

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 6154 OF 2011

In the matter of:

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
represented by its Secretary Asaduzzaman
Siddiqui Hall No. 2 Supreme Court Bar
Association Bhaban, Dhaka

... Petitioner

Versus

Bangladesh represented by the Secretary
Prime Minister's Secretariat, Tejgaon, Dhaka and
others

... Respondents

Mr. Manzil Murshid, Advocate

.... For the petitioner

Ms. Israt Jahan, DAG,

Ms. Nusrat Jahan, DAG,

Ms. Nurun Nahar, AAG,

Mr. Swarup Kanti Deb, AAG,

Mr. A.H.M. Ziauddin, AAG

.... For respondent No. 4

Heard on 12.03.2018 & 03.04.2018

And

Judgment on the 7th May, 2018

Present:

Ms. Justice Zinat Ara

And

Mr. Justice Kazi Md. Ejarul Haque Akondo

Zinat Ara, J:

In the original rule nisi, the petitioner has called in question the legality of inaction of the respondents to protect the hills of Banshkhali Upazila and other Upazilas of Chittagong district. The petitioner has also sought for a direction upon the respondents to stop cutting hills at Banshkhali Upazila and other Upazilas of Chittagong district.

In the supplementary rule nisi, the petitioner has sought for a direction upon the respondents including respondent No. 4, the Deputy Commissioner, Chittagong to take appropriate steps to fill up the soil of Gunagori hills at Banshkhali, Chittagong and to realize the costs of the works from the persons responsible for such acts as per news report and public representation (Annexures-A and A1 to the writ petition).

Petitioner-Human Rights and Peace for Bangladesh (shortly, HRPB) is a non-profitable registered organization and object of the organization is to uphold the rights of citizens, to work for the poor people, to give legal support to helpless people, to build up awareness among the people about their rights. HRPB is also working to protect environment and to take legal steps against the activities destroying environment in violation of law.

Due to cutting of hills in different Upazilas of Chittagong district violating the provisions of law, the existence of hills has been threatened as well as the said acts have seriously affected the environment and ecological balance of the area. The said act of cutting hills involves great public importance and therefore, the writ petition has been filed by HRPB as public interest litigation to protect the hills.

One Leda Mia, son of late Kabir Ahamed of Khedamura, Jungle Kokdandi, Banshkhali, Chittagong sent a letter addressing to HRPB. In the letter, it was stated that a group of people were destroying the environment by cutting hills. A photo-stat copy of a paper cutting with a report published in the news paper was also annexed with the said letter. In the news-paper (Annexure-A to the writ petition), it was reported that a group of people were cutting the hills at Banshkhali Upazila illegally and that such kind of activity had been continuing. But the concerned local authorities remained silent without performing their duties properly. Consequently, many hills were destroyed in Chittagong area by unscrupulous persons. This has seriously affected the environment. The inaction of the local authorities in protecting the hills was contrary to the applicable laws of the country and their inaction was for the benefit of some interested quarters. Therefore, the

authorities remained silent without taking any legal action and thereby, violating and flouting all the legislations of the country. Thus, the respondents have miserably failed to administer laws and to protect public interest and the environment, although the respondents were/are required to ensure proper implementation of laws. Most of the respondents were/are experienced public servants and very much aware about the laws of the land and about the duties vested upon them. But they failed to protect the hills at Banshkhali and other Upazila of Chittagong district. Fresh and pollution free environment is inevitable requirement for healthy life. Hence, the writ petition has been filed for stopping hill cutting activities to protect the environment of Bangladesh as a part of right to life.

At the time of issuance of the rule, respondent Nos. 4 and 7 were directed to arrange continuous monitoring in the hilly area of Banshkhali Upazila and other hilly areas of Chittagong district so that no one can destroy, cut and damage the hills and respondent Nos. 5 to 7 were directed to take legal steps against the persons who had cut hills at Banshkhali Upazila and other Upazila of Chittagong district and to file cases against the persons responsible for such illegal acts in accordance with law and also to submit a compliance report before the Court through the Registrar of the Court. Respondent Nos. 4 to 7 were further directed to take appropriate steps to restore Gunagori hills situated at Banshkhali Upazila, Chittagong (hereinafter mentioned as Gunagori hills) to its original position by filling with soil, sand, etc. within six months by collecting costs from the people who are responsible for the damage of the said hills.

