

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

WRIT PETITION NO. OF 2016.

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, Advocate Asaduzzaman Siddique, Hall No.2 Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. Bangladesh represented by the Secretary, Ministry of Environment and Forrest, Bangladesh Secretariat, P.S -, Shahbag, Dhaka, Bangladesh.

2. The Secretary, Ministry of LGRD, Bangladesh Secretariat, P.S:-Shