

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

WRIT PETITION NO. OF 2010.

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, Dhaka, Bangladesh.

3. Advocate Sarwar Ahad Chowdhury,
Hall No. 2, Supreme Court Bar Association
Bhaban, Dhaka, Bangladesh, and 3/14
Bashbari Bosila Road, Mohammadpur, P.S.:
Mohammadpur, Dhaka.

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

.....Petitioners.

-V E R S U S-

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, Bangladesh.

3. The Mayor, Dhaka City Corporation,
City Corporation Bhaban, Fulbaria, Dhaka,
Bangladesh.

4. The Chairman, Rajdhani Unnoyon
Kortipokho (RAJUK), RAJUK Bhaban,

Dilkusha, Motijheel C/A, Dhaka,
Bangladesh.

5. The Director General (Joint Secretary),
Archeological Directorate, F-4A, Agargaon,
Sher-E-bangla Nagar, Dhaka-1207,
Bangladesh.

6. The Police Commissioner, Dhaka
Metropolitan Police (DMP), Mintu Road,
Eskaton, Dhaka, Bangladesh.

7. The Officer in Charge (O.C.), Lalbagh
Thana, P.S.- Lalbagh, District-Dhaka,
Bangladesh.

8. Mohammad Shohid Hossain of 46/47
Kaji Riaz Uddin Road, P.S.-Lalbagh, Dhaka.

9. Md. Hoque of 52 Kaji Riaz Uddin Road,
P.S.-Lalbagh, Dhaka, Bangladesh.

10. Md. Lalin of 4 Pushporaj Shaha Lane,
P.S.-Lalbagh, Dhaka, Bangladesh.

.....Respondents.

AND

IN THE MATTER OF:

For a direction upon the respondents to
implement the provisions of Rule 61 of
Dhaka Metropolitan Building
(Construction, Development, Preservation
and Eviction) Rules 2008 and Section 12(c)
of the Antiquities Act. 1968 and to protect
the natural existence of a historical
importance place namely Lalbagh Fort as

per article 24 of the Constitution of
Bangladesh.

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 Petitioners 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 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 of human 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 practicing lawyer of this Hon'ble Court, human rights activist and conscious citizen of the country. They are challenging the Inaction of the respondents to take necessary steps to stop building construction activities in adjacent areas of protected of Lalbagh Fort which has very significant and important role, not only, in the history of Bangladesh but also the history of this subcontinent. 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 adjacent to the Lalbagh Fort.

3. 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, Bangladesh. Respondent no. 3 the Mayor, Dhaka City Corporation, City Corporation Bhaban, Fulbaria, Dhaka, Banglades.

Respondent no. 4 is The Chairman. Rajdhani Unnoyon Kortipokho (RAJUK), RAJUK Bhaban, Dilkusha, Motijheel C/A, Dhaka, Banglades. Respondent no. 5 The Director General (Joint Secretary), Archeological Directorate, F-4A, Agargaon, Sher-E-bangla Nagar, Dhaka-1207, Bangladesh. Respondent No. 6 is The Police Commissioner, Dhaka Metropolitan Police (DMP), Mintu Road, Eskaton, Dhaka, Bangladesh. Respondent no. 7 is The Officer in Charge (O.C.), Lalbagh Thana, Lalbagh, Dhaka, Bangladesh.

Respondent no. 8 is Mohammad Shohid Hossain, 46/47 Kaji Riaz Uddin Road, Lalbagh, Dhaka. Respondent no. 9 is Md. Houque, 52 Kaji Riaz Uddin Road, Lalbagh Road, Lalbagh, Dhaka, Bangladesh.

Respondent no. 10 is Md. Lalin, 4 nos. Pushporaj Shaha Lane,

Lalbagh, Dhaka, Bangladesh. That the addresses of the petitioners and the respondents given above are correct for the purpose of service of notices.