Subsequently, several orders were passed by the High Court Division directing respondent Nos. 4 to 7 to inform about the steps taken by them to fill up Gunagori hills with soil and to submit a report. Eventually, some affidavits-in-compliance were filed on behalf Md. Zillur Rahman Chowdhury i.e. respondent No. 4 and also on behalf of respondent Nos. 5 to 7. But the affidavits-in-compliance were not accepted by the concerned Bench of the High Court Division and respondent No. 4, the Deputy Commissioner, Chittagong was asked to appear before the Court personally and respondent No. 4 appeared personally and prayed for ten days' time to file affidavit-in-compliance. But the affidavit-in-compliance was not filed by respondent No. 4. Therefor, respondent No. 4 and Mr. A.K.M. Asiful Haque, the learned Advocate for respondent No. 4, were directed to appear before the Court personally to explain their position. Whereupon, respondent No. 4 and the learned Advocate Mr. A.K.M. Asiful Haque filed Civil Petition for Leave to Appeal (CPLA) No. 4391 of 2017 and Civil

Petitions for Leave to Appeal (CPLAs) No. 74 and 79 of 2018 before the Appellate Division. The Appellate Division, considering the facts, observed that the petitions have become infructuous and dispensed with the presence of the Deputy Commissioner, Chittagong and Mr. A.K.M. Asiful Haque and sent the matter for hearing by the Bench presided over by one of us (Zinat Ara, J).

Thereafter, the petitioner obtained the supplementary rule nisi by filling an application.

Respondent Nos. 4 and 6 filed a joint affidavit-in-opposition denying part of the averments made in the writ petition and stating that in 2011, some parts of Gunagori hills were destroyed by natural calamities and some interested quarters had tried to take clay and soil from the said part. Getting information, respondent No. 6 communicated with respondent Nos. 4 and 7, Respondent No. 4 directed respondent No. 6 to take steps to protect the hills. Thereafter, some meetings were held by the law enforcing agencies to protect the original part of the hills. At that time, no part of the hills was cut. The Assistant Commissioner (Land), Banshkhali also filed a case to protect the hills, but the said case file was destroyed on 28.02.2013 by the miscreants.

Respondent No. 4 further filed a supplementary affidavit-in-opposition admitting that the grounds taken in the writ petition in respect of cutting hills are partially correct and stating that two criminal cases were filed in the year 2011 for cutting hills at Gunarari under Banshkhali Upazila being No. 29 of 2011 dated 23.06.2011 corresponding to G. R. No. 178 of 2011 and Banshkhali Police Station Case No. 30(6)2011 corresponding to G. R. No. 179 of 2011 dated 27.06.2011. One of the cases was subsequently registered as Paribesh Case No. 322 of 2011 before the Joint District Judge and Paribesh Adalat, Chittagong. Upon hearing, the said court acquitted all the accused persons, namely, (1) Abdul Gaffar, (2) Abdul Mannan, (3) Abdullah Al-Mamun, (4) Shahadul Alam, (5) Mastser Azim Uddullah Chowdhury, (6) Jahangir Alam, (7) Md. Haroon, (8) Md. Mohiuddin, (9) Rahim Uddullah Chowdhury by the judgment and order dated 27.11.2013. The other case being Paribesh Case No. 31 of 2011 arising out of Police Station Case No. 29 of 2011 dated 23.06.2011 corresponding to G. R. No. 178 of 2011 is pending before the Joint District Judge and Paribesh Adalat, Chittagong against one accused only. Therefore, respondent No. 4, the Deputy Commissioner, Chittagong could not collect compensation for cutting hills from the accused persons.

The present Deputy Commissioner joined on 11.05.2017 and after joining, he has taken all initiative and tried his level best to obey the Court's direction. But, for the aforesaid reason, he could not restore Gunagori hills of Banskhali Upazila to its original shape by using soil and sand. However, the district administration by using soil and sand from local fund had tried to fill up the hills and planted fruit and forest plants to restore natural environment. The hills are on an average 30 feet high, 110 feet wide and 1,500 feet long and without expert's opinion and allocation of funds by the Government, it is not possible by the district administration alone to restore Gunagori hills to its previous shape. The then Deputy Commissioner, Chittagong was transferred on 05.03.2018 and the present Deputy Commissioner is willing to work as per the Court's order.

