

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 626 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:

Human Rights and Peace for Bangladesh
(HRPB) represented by the President of the Executive Committee and others

..... Petitioners.

Versus

Bangladesh represented by the Secretary, Ministry of Planning, Sher-E-Bangla Nagar, Dhaka and others

..... Respondents.

Mr. Manzill Murshid, Advocate

.....for the petitioners

No one appears

.....for the respondents.

Heard and Judgment on: 7th of June, 2011

Present:-

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Gobinda Chandra Tagore

Gobinda Chandra Tagore, J :

The *Rule Nisi* was issued on 10th of January 2011 in following terms:- “Let a *Rule Nisi* issue calling upon the respondents to show cause as to why the direction should not be given upon the respondents to protect the sea beach area at Cox's Bazar from encroachment and earth filling and why a direction should not be given upon the respondents not to allow any construction of any permanent or temporary structure within the sea beach area at Cox's Bazar and/or

why such other or further order or orders, as this Court may deem fit and proper, shall not be passed.”

The petitioners made the following averments:

Petitioner No. 1, Human Rights and Peace for Bangladesh (HRPB) is a non-profitable registered organization. Its objects are to uphold the rights of the citizens, to work for the poor people, to give legal supports to the helpless people, to build up awareness amongst the people about their rights and activities in relation to environment *et cetera*. The organisation is likewise working to protect the environment and has taken legal steps against the activities of destroying the environment as well as against the violation of laws. It has filed many public interest litigations. In a good number of such public interest litigations, the High Court Division has passed judgments and orders, amongst other, directing (1) to set up Food Courts in every city in order to prevent food adulteration, (2) to form an “Earthquake Preparedness and Awareness Committee” and to collect the necessary earthquake rescue equipments as per its recommendation, (3) to protect the rivers, Buriganga, Balu, Turag and Shitalasksha by stopping encroachment in and by removing all the structures from inside the rivers *et cetera*. Many other cases are pending before the High Court Division. The organization always bears all the cost of the cases from its own fund, which is raised by the donation of the members. The organization received no fund from home and abroad, except from its lawyer members.

The petitioners filed this Writ Petition in the form of a public interest litigation for a direction upon the respondents to stop encroachment, earth filling, and construction of temporary and permanent structures on the sea-beach area in Cox’s Bazar, violating the provisions of the Bangladesh Environment Conservation Act, 1995 (amended in 2000), and the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০, hereinafter referred to as the Act of 2000 and for removal of the temporary and permanent structures already built thereon by violating the provisions of laws.

Millions of tourists from home and abroad come to visit the longest sea-beach area in Cox’s Bazar and the Government earns a lot of revenue and thus, the sea-beach area in Cox’s Bazar plays a great role in the national economy as well as in protecting the environment. But due to continuous encroachment, earth filling and structure building, on the sea-beach, it is losing its width and natural beauty, and its importance too.

On 05.01.2011 a report was published in the newspaper, namely, the Daily Star, Annexure-A that some interested quarters were encroaching, earth filling and building temporary and permanent structures on different places of the sea-beach of Cox's Bazar. Though such kinds of activities were continuing, the concerned authorities were silent and not performing their duties properly, Consequently, the sea beach area at Cox's Bazar was going to lose its existence and beauty, which was seriously affecting the environment, particularly the ecological system, and the economy of the country. The entire beach from Cox's Bazar to Tekhnaf was declared as an 'Ecologically Critical Area' in 1999 and as such any kind of activities that might change the existing character of the land and water or threaten the local ecology is prohibited.

Section 5 of the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০, prohibits from changing the nature of any land that has been earmarked as an open place or natural reservoir, Pursuant to section 8 of the Ain, any person, who acts in contravention of the Ain is liable to imprisonment not exceeding 5 years or a fine not exceeding Tk. 50,000. Moreover, by section 7 of the Environment Conservation Act, 1995, the authority is empowered to direct any person, who is responsible for causing any damage to the ecosystem, to adopt corrective measures.

Disregard for laws and the legal provisions, the encroachment, earth filling and temporary and permanent structure building were continuing and failure to ensure proper implementation of laws caused enough damage to the environment adversely affecting the beauty of the long beach area. The duty and responsibility vested upon the respondents to serve the people and initiate lawful steps against the beach grabbers, but the respondents have failed to perform the duties and responsibility and also failed to protect the above mentioned sea beach from encroachment, earth filling and occupation. Under these circumstances, the respondents may be directed to protect the sea beach of Cox's Bazar, which they are required by law to do.

