S.P. Office Comilla, District- Comilla.

9. The Upazila Chairman, Burichang, Post

and P.S.-Burichang, District- Comilla.

10. The Upazila Chairman, Chandina, Post

and P.S.-Chandina, District- Comilla.

11. The Upazila Chairman, Debidar, Post
and P.S.-Debidar, District- Comilla.

12. The Upazila Chairman, Muradnagar,
Post and P.S.-Muradnagar, District- Comilla.

13. The Upazila Chairman, Doudkandi, Post
and P.S.-Daudkandi, District- Comilla.

14. Upazila Nirbahi Officer, Burichang,
Post and P.S.-Burichang, District- Comilla.

15. Upazila Nirbahi Officer, Chandina, Post
and P.S.-Chandina, District- Comilla.

16. Upazila Nirbahi Officer, Debidar, Post
and P.S.-Debidar, District- Comilla.

17. Upazila Nirbahi Officer, Muradnagar,
Post and P.S.-Muradnagar, District- Comilla.

18. Upazila Nirbahi Officer, Doudkandi,
Post and P.S.-Daudkandi, District- Comilla.

..... Respondents

AND

IN THE MATTER OF:

For a direction to stop illegal encroachment,
earth filling and temporary & permanent
structures building in the River Gomati at
Comilla District , violating the provisions
of the Bangladesh Environment
Conservation Act 1995 (amended in 2000
and 2002), and gnvbMix, wefMxq kni I tRjv
knþi i tcŠi GjvKvnn t`tki mKj tcŠi GjvKvi tLjvi

গণপ্রজাতন্ত্রী বাংলাদেশ সরকারের আইন মন্ত্রণালয়

আইন, ২০০০.

AND

IN THE MATTER OF:

For a direction to remove temporary & permanent structures built in the River Gomati in Comilla District violating the provision of law.

To

Mr. Justice A.B.M. Khairul Haque, 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 (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 petitioner no. 1 is the Secretary of Human Rights and Peace For Bangladesh and the petitioner no. 2 is publicity secretary of the executive committee and all of them are practicing lawyer of this Hon'ble Court and conscious citizen of the country.

3. That the Respondent No. 1 is Bangladesh represented by The Secretary, Ministry of Environment and Forrest Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S -, Shahbag, Dhaka. Respondent no. 2 is The Secretary, Ministry of

Finance, Bangladesh Secretariat, P.S -, Shahbag, Dhaka. Respondent no. 3 is The Secretary, Ministry of Local Government and Rural Development, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S -, Shahbag, Dhaka. Respondent no. 4 is The Secretary, Ministry of Water Resources, Bangladesh Secretariat, P.S -, Shahbag, Dhaka. Respondent no. 5 is The Chairman, BIWTA, 141-143 Mitijheel C/A, Dhaka. Respondent no. 6 is The Director General, Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka. Respondent no. 7 is The Deputy Commissioner, Comilla, Office of the Deputy Commissioner, Collectorate Building , Comilla. Respondent no. 8 is The Superintendent of Police, Comilla, S.P. Office Comilla, District- Comilla. Respondent no. 9 is The Upazila Chairman, Burichang, Post and P.S.-Burichang, District- Comilla. Respondent no. 10 is The Upazila Chairman, Chandina, Post and P.S.-Chandina, District- Comilla. Respondent no. 11 is The Upazila Chairman The Upazila

Chairman, Debidar, Post and P.S.-Debidar, District- Comilla.

Respondent no. 12 is The Upazila Chairman, Muradnagar, Post and

P.S.-Muradnagar, District- Comilla. Respondent no. 13 is The Upazila

Chairman, Doudkandi, Post and P.S.-Daudkandi, District- Comilla.

Respondent no. 14 Upazila Nirbahi Officer, Burichang, Post and P.S.-

Burichang, District- Comilla. Respondent no. 15 is Upazila Nirbahi

Officer, Chandina, Post and P.S.-Chandina, District- Comilla.