Respondent Nos. 4 and 6, the Deputy Commissioner, Chittagong and the Upazila Nirbahi Officer, Banskhali respectively also filed a joint affidavit-in-compliance re-iterating the same facts as stated in the affidavit-in-opposition filed by them. Respondent Nos. 4 and 6 sought for unconditional apology for not complying with the Court's order.

Respondent Nos. 4 and 7 filed an affidavit-in-compliance on 26.02.2017 re-iterating more or less the same facts as stated in the earlier affidavits-in-compliance and annexing photo-stat copies of the orders passed by the learned Judge of the Paribesh Adalat in the cases filed for cutting of hills.

Respondent No. 4, Md. Zillur Rahman Chowdhury, the Deputy Commissioner, Chittagong also filled an affidavit-in-compliance stating that due to order of acquittal of the accused in Paribesh Case No. 32 of 2011, respondent No. 7 could not realize compensation from the persons liable for cutting hills and that the Deputy Commissioner, Chittagong has taken steps to restore Gunagori hills by utilizing his own local resources, but could not complete the work with his own resources and prays for exonerating him from appearance before the Court.

Ministry of Public Administration also filed an affidavit-in-compliance annexing list of the Deputy Commissioners, Chittagong and the Upazila Nirbahi Officers, Banskhali who were posted at the time of cutting hills and also the present posting of the said officers.

Respondent Nos. 5 and 7, the Superintendent of Police, Chittagong and the Officer-in-Charge, Banskhali Police Station respectively also filed a separate joint affidavit-in-opposition stating that respondent Nos. 5 and 7 are always vigilant in protecting hills and they are legally bound to protect

the hills. In the year, 2011, some parts of Gunagori hills were destroyed by natural calamities. Thereafter, some people of the surrounding area had tried to take away the clay and soil from the said area. They visited the said area and thereafter, nobody became successful to remove the soil from the destroyed hills. Police forces were also deployed in the affected areas of Gunagori hills and therefore, the grounds taken in the writ petition are not correct.

Respondent Nos. 5 and 7 filed an affidavit-in-compliance stating that the Inspector of Directorate of Environment filed Banshkhali Police Station Case No. 30 dated 18.06.2011 against some persons on the allegation of cutting Gunagori hills. But all the persons against whom the case was filed were acquitted by the learned Judge of the Paribesh Adalat.

Inspector General of Police also filed an affidavit-in-compliance annexing the names of Superintendents of Police who were posted in Chittagong from 04.07.2011 to 04.07.2014 and the present posting of one of them. The other one being dead meanwhile.

Mr. Manzil Murshid, the learned Advocate for the petitioner, takes us through the writ petition, the application for issuance of the supplementary rule nisi, the connected materials on record and put forward the following arguments before us:-

(i) From the report published in the Daily Purbakon dated 20th June, 2011, it is evident that some persons were cutting earth from Khedamura and other hills of “Banshkhali Jungle Gunagori Government Hills” for the last six months from that date (20.06.2011) and by cutting Gunagori hills, 26,000 trucks of soil was sold and taken away.

(ii) From the said news report, it is further evident that the Department of Environment and local administration remained silent without taking appropriate steps against cutting hills. The names of the persons who were involved in destroying the environment by cutting the said hills were also mentioned in the news report, but the local administration served the interest of the said persons by remaining silent and without protecting the Government owned Gunagori hills as well as the environment violating the laws.

(iii) The aforesaid illegal activities of cutting and razing hills are the main causes for environmental degradation and ecological imbalance.

(iv) Under section 6Kha of the পారిবেশ সংরক্ষণ আইন, ১৯৯৫ (hereinafter referred to as the Ain), cutting and/or razing of hills are prohibited and only in exceptional cases, permission for cutting hills may be given by the Paribesh Adhidaptor for the prerequisite of national interest.

(v) Section 7 of the Ain requires taking action against the person/persons who causes damage to the environment. But at the time of cutting Gunagori hills no action was taken by the Department of Environment and local administration including the police to stop cutting of Gunagori hills and other hills of the said area violating the provision of section 6Kha of the Ain.