Being aggrieved by and dissatisfied with the inaction of the respondents and having no other equally efficacious remedy provided by law the petitioners moved the Writ Petition as a public interest litigation and obtained the Rule Nisi along with the following interim directions-

- (i) upon the respondent No. 8 to demarcate the sea beach area at Cox's Bazar by a special team;

(ii) upon the respondent Nos. 9 and 10 to arrange police force for that area so that no one can encroach, occasion earth filling or build any permanent or temporary construction within the area for a period of 3 (three) months from the date of the order, and

(iii) upon the respondent Nos. 8-10 to demolish/remove all the temporary and permanent structures within the sea beach area at Cox's Bazar forthwith and to submit a report of compliance to this Court within 7 (seven) days from the date of receipt of the order.

It appears from the office note dated 26.02.2010 that the *Rule Nisi* was properly served on the respondents, but none of them filed any Affidavit-in-Opposition in rebuttal of the allegations and averments made in the Writ Petition. However, it further appears from the record that one Muhammad Noushad Karim, proprietor of Messer's Angel Drop (Restaurant), Merin Drive Road, Kalatali, New Sea Beach Road, Jhilanjha, Cox's Bazar Sadar, Cox's Bazar without being added as a party to the Writ Petition filed an application for direction on modification of the ad-interim order dated 10.01.2011. After hearing, the applications was rejected by the order dated 07.03.2011. But the record does not disclose that the said applicant was aggrieved by the order of rejection dated 07.03.2011.

Having placed the Writ Petition, Mr. Manzill Murshid, learned Advocate for the petitioners submits that encroaching, earth filling and building temporary and permanent structures in the sea beach area at Cox's Bazar are contrary to all applicable laws of the land, but the respondents failed to discharge their duties to protect and preserve the sea beach area at Cox's Bazar, which they are required by law to do.

The learned Advocate for the petitioners then submits that such disregard to laws and failure to ensure proper implementation of laws have caused serious damage to the environment of the sea beach area adversely affecting the environment and ecosystem of the country, and the attraction of the tourists for the longest beach in the world and as such the respondents may be directed to protect the sea beach area at Cox's Bazar and remove all structure made thereon, which they are required by law to do.

The Learned advocate also submits that by not implementing the laws the respondents have undermined the rule of law and jeopardized the peoples' fundamental right as guaranteed under Article 31 of the Constitution of Bangladesh by failing to protect, preserve and refresh the environment and ecosystem of the area in accordance with law

and as such, the respondents may be directed to implement the relevant in protecting and preserving the sea beach area at Cox's Bazar, which they are required by law to do.

We have perused the Writ Petition and heard the learned Advocate for the petitioners.

It appears from the Writ Petition that it has been based on a report published in the 'Daily Star' on 05.01.2011 under the headline, "Grabbers feast on Cox's Bazar- Landscape, tourism prospect of world's longest beach at stake". The report was illustrated with a number of photographs with the comment. " ONSLAUGHTS ON BEACH- Authorities concerned seem to have turned a blind eye to the ominous encroachment into the Cox's Bazar beach – the longest sandy sea beach in the world and the heart of the country's rising tourism industry. Some government organisations, political clouts and influential locals are grabbing the beach by erecting commercial centres. The act is prohibited by law, as the zone is considered ecologically critical. Besides, the illegal establishments are spoiling the view of the tourist attraction," The report says that different government bodies, armed forces, political high-ups and local influential people already illegally constructed hotels, rest houses, restaurants, coffee shops, and gift shops on and along the beach. Many encroachers put up signboards saying they are the owners of the land through purchase. Some encroachers are erecting makeshift structures on the sandy beach where water hits during high tide. Bricks and other materials were seen piled along the beach for further construction. The wholesale unplanned constructions and putting up of signboards are turning the beautiful seashore into an eyesore. In 1999, the Government declared the entire beach from Cox's Bazar to Teknaf as an 'Ecologically Critical Area.' Therefore, any activity that might change the nature and character of the land and water or threaten local ecology is prohibited. However, it appears from the report that the Department of Environment on 07.12.2010 instructed the local administration to remove all illegal structures and stop construction of roads on the beach in seven days. The report reveals that the office of the Deputy Commissioner, Cox's Bazar prepared a report on all incidents of encroachment into the sea beach and sent it to the higher authorities for necessary instructions and actions against such illegal encroachment.

Section 87 of the State Acquisition and Tenancy Act, 1950 enshrines the mandate that notwithstanding anything contained in any other law for the time being in force that any land gained by accession from the recess of a river or sea shall vest absolutely in the Government.

Therefore, the sea beach and seashore belong to the Government. Consequently, the respondents being government servants it is their duty to protect and preserve such land of the Government.