4. That it is stated here that the matter is involved a public importance. The Lalbagh Fort has a very significance in our history and it is also a public place which is now under the governance and protection of the Government of People Republic of Bangladesh. However in recent year few peoples are taking possession of the property which belongs to this protected historical monument and they are constructing buildings violating the provisions of law, which is illegal and without lawful authority. That the matter is involved about the interest of the common people as this historical place belongs to the common people of Bangladesh and the Government is in under duty to protect the interest of the people by protecting the historical place. The affected people is unable to come to protect this historical place and sentimental importance for the people of

Bangladesh, hence the petitioners move this Public Interest Litigation (PIL) before this Hon'ble Court. As it involves great public importance so this petition may be treated as public interest litigation.

5. That it is stated here that a report was published in the Daily Ittefaq on 13.10.2010 on the head line that "Lalbagh Fort's land is being dispossessed". It was reported in the newspaper that, few powerful local personals, including the respondent no. 7, 8 and 9, are continuing constructions on the land adjacent to Lalbagh Fort violating the provisions of law. Moreover it was stated in the report that the provisions of Antiquities Act has not been followed in case of "Lalbagh Fort."

Copy of the paper clipping is annexed here

with and marked as 'ANNEXURE-A.

6. 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 assistance of the hon'ble court to protect this historical place by directing the respondents to perform their duty to protect the historical place Lalbagh Fort.

7. That it is stated here that this Fort 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 and for many years peoples from Bangladesh and abroad have been using this as an important public place. It is significant that by constructing buildings within the perimeter and adjacent to its perimeter of the Lalbagh Fort, the beauty of this monument is being dangerously affected. Also construction of buildings so closer to this monument is hampering the protection of this monument and making it endangered. So such construction is

without any lawful authority and unlawful as per Rule 61 of Dhaka Metropolitan Building (Construction, Development, Preservation and Eviction) Rules 2008 and Section 12(c) of the Antiquities Act. 1968.

8. That it is stated here that the custodian of the Lalbagh Fort has sent a letter to the Officer In charge of Lalbagh Police Station for taking action to stop the on going construction work, how ever no action has been taken by the Police Station. It is certainly the duty of the local police to stop any illegal construction within their jurisdiction. However, surprisingly the authority of Lalbagh Police Station has failed to perform their lawful duties without any good reason, which is unlawful and illegal.

Photocopy of the latter is annexed here with

and marked as 'ANNEXURE-B.

9. That it is stated here that Md. Shafiqul Islam, Director General of Bangladesh Archeological Department has submitted an application to the Chairman of Rajdhani Unnoyon Kortipokho (RAJUK) informing the illegal building construction which is being without the permission of RAJUK and hence he requested him to take steps to prevent such activity. It is stated that it's the duty of RAJUK to give permission, control and observe any construction activity by citizens within the Capital and certainly Lalbagh Fort is within their jurisdiction, however surprisingly RAJUK was proven ineffective as same as the Lalbagh Police Station and has taken no steps to prevent these activities, which is again unlawful act by such public department.

Photocopy of the application dated
01.011.2010 is annexed here with and
marked as 'ANNEXURE-C.

10. That it is stated here that few photographs of these unauthorized and illegal construction adjacent to the Lalbagh Fort has been obtained by the petitioners. In these photographs it can be seen that there are some building already build and in under construction dangerously closer to the historical monument which is likely to hamper the protection and preservation of the Lalbagh Fort and obviously these buildings are being constructed against the present law and without proper authority, which is illegal and unlawful.

Copies of the photographs are annexed here

with and marked as 'ANNEXURE-D

Series.

11. That it is submitted that as per section 12 of The Antiquities Act 1968, it is the duty of the Government to protect the historical immovable properties. Subsequently the section 12 (c) of the

Antiquities Act 1968 imposes a duty to Government to restrict any sort of construction activity in near the listed immovable property, by anyone.

12. That it is submitted that the authority framed a rules namely “Dhaka Metropolitan Building (Construction, Development, Protection and Eviction) Rules 2008, in which rule 61 it was provided that no one including the owner of any listed immovable property can do any construction, renovation or demolition activity on that property with out the permission of proper authority and even if any such activity is continuing then the authority has the power to order to stop such activity. It was also provided in the rule that 250 (two hundred and fifty) diameter area adjacent to listed immovable property is to be treated as the part of the monument, so any kind of construction, renovation or demolition in the mentioned area is illegal and the Government is under obligation to prevent such construction, renovation and demolition activity.

15. 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 its 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.