(vi) From the supplementary affidavit filed by respondent No. 4, it is evident that he has admitted the cutting of Gunagori hills by some unscrupulous land grabbers. But respondent Nos. 4 and 6, 5 and 7 submitted incorrect affidavits-in-opposition before the Court denying the fact of cutting Gunagori hills.

(vii) In the circumstances, orders ought to be passed against the Government for restoring the original Gunagori hills by spending its own fund and also for taking necessary action against the concerned officers/officials of the Government, who were posted in Chittagong district at the relevant time, but failed to protect the Government owned hills by their inaction and thereby, allowed destruction of hills, although it was the duty of the concerned officials to protect the Government owned hills or any other hills as well as the environment in accordance with law.

(viii) The inaction of the aforesaid authorities clearly shows that they had unholy alliance with the land grabbers who cut the hills and sold thousands of trucks of soil from the hills.

(ix) Criminal cases are for punishment of offenders and for acquittal from criminal cases, there is no legal bar from recovery of compensation from the said persons in accordance with law.

(x) The respondents should be directed to restore the cut hills by spending its own fund upon taking expert's opinion and also to give necessary direction to its local authorities so that the hills of this area cannot be cut in future by anybody.

(xi) The Government should also be directed to find out the persons responsible for cutting the said hills by forming an enquiry committee and to recover the costs of restoration of the cut hills from the said persons and also from the persons who were involved in cutting Gunagori hills and selling soil therefrom.

In reply, Ms. Israt Jahan, the learned Deputy Attorney General, appearing with Ms. Nusrat Jahan, the learned Deputy Attorney General, Ms. Nurun Nahar, Mr. Swarup Kanti Deb and Mr. A.H.M. Ziauddin, the learned Assistant Attorney Generals on behalf of respondent No. 4, frankly concedes that Khedamura hill of Gunagori hills was cut and huge quantities of soil were sold by some land grabbers/miscreants.

However, she takes us through the affidavits-in-opposition and affidavits-in-compliance filed by different respondents, the connected materials and submits as under:-

(a) The Court directed to restore Gunagori hills to its original position by realizing funds from the persons who are responsible for cutting the hills. But the persons against whom environmental cases were filed for cutting the hills were acquitted by the learned Judge of the Paribesh Adalat and for that reason, it was not possible for the local administration to restore the hills to its original position by realizing the fund from the said persons.

(b) If fund is allocated by the Government, the Deputy Commissioner, Chittagong could restore Gunagori hills to its original position after obtaining an expert's opinion.

(c) The previous Deputy Commissioner, Chittagong during whose tenure the hills were cut and the soil was taken away was transferred from Chittagong and the present Deputy Commissioner, Chittagong is interested to comply with the direction of the Court subject to allocation of fund by the Government for this purpose.

(d) Meanwhile, by arranging some funds locally, the present Deputy Commissioner, Chittagong has filled up some portion of the cut hill and planted some trees on the said place on which Khedamura

hill of Gunagori hills was situated. Therefore, necessary direction may be given to the Government for allocation of fund.

The learned Deputy Attorney General (DAG) argued the case only on behalf of respondent No. 4, the present Deputy Commissioner, Chittagong. No one put forward any argument on behalf of respondent Nos. 5, 6 and 7 at the time of hearing of the rule. The learned DAG submits that it is a fact that part of Gumagori (Khedamura) hills was cut and soil and clay were removed by certain persons. So, the statements made by respondent Nos. 5, 6 and 7 in their affidavits-in-opposition and affidavits-in-compliance not being correct, she is unable to defend their case.

We have examined the writ petition, the application for issuance of the supplementary rule, the affidavit-in-opposition filed by respondent Nos. 4 and 6, the affidavit-in-opposition filed by respondent Nos. 5 and 7, the supplementary affidavit-in-opposition filed by respondent No. 4, the series of affidavits-in-compliance filed by the respondents and others and the connected materials on record.

In the writ petition, it has been categorically stated that the petitioner filed this writ petition as a public interest litigation on the basis of an application (Annexure-A1 to the writ petition) filed by one Leda Mia in favour of the local inhabitant to the Director of the Department of Environment, Khulshi, Chittagong and copies of the applications were forwarded to the Chairman, Human Rights and Peace for Bangladesh (shortly, HRPB) along with a copy of a newspaper, namely, the Dainik Purbakon dated 20 June, 2011 and also to others.

