

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.

.....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 Deputy Commissioner, Bogura, Post
and District-Bogura, Bangladesh.

4. The Superintendent of Police (S.P.),
Bogura, Post and District- Bogura.

5. The Custodian, Mohasthangor
Archeological Museum, Mohasthangor, P.S.
Shibgonj, District- Bogura, Bangladesh.

6. Mr. Mamtazuddin, President, Mazar Unnoayon Committee, Mohasthangor Mazar, P.S. Shibgonj, District- Bogura, Bangladesh.

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

.....Respondents.

AND

IN THE MATTER OF:

For a direction upon the respondents to implement the provisions of Section 12(c) of the Antiquities Act. 1968 and provisions of Article 24 of the Constitution of Bangladesh to protect the historical

importance place namely Mohasthangor at

Bogura.

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 construction activities in adjacent areas of a historical place namely Mohasthanor which is a historical place of Bangladesh. 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 Mohasthanor ancient monument.

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. 1. Bangladesh represented by the Secretary, Ministry of Cultural Affairs, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh. Respondent no. 3 is the Deputy Commissioner, Bogura, Post and District-Bogura, Bangladesh. Respondent no. 4 is the Superintendent of Police (S.P.), Bogura, Post and District- Bogura. Respondent no. 5 is the Custodian, Mohasthanor Archeological Museum, Mohasthanor, P.S. Shibgonj, District- Bogura, Bangladesh. Respondent no. 6 is Mr. Mamtazuddin, President, Mazar Unnoayon Committee, Mohasthanor Mazar, P.S. Shibgonj, District- Bogura, Bangladesh. Respondent no. 7 is the Officer in Charge (O.C.), Shibgonj, Thana, P.S.- Shibgonj, District-Bogura, 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 Mohasthanor 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 recently few peoples are making construction in the property adjacent 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 Prothom Alo and Kaler Kontho on 06.12.2010 on the head line that “Construction is being made by destroying the historical monument”.

It was reported in the newspaper that, few powerful local personals, under the leadership of the respondent no. 6 the construction work is continuing on the land adjacent to Mohasthangor area violating the provisions of law. Moreover it was stated in the report that the provisions of Antiquities Act has not been followed. Even after raising repeated objection by the proper authority the respondents have failed to stop it.

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 namely Mohasrhangor ancient monument.

7. That it is stated here that this monument is not only significant for the history of Bangladesh but also it has very importance in the history of this subcontinent. It was a developed city in middle of 1500 years. and used as a capital of Gupta, Pal and Sen emperor. 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 adjacent to its perimeter of the Mohasthangor ancient monument, 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 Section 12(c) of the Antiquities Act. 1968.

8. That it is stated here that the custodian of the Mohasthangor ancient monument has sent a letter to the Mazar Committee to stop the on going construction work, how ever no action has been taken by them. It is certainly the duty of the local police to stop any illegal construction within their jurisdiction. However, surprisingly the local Police Station has failed to perform their lawful duties without any good reason, which is unlawful and illegal.

9. 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 immoveable 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.

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-UI-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.

11. That being aggrieved by and dissatisfied with the inaction of the respondents to take necessary steps to stop these illegal construction adjacent to the Mohasthangor ancient monument, 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:-

G R O U N D 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 Mohasthangor and hampering its preservation which is certainly without any lawful authority and illegal.

II. For that the Mohasthangor ancient monument is a historical importance place; 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 existence of Mohasthangor ancient monument's. 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 place of ancient monument 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 Mohasthanor, 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 Mohasthanor.

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

construction work adjacent to the Mohasthanor ancient monument, 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 (c) of Antiquities Act. 1968 and article 24 of the Constitution of Bangladesh in case of construction work near Mohasthanor ancient monument.

c) Pending hearing of the Rule direct the Respondent No. 3,4, and 7 to take steps to stop ongoing construction activities adjacent to Mohasthanor ancient monument with 24

hours and submit a compliance report within 5(five) days before this court.

d) Pending hearing of the Rule direct the Respondent No. 6 to remove all construction materials from the place of Mohasthanor ancient monument with 48 hours and make the soil level as it was and submit a compliance report within 5 days before this court.

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 Petitioner as in duty bound shall ever pray.

Name of the applicants-

Advocate Manzill Murshid -----

Advocate Asaduzzaman Siddiqui -----

Advocate Sarwar Ahad Chowdhury-----

Submitted by;-

Manzill Murshid
গব্বরজ তগব্বিতম`
Advocate
Supreme Court Of Bangladesh.

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Manzill Murshid
গভীর জীবিত
Advocate
Supreme Court of Bangladesh.

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গভীর জীবিত
Advocate
for the Petitioners.

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Human Rights and Peace for Bangladesh.

.....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 তগবি ত্রম`
Advocate
Supreme Court of Bangladesh.