Respondent no. 16 is Upazila Nirbahi Officer, Debidar, Post and P.S.-

Debidar, District- Comilla. Respondent no. 17 is Upazila Nirbahi

Officer, Muradnagar, Post and P.S.-Muradnagar, District- Comilla.

Respondent no. 18 is Upazila Nirbahi Officer, Doudkandi, Post and

P.S.-Daudkandi, District- Comilla. That the addresses of the petitioners

and the respondents given above are correct for the purpose of service

of notices.

4. That the petitioners are seeking direction upon the respondents to

stop encroachment, earth filling and temporary & permanent

structures building in the River Gomati at Comilla District, violating the provisions of the Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and gnvbMlx, wefiMlxq kni I tRjv kni i tcSi GjvKvnmn t`tki mKj tcSi GjvKvi tLjvi gw DbjP `vb, D`vb Ges c0KwZK Rj vavi msi ¶b AvBb, 2000. The petitioners also seeking direction to remove temporary & permanent structures built in the River Gomati violating the provision of law. The petitioners seek 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 the river Gomati.

5. That it is stated here that by way encroachment, earth filling and temporary & permanent structures building within the territory of River Gomati at Comilla District, violating the provisions of law, the normal movement of the river was obstructed as well as seriously

affected the environment and as it, involves great public importance so this petition may be treated as public interest litigation.

6. That the thousands of people residing in Comilla District and are depending on the source of water from Gomati river. Not only that some 'river transports' based on the above mentioned river is playing a great role in the transport sector. More over the main source of water for cultivation of the area is Gomati River but due to continuous encroachment, earth filling and structure building in the above mentioned river, day by day it is losing its width and affecting the cultivation and life of the citizen. The river is playing an effecting role in protecting the environment. But due to illegal acts of the law violators the above mentioned river could not play effecting role in environment.

7. That according to Section 5 of the gnvbMi x, wefvMxq kni I tRj v knṭi i tcŠi

Gj vKmn ṫ ṫki mKj tcŠi Gj vKvi tLj vi gw Dbṫṫ ṫvb, D`vb Ges cṫKwZK Rj vavi

msi ¶b AvBb, 2000, it is prohibited to change the nature of any land that has been earmarked as a natural reservoir. Pursuant to section 8 of the said law any person who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000. More over under section 7 of the Environment Conservation Act, 1995, the authority has empowered to direct any person responsible for causing damage to the ecosystem for adopting corrective measures. Due to the encroachment, earth filling and temporary & permanent structures built in the River Gomati River the nature of the river is going to be changed, which is not only illegal but punishable offence under the provision of law.

8. That disregard to laws and legal provisions encroachment, earth filling and temporary & permanent structures building is continuing and failure to ensure proper implementation of laws caused enough damage to the environment and adversely affecting life of the citizen

of the area. Under these circumstances the respondents are legally bound to protect the River Gomati, in accordance with law.

9. 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 River from encroachment, earth filling and occupation, which is illegal.

10. That it is stated here that on 23.01.2011 a report was published in a news paper namely Daily Inqilab. It was reported in that news paper that the different places of river Gomati are encroaching, earth filling and building temporary & permanent structures by the interested quarter 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 the river Gomati is going to lost it's existence which is seriously affecting the environment. It was written that the interested quarter occupied the river and created obstruction to the normal movement of the Rivers which is seriously affecting our ecological system.

Paper clippings dated 23.01.2011 and 28.08.2009 are annexed here with and marked as **“ANNEXURE-A , A-1,**

11. That it is stated here that encroaching, earth filling and building temporary & permanent structures in the river 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.

12. 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 peoples are adversely affecting the right to life of the citizen. Under these circumstances the respondents are legally bound to protect the river Gomati in accordance with law.

13. 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.

14. 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 river Gomati. 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.

15. 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 the earth filling, encroachment is continuing in Gomati, which is illegal.

16. 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 encroaching, earth filling and building temporary & permanent structures in the river Gomati is continuing.