From the news report published in the said newspaper (Annexure-A to the writ petition) with photograph of cutting Government hills reads as under:-

“বাঁশখালীতে পাহাড় কেটে ৬ মাসে ২৬ হাজার ট্রাক মাটি বিক্রি

নিজস্ব সংবাদদাতা, বাঁশখালীঃ উপজেলার কালীপুর ইউনিয়নের জঙ্গল গুনাগরীতে প্রকাশ্যে চলছে পাহাড় কাটার মহোৎসব। রাতের আঁধারে কোদাল ও বল্লম দিয়ে পাহাড় কেটে ট্রাক, মিনি ট্রাক যোগে বিভিন্ন স্থাপনার জায়গা ভরাট, পুকুর ভরাট, আবাসিকের মাটি ভরাটের কাজ করছে ভূমিদস্যু চক্র। স্থানীয়রা পরিবেশ অধিদপ্তর ও প্রশাসনকে পাহাড় কাটার বিরুদ্ধে আইনগত ব্যবস্থা নেওয়ার দাবি জানালেও সংশ্লিষ্ট বিভাগের নীরবতা নিয়ে এলাকায় অভিযোগ উঠেছে। সরকারী পাহাড় দখলে নেয়া মালিকদের সাথে মোটা অংকের অর্থের বিনিময়ে মোহাম্মদ হারুন, কামাল ড্রাইভার, আবু তাহের, আমিনসহ ৮/১০ জনের সিডিকিট এ ধবংসযজ্ঞ চালিয়ে যাচ্ছে বলে স্থানীয়দের অভিযোগ। চট্টগ্রাম পরিবেশ অধিদপ্তরের পরিচালক জাফর আলম বাঁশখালীতে পাহাড় কাটার বিষয়ে কেউ অভিযোগ করেনি বলে জানিয়েছেন। তবে তিনি খোঁজ নিয়ে আইনগত ব্যবস্থা নেবেন বলে জানান। এ ব্যাপারে গত শুক্রবার বাঁশখালীতে পরিবেশ অধিদপ্তরের একটি দল পরিদর্শন করেছে।

সরজমিনে গিয়ে জানা গেছে, উপজেলার কালীপুর ইউপির জঙ্গল গুনাগরীর সাধুর বাপের কাটাপাহাড়, হাতির হেদামুড়া, গুনাগরি ঢালা পাহাড় হতে ভূমিদস্যুরা শ্রমিক দিয়ে পাহাড় কেটে ট্রাকে ট্রাকে মাটি বিক্রি করছে। গত ছয় মাসে এসব পাহাড় হতে শ্রমিক দিয়ে প্রায় ২৫/২৬ হাজার ট্রাক পাহাড়ি মাটি বিভিন্ন স্থাপনা তৈরি, বসত বাড়ি, ধানী জমি ভরাট কাজে বিক্রি করা হয়েছে। ভূমিদস্যুরা প্রতি ট্রাক আটশত থেকে এক হাজার টাকায় পাহাড়ি মাটি বিক্রি করে।

স্থানীয়রা জানায়, জঙ্গল গুনাগরী হাতির খেদা পাহাড় (খেদা মুরা) সরকারি পাহাড়টি মৃত সফি আহমদ এর পুত্র নুরুল আমিন গং দখলে রেখে মাটি বিক্রি করছে। পাশের সরকারি পাহাড়গুলোও মনিরুল ইসলাম, খুইল্ল্যা মিয়া গং দখলে রেখেছেন। সরকারি পাহাড়ের অংশ দখলে নিয়ে একইভাবে মাটি বিক্রি হচ্ছে হাছিয়া পাড়া মসজিদ সংলগ্ন পাহাড়, সাধু বাপের কাটা পাহাড়, পূর্ব বেলছড়ি পাহাড় থেকে।.....”

