

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

WRIT PETITION NO. OF 2021.

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 peach for Bangladesh (HRPB), represented by it's Secretary-in-Charge, Advocate Md. Sarwar Ahad Choudhury, Hall No.2 Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

2. Advocate Ripan Barai, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka.

.....Petitioners.

-V E R S U S-

1. Bangladesh represented by the Secretary, Ministry of Local Government, Bangladesh Secretariat, P.S:- Shahbag, Dhaka, Bangladesh.

2. The Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S:- Shahbag, Dhaka, Bangladesh.

3. The Director General, Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka, Bangladesh.

4. The Director (enforcement), Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka, Bangladesh.

5. The Deputy Commissioner (D.C), Gazipur, Office of the Deputy Commissioner, Gazipur-1700, Bangladesh.

6. The Superintendent of Police (S.P), Gazipur, Post and District- Gazipur, Bangladesh.

7. Upazila Nirbahi Officer (UNO), Sreepur Upazila, District- Gazipur., Bangladesh.

8. Assistant Commissioner (Land) Sreepur Upazila, District- Gazipur.

9. The officer in Charge (O.C), Sreepur Police Station, District- Gazipur., Bangladesh.

10. Mr. Hannan Bhiiyan, of village-Akterpara, Ex Member, Ward No. 9, Mouna Union Parishad, Sreepur Upazila, District- Gazipur.

.....Respondents.

AND

IN THE MATTER OF:

The Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002), and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০.

AND

IN THE MATTER OF:

Inactions/failure of the respondents to take necessary steps to remove encroachment construction/ structures/ Dam constructed/erected within the territory of Chengti Khal situated whining Maona and Gazipur Union, under Sreepur Upzilla, District-Gazipur, violating the provisions of law.

AND

IN THE MATTER OF:

For a direction upon the respondents to remove all the encroachment/construction/ structures/ Dam constructed/erected within the territory of

Chengti Khal situated within Maona and Gazipur Union, under Sreepur Upzilla, District-Gazipur.

GROUND S -

I. 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 against any violation of the provisions of law by way of earth filling, building permanent dam structures within the area of Chengti Khal situated within Maona and Gazipur Union, under Sreepur Upzilla, District-Gazipur, which is illegal. Hence direction may be given upon the respondents to remove earth filling, Dam, illegal encroachment and structures within the territory of the Chengti Khal.

II. For that disregard to laws and legal provisions and failure to ensure proper implementation of laws, the respondents have caused damage to the environment; to the Canal and to the local people as well as the right to life of the people. Under these circumstances the respondents are legally bound to protect the Canal in accordance with law at one hand and to remove the dams/earthfilling/encroachment as made within the Canal.

III. For that under 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, 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. Hence, a direction may be given to remove the dam, structures from the territory of the Canal.

IV. For that encroachment, earth filling and making permanent dam structures in the territory of the Chengti Khal is contrary to all applicable laws of the country. That the encroachment of river and permanent structures in the territory of Canal has created obstruction to the normal movement of the said Canal.

V. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and making illegal dam structures in the territory of Chengti Khal. The unauthorized activities are the main causes for environmental degradation. Taking advantage of the silence of the concern authority, the illegal activities is being continued and as a result the environment is being destroyed.

VI.VI For that the non-implementation of the laws by the respondents undermine rule of law and jeopardize people's fundamental right as guaranteed under Article 32 of the Constitution of Bangladesh.

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

a) Issue a Rule Nisi calling upon the Respondents to show cause as to why failure/inaction of the respondents to remove all kinds of encroachment, earth filling, permanent/temporary constructed dams within the Chengti Khal, situated within Maona and Gazipur Union, under Sreepur Upzilla, District-Gazipur, should not be declared illegal and without lawful authority.

AND

Why a direction should not be given upon the respondents to demolish/evict all dam structures/constructions/dam built within the territory of Chengti Khal situated within Maona and Gazipur Union, under Sreepur Upzilla, District-Gazipur and to protect the said Canal as per record to its original position.

b) Pending hearing of the rule direct the respondents to maintain statuesque in respect of earth filling/dam constructions/structures/encroachment/ within the territory of Chengti Khal situated within Maona and Gazipur Union, under Sreepur Upazilla, District-Gazipur and submit a compliance report by the respondent no.7-10 within 2 weeks before this court.

c) Pending hearing of the rule direct the no. 5 and 8 to conduct a survey of the area of Chengti Khal situated within Maona and Gazipur Union, under Sreepur Upazilla, District-Gazipur as per CS/RS record and submit the report within 30 days before this court through affidavit.

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

e) Upon hearing the parties and 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.

Present Status:

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued rule nisi and passed an order of statuesque in respect of earth filling/dam construction/structure/encroachment within the territory river chengthi khal etc. The matter is pending before the Hon'ble High Court Division.