But the petitioners averred that the authorities concerned did not take any effective steps to remove the illegal structures from and to stop further construction or erection of any new structures in the sea beach and thereby they are allowing the encroachers to grab the sea beach. The respondents did not refute the petitioners' averments and accordingly, the same are deemed to have been admitted by them.

If the Government is satisfied that due to degradation of the environment the eco-system of any area becomes critical or is apprehended to be critical, it can declare by a Gazette Notification the area as an 'Ecologically Critical Area' under subsection (1) of section 5 of the Environment Conservation Act, 1995. Subsection (2) of section 5 of the Act provides that the Government shall specify in the Gazettee Notification what are the acts or processes shall not be continued or initiated. By sections 4 and 7 of the Act, respondent No. 7 is empowered to take any appropriate action against the perpetrators to protect the environment, ecology and the 'Ecologically Critical Area' and to require them adoption of corrective measures against the environmental wrongs. It has already been found that the sea beach from Cox's Bazar to Teknaf was declared 'Ecologically Critical Area' in 1999, but the respondents have not taken any effective measures against the illegal encroachment into and construction or erection of permanent and temporary buildings and structures on the sea beach.

Section 5 of Act of ২০০০ (মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০) stipulates that save and except as provided in this Act, the nature of any land earmarked as a playground, open space, park and a natural water reservoir cannot be changed or such land cannot be used otherwise nor any such land can be let out, leased out and transferred in any manner. However, under sections 6 and 7 of the Act, the concerned authority, on an application filed duly for changing the nature of any such land, may approve such changing upon consideration as to whether (a) thereby the purposes and objective of the Master Plan would be frustrated and if so, the extent thereof, and (b) it will entail any harmful effect on the environment of the concerned locality or whether the local residents would be otherwise prejudiced thereby. Subsection (3) of section 6 of the Act specifically propounds that even if the land requiring the change of its nature and character belongs to the Government, any local authority, statutory body or company, as the case may be, the provisions of section 6 of

the Act Shall apply thereto to the same extent. Section 8(1) provides that if any person contravenes any provision of the Act shall be liable to imprisonment not exceeding 5 years or a fine not exceeding Taka-50,000 or both. Section 8(2) further provides that if any person changes the nature of any such land in contravention of the provisions of section 5 the concerned authority may, *inter alia*, prevent the person from changing the nature of such land and may direct the person to demolish the unauthorised construction made thereon. Section 8(3) provides that any unauthorised building or structure already constructed or erected shall be forfeited in favour of the concerned authority by the order or the Court.

Therefore, section 5 of the Act of 2000 restricts not only any private body or person, even also the Government, any local authority, statutory body or company to change the nature and character of any, amongst others, open space of an urban area and to use or deal with such land otherwise without being so permitted through the procedure laid in sections 6 and 7 of the Act, and if any body or authority does so in contravention of the provisions of section 5, the concerned authority may, under section 8(2), prevent them from doing so and direct them to demolish the unauthorised structure.

Subsequently, the বাংলাদেশ পর্যটন সংরক্ষিত এলাকা ও বিশেষ পর্যটন অঞ্চল আইন, ২০১০ was enacted for the purpose of ‘বাংলাদেশে পর্যটন শিল্প ও সেবা খাতের পরিচালনা, উন্নয়ন ও বিকাশের লক্ষ্যে পর্যটন সংরক্ষিত এলাকা ও বিশেষ পর্যটন অঞ্চল ঘোষণা এবং পর্যটন সম্ভাবনাময় এলাকায় অপরিকল্পিত স্থাপনা নির্মাণ ও কার্যক্রম নিয়ন্ত্রণ।’ For the purpose of disposal of this Writ Petition the following provisions of the Ain are relevant-

“৩। আইনের প্রাধান্য।-আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই আইনের বিধানবলী প্রাধান্য পাইবে।

৪। পর্যটন সংরক্ষিত এলাকা-(১) পর্যটন শিল্প রহিয়াছে অথবা পর্যটন শিল্পের সম্ভাবনা রহিয়াছে এমন কোন এলাকাকে চিহ্নিতকরণ ও সংরক্ষণ করা প্রয়োজন হইলে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে পর্যটন সংরক্ষিত এলাকা হিসেবে ঘোষণা করিতে পারিবে।
(২) এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, বিধি দ্বারা, পর্যটন সংরক্ষিত এলাকায় যে কোন ধরণের কার্যক্রমে বিধি-নিষেধ আরোপ করিতে পারিবে।

৫। বিশেষ পর্যটন অঞ্চল।-(১) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, পর্যটন সংরক্ষিত এলাকায় বিশেষ পর্যটন অঞ্চল ঘোষণা করিতে পারিবে।
(২) সরকার নিজ উদ্যোগে অথবা বেসরকারি, স্বায়ত্তশাসিত প্রতিষ্ঠান, সংবিধিবদ্ধ সংস্থা বা ব্যক্তি বিশেষের মাধ্যমে বিশেষ পর্যটন অঞ্চলের নিয়ন্ত্রণ ও পরিচালনা করিতে পারিবে।

৬। পর্যটন শিল্পের উন্নয়ন, বিকাশ ও বিনিয়োগ, ইত্যাদি।-(১) পর্যটন শিল্পের উন্নয়ন ও বিকাশের লক্ষ্যে সরকার সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ এবং সংস্থার সহিত সমন্বয়ের মাধ্যমে প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবে।

(২) সরকার, বিধি দ্বারা, পর্যটন শিল্পের উন্নয়ন ও বিকাশের লক্ষ্যে পর্যটন সংরক্ষিত এলাকা এবং বিশেষ পর্যটন অঞ্চলে প্রয়োজনীয় অবকাঠামো, বিনাদন ও সেবামূলক সুযোগ সুবিধা সৃষ্টির প্রয়োজনীয় ব্যবস্থা গ্রহণসহ আইনানুগ বিধি-নিষেধ আরোপ করিতে পারিবে।

(৩) পর্যটন শিল্পের উন্নয়ন ও বিকাশের লক্ষ্যে পর্যটন সংরক্ষিত এলাকা এবং বিশেষ পর্যটন অঞ্চলে পর্যটন কেন্দ্র নির্মাণ ও উন্নয়নকল্পে দেশি বা বিদেশি উদ্যোগে, দেশি-বিদেশি যৌথ উদ্যোগে, সরকারি বা বেসরকারি উদ্যোগে অথবা সরকারি-বেসরকারি যৌথ উদ্যোগে সরকার বিনোয়েগ কার্যক্রম গ্রহণ করিতে পারিবে।

৭। অপরাধ ও দণ্ড ।-(১) কোন ব্যক্তি এই আইন এবং তদবীন প্রণীত বিধির কোন বিধান লঙ্ঘন করিলে উহা। আমলযোগ্য অপরাধ হিসাবে গণ্য হইবে এবং উক্ত অপরাধের জন্য তিনি অনুর্ধ্ব ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১০ (দশ) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) পর্যটন সংরক্ষিত এলাকা অথবা বিশেষ পর্যটন অঞ্চল হইতে কোন স্থাপনা উচ্ছেদের বিষয় জড়িত থাকিলে, উপ-ধারা (১) এ উল্লিখিত দণ্ডের অতিরিক্ত উক্তরূপ অবৈধ স্থাপনা উচ্ছেদের জন্য ব্যয়িত অর্থ সংশ্লিষ্ট ব্যক্তির নিকট হইতে আদায় করা যাইবে।”

The Cox's Bazar sea beach being the longest sandy sea beach in the world is the heart of the country's rising tourism industry. Therefore, the respondents are also duty bound under the বাংলাদেশ পর্যটন সংরক্ষিত এলাকা ও বিশেষ পর্যটন অঞ্চল আইন, ২০১০ to protect and preserve the Cox's Bazar sea beach by, amongst others, preventing the land grabbers from encroaching into it and by demolishing and removing the buildings and structures constructed or made thereon, which are not allowable under the relevant laws as have been discussed in this judgment.

For the reasons stated above, the Rule is made absolute.

The respondents are directed to protect and preserve the Cox's Bazar sea beach- the longest sea beach in the world, with its natural feature and beauty, and to prevent the land grabbers from encroaching into and earth filling in the sea beach area.

The respondents are further directed to demolish and remove the permanent or temporary buildings and structures constructed or made thereon, which are not allowable under the relevant laws as have been discussed in this judgment, within 30 days from the date of receipt of this judgment and order, and to realise the costs thereof from the concerned person, body or authority and/or to take necessary steps, if required, for forfeiture of such buildings and structures in accordance with law.

The respondents are also directed to file an affidavit in compliance within 40 days from the date of the receipt of this judgment and order.

This Writ Petition shall be deemed to be a ‘Continuous Writ of Mandamus’. Accordingly, the respondents shall submit their progress

and performance report in this regard to this Court from time to time as this court may order.

The Petitioners are to proceed immediately to discharge their duty in this behalf.

The office is directed to send the judgment and order to immediately the respondents at the costs of the Office.