(Underlined by us)

The correctness of the aforesaid news report has not been specifically denied by the contesting respondents. Rather, in the supplementary affidavit-in-opposition filed by **respondent No. 4, it has been stated in paragraph 11 that the grounds taken are partially correct in respect of cutting hills.** It has also been stated in paragraph 12 that two criminal cases were filed in 2011 for cutting hills on Gunagori under Banshkhali Upazila. It has further been stated in paragraph 13 of the affidavit-in-opposition that,- “the present Deputy Commissioner, Chittagong joined on 11.05.2017. After joining, the concerned Deputy Commissioner has taken all initiative to obey the Hon’ble Court’s direction relating to restoration of Gunagori hills of Banshkhali to its original form by using soil/sand for filling the hills. Fruit and forest plants are planted to restore the natural environment of the affected hills. It is to be noted here that the hills are on the average 30 feet high, 110 feet wide and 1,500 feet long and **without expert’s opinion and allocation of funds by the Government, it is not possible for the district administration alone to restore Gunagori hills for its previous condition.**”

Therefore, from the statements made in the supplementary-affidavit-in-opposition filed by respondent No. 4, it is crystal clear that some hills of Jungle Gunagori were cut and destroyed during the time when the previous Deputy Commissioners, who were posted as Deputy Commissioner, Chittagong, and that neither the Deputy Commissioner, Chittagong nor the Department of Environment nor the Superintendent of Police had taken appropriate steps to stop hill-cutting when the hills were cut and soil was removed from the area by trucks as reported in the newspaper.

The fact that Jungle Gunagori hills are owned by the Government has not been denied by the contesting respondent No. 4. From the news report, it

also appears that Jungle Gunnagori hills are owned by the Government. Therefore, it was the duty of the then Deputy Commissioner, Chittagong to protect the Government owned hills, but the Government property was destroyed for non-taking any action by the previous Deputy Commissioners, Chittagong. Moreover, the then Superintendent of Police also did not take any action when the said hills were cut and soil was being removed by trucks as reported in the newspaper. Department of Environment also remained silent without taking appropriate action to protect the hills. Therefore, it appears that the local administration, police force and Department of Environment were in collusion with the persons who cut earth and removed soil from the hills which, according to the present Deputy Commissioner, Chittagong, were/are on the average 30 feet high, 110 feet wide and 1,500 feet long. This is very unfortunate that the entire Government machineries remained silent when Gunagori hills was cut and soil was removed by some persons unlawfully.

Now, let us study the relevant provisions of sections 6Kha and 7 of the পারিবেশ সংরক্ষণ আইন, ১৯৯৫.

Sections 6Kha and 7 of the Ain read as under:-

“Section ৬খ. পাহাড় কাটা সম্পর্কে বাধা-নিষেধ।- কোন ব্যক্তি বা প্রতিষ্ঠান কর্তৃক সরকারী বা আধা সরকারী বা স্বায়ত্তশাসিত প্রতিষ্ঠানের মালিকানাধীন বা দখলাধীন বা ব্যক্তিমালিকাধীন পাহাড় ও টিলা কর্তন ও/বা মোচন (cutting and/or razing) করা যাইবে না;

তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থের প্রয়োজনে অধিদপ্তরের ছাড়পত্র গ্রহনক্রমে কোন পাহাড় বা টিলা কর্তন বা মোচন করা যাইতে পারে।”

“Section ৭. প্রতিবেশ ব্যবস্থার ক্ষতির ব্যাপারে ব্যবস্থা গ্রহন।- (১) মহা-পরিচালকের নিকট যদি প্রতীয়মান হয় যে, কোন ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ অথবা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠীর ক্ষতিসাধন করিয়াছে বা করেছে, তাহা হইলে তিনি উক্ত ক্ষতির পরিমাণ নির্ধারণপূর্বক উহা পরিশোধ এবং যথাযথ ক্ষেত্রে সংশোধনমূলক ব্যবস্থা গ্রহণ বা উভয় প্রকার ব্যবস্থা গ্রহণের জন্য নির্দেশ দিতে পারিবেন এবং উক্ত ব্যক্তি এইরূপ নির্দেশ পালনে বাধ্য থাকিবেন।

(২) উপ-ধারা (১) এর অধীনে প্রদত্ত নির্দেশ অনুসারে নির্দেশপ্রাপ্ত ব্যক্তি ক্ষতিপূরণ প্রদান না করিলে মহা-পরিচালক যথাযথ এখতিয়ারসম্পন্ন আদালতে ক্ষতিপূরণের মামলা বা উক্ত নির্দেশ পালনে ব্যর্থতার জ্য ফৌজদারী মামলা বা উভয় প্রকার মামলা দায়ের করিতে পারিবেন।