17. That it is submitted that the environment is being continuously endangered and threatened by various illegal activities such as filling

up the river. The main causes for environmental degradation is unauthorized filling up, structure building in the river around the Gomati. Taking advantage of the silence of the concern authority, the encroachment, earth filling and temporary & permanent structures building in the River Gomati at Comilla District is continuing and as a result the environmental is destroying.

18. 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 life of the people and as such the respondents are required to be directed to protect the river in accordance with law and remove all structure made therein.

19. That it is submitted that the non-implementation of the laws by the respondents undermine the rule of law and jeopardize peoples

fundamental right as guaranteed under Article 31 of the Constitution of Bangladesh.

20. 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 laws and legal provisions and failure to ensure proper implementation of laws the respondents have caused enough damage to the environment and the peoples are adversely affecting to the right to life. Under these circumstances the respondents are legally bound to protect the river Gomati 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 the earth filling up is continuing in river Gomati, which is illegal. Hence direction may be given upon the respondents to stop encroachment, earth filling and remove temporary & permanent structures building within the territory of the River Gomati at Comilla District.

III. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and temporary & permanent structures building in the River Gomati at Comilla District. 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 under Section 5 of the gnvbMi x, uefvMxq kni I tRjv kni i tcSi GjvKvnn t`tki mKj tcSi GjvKvi tLjvi gW Dbj³ -vb, D`vb Ges c0KwZK Rj vavi msi ¶b AvBb, 2000, also prohibits change of the nature of any land that has been earmarked as a natural reservoir. As per section 8 of the Act 2000 any person who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000 or both. In spite of violation of law the respondents are not taking appropriate action.

V. For that encroachment, earth filling and temporary & permanent structures building in the River Gomati at Comilla District is contrary to all applicable laws of the country. Moreover the filing up and encroachment in the river will create obstruction to the normal movement of the river.

VI. 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 city dwellers and as such the respondents are required to be directed to protect the river in accordance with law.

VII. For that the non-implementation of the laws by the respondents undermine rule of law and jeopardize peoples fundamental right as guaranteed under Article 31 of the Constitution of Bangladesh.

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

to:-

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 the river Gomati at Comilla District from encroachment and earth filling and why the respondents should not be directed to take steps for dredging the river Gomati and remove all permanent and temporary structure made within the river Gomati as it was constructed violating the provision of law.

C) Pending hearing of the Rule the respondent No. 7 and 14-18 may be directed to demarcate the original territory of the River Gomati at Comilla District through a survey by a special team and submit the

report within 2 months before this Hon'ble Court.

D) Pending hearing of the Rule direct the respondent no. 7 and 9-19 to take immediate appropriate steps to stop further encroachment, earth filling, construction of temporary/permanent structure in the area of river Gomati at Comilla District.

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

Advocate Asaduzzaman Siddiqui -----

Advocate Aklasuddin Bhuiyan.....

Submitted By-

Manzill Murshid
Advocate
গব্বরজ তগ্বিতম`
Supreme Court of Bangladesh.

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

WRIT PETITION NO. OF
2010.

IN THE MATTER OF:

Human Rights and Peace for Bangladesh
represented by it's Secretary Advocate
Asaduzzaman Siddiqui and another.
.....Petitioners.

-V E R S U S-

1. Bangladesh and others.
.....Respondents.

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4.	Back Sheet		

Manzill Murshid
গভীর জগৎ
Advocate
Supreme Court of Bangladesh.

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

WRIT PETITION NO.....OF 2011.

IN THE MATTER OF:

Human Rights and Peace for Bangladesh and
another.

.....Petitioners.

-V E R S U S-

Bangladesh and others.

.....Respondents.

Manzill Murshid
গভীর জীবিত
Advocate
for the Petitioners.

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

WRIT PETITION NO. OF
2011.

IN THE MATTER OF:

Human Rights and Peace for Bangladesh and
another.

.....Petitioners.

-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 তগব্বিতম`
Advocate
Supreme Court of Bangladesh.