16 That being aggrieved by and dissatisfied with the inaction of the respondents to take necessary steps to stop these illegal

construction adjacent to the Lalbagh Fort, which is in violation of present law of the country and against the best interest of the citizens of Bangladesh as these constructions are hampering the beauty and the preservation of this important historical place. And having no other equally efficacious remedy the petitioners beg to move Your Lordships on the following amongst others:-

GROUND S

I. For that the duty and responsibility vested upon the administration to perform the duties for the people. The respondents are also duty bound to obey the provision of law. It is the duty of an officer to perform the duties in accordance with law, but they have failed to perform the duties and responsibility as vested upon them under section 12 of The Antiquities Act 1968. Hence respondents may be directed to take necessary and immediate steps to stop the illegal construction which is rendering the beauty of the monument Lalbagh

Fort and hampering its preservation which is certainly without any lawful authority and illegal.

II. For that the Lalbagh Fort is having a historical importance; it must be preserved by the Government as per the provisions of Article 24 of the Constitution of Bangladesh. So at this stage there is no alternative to stop the illegal and unlawful construction activity unless it will be very difficult to demolish the buildings once it is build.

III. For that disregard to laws and legal provisions and failure to ensure proper steps the respondents have caused enough threat to the Lalbagh Fort's very existence. Under these circumstances the respondents are legally bound to take all necessary steps to take necessary steps to stop construction activities. Hence a direction may be given upon the Respondents to take appropriate steps to stop these constructions.

IV. For that without any precautions to save the historical place, the respondents has sent the Lalbagh Fort in a dangerous situation, which is violation section 12 of The Antiquities Act 1968. Moreover it is the duty of the government to impose restriction as per section 12 of The Antiquities Act 1968 in case of any constructions but violating the provisions the law construction within and near the perimeter of the protected immovable antiquity is continuing, which is illegal.

V. For that section 12 (c) of the Antiquities Act 1968 imposes a duty upon the Government to restrict any sort of construction activity near the listed antiquities by anyone. It is the duty of the Government to organize protection and preservation of the antiquities. But in the case of Lalbagh Fort, the Government has failed to perform his duties; hence the respondents may be directed to take appropriate steps to stop the illegal and unlawful construction activity near the Lalbagh Fort.

VI. For that as per rule 61 of Dhaka Metropolitan Building (Construction, Development, Protection and Eviction) Rules, 2008, no one is authorized to perform any construction activities within the area of 250 diameters adjacent to the antiquity and even if any such activity is continue then the authority has the power to stop such activity. But despite of illegal and unreasonable construction, the authorities empowered by the government has taken no steps to prevent it. Hence the respondents may be directed to take appropriate steps to stop these construction activities as per the provision of law.

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) Issue a Rule Nisi calling upon the Respondents to show cause as to why inaction of the respondents to take necessary steps to stop any kind of building construction adjacent to the Lalbagh Fort except the permission from Nagar Committee, should not be declared illegal and without lawful authority,

AND

Why a direction should not be given upon the respondents to implement the provisions of section 12 of Antiquities Act. 1968 and rule 61 of the Dhaka Metropolitan Building (Construction, Development, Preservation and Eviction)

Rule, 2008, in case of construction near
Lalbagh Fort.

c) Pending hearing of the Rule directs the
Respondent No. 7 to take steps to stop
ongoing construction activities adjacent to
boundary of the Lalbagh Fort with 24 hours
and submit compliance report within 1(one)
week before this court.

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

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

f) 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 applicants-

Advocate Manzill Murshid -----

Advocate Asaduzzaman Siddiqui -----

Advocate Sarwar Ahad Chowdhury-----

Advocate Md. Aklas Uddin Bhuiyan-----

Submitted by;-

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

IN THE SUPREME COURT OF BANGLADESH
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3.	Photocopy of the application dated 01.11.2010 is annexed here with and marked as <u>'ANNEXURE-C.</u>		
4.	Copies of the photographs are annexed here with and marked as <u>'ANNEXURE-D Series.</u>		

Manzill Murshid
গভীর জগৎ
Advocate
Supreme Court of Bangladesh.

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Manzill Murshid
গব্বরজ তগবি তম`
Advocate
for the Petitioners.

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-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.