(৩) উপ-ধারা (১) এর অধীনে ক্ষতিপূরণ নির্ধারণের বা সংশোধনমূলক ব্যবস্থা গ্রহণের উদ্দেশ্যে যথাযথ ক্ষেত্রে যে কোন বিশেষজ্ঞ এবং অন্যান্য ব্যক্তিকে মহাপরিচালক দায়িত্ব প্রদান করিতে পারিবেন।

(8) সরকার এই ধারার অধীনে যে কোন ব্যবস্থা গ্রহণ এবং তৎসম্পর্কে প্রতিবেদন দাখিলের জন্য মহাপরিচালককে নির্দেশ দিতে পারিবেন।”

(Underlined by us)

It is not the case of the respondents that permission was given by the Department of Environment to cut Gunagori hills or any part of it including Khedamura for prerequisite of the national interest (অপরিহার্য জাতীয় স্বার্থের প্রয়োজনে). Therefore, it is evident that Gunagori hills or some of hills out of the said hills were cut illegally by some persons violating the provision of section 6Kha of the Ain. Since the entire Government machineries failed to protect the hills which were/was cut and soil as well as clay was removed therefrom violating the provision of section 6Kha of the Ain enacted by our Parliament. The Deputy Commissioner, Chittagong, Superintendent of Police and the Director of the Department of Environment were to act in accordance with the law enacted by our Parliament. But the said officers posted in Chittagong at the relevant time have miserably failed to do the same.

According to the supplementary affidavit-in-opposition filed by respondent No. 4, Gunagori hills are, on an average, 30 feet high, 110 feet wide and 1500 feet long. So, Gunagori hills are not a mountain. Rather, it is only a 30 feet high hill formed with clay and soil as is evident from the affidavits-in-opposition, affidavits-in-compliance, etc. Therefore, it is possible to restore Gunagori hills to its original shape and size with clay, sand, soil, etc. Since cutting of hills is an offence under the Ain enacted by the Parliament, we are of the view that order for restoration of Gunagori hills ought to be passed so that in future nobody dare to cut any hill due to inaction of the concerned Government functionaries.

From the supplementary affidavit filed by respondent No. 4, it transpires that restoration of Gunagori hills, parts of which were cut and soil removed, is possible with expert's opinion and providing fund by the Government.

Therefore, we are of the view that the Deputy Commissioner, Chittagong, the Director of the Department of Environment, Chittagong and the Superintendent of Police, Chittagong ought to be directed to restore Gunagori hills to its previous position after obtaining expert's opinion and procuring necessary funds from the Government. We are further of the view that indiscriminate cutting of the hills situated in Chittagong district violating the provision of section 6Kha of the Ain should be stopped at once and the Government should take necessary action to stop cutting of all the hills situated in Chittagong district with immediate effect violating the provision of section 6Kha of the Ain.

It be mentioned that civil and criminal liability are different. If the persons against whom criminal cases were filed are acquitted in criminal cases, the same would not debar the respondents to recover the cost for restoration of the hills to its original shape and size as compensation by the Government in accordance with law.

In view of the discussions made in the foregoing paragraphs, vis-à-vis the law, we find merit in the rule as well as in the supplementary rule.

Accordingly, the rule and the supplementary rule are made absolute.

Respondent Nos. 4 to 7 are directed:-

- (i) to stop cutting of any hill situated in Chittagong district violating the provisions of section 6Kha of the পారిবেশ সংরক্ষণ আইন, ১৯৯৫;
- (ii) to restore Gunagori hills to its original position within one year from date upon taking expert's opinion for this purpose. If necessary, they would take necessary steps for arranging fund from the Government exchequer to restore Gunagori hills to its previous position;
- (iii) to recover the amount spent by the Government for restoring Gunagori hills as compensation by ascertaining the persons who were responsible for cutting and selling soil and clay of Gunagori hills in accordance with law.
- (iv) The Government is directed to take appropriate action against the concerned officers during whose tenure Gunagori hills were cut and soil and clay were removed therefrom by the miscreants due to their inaction.

Communicate the copy of the judgment to the respondents at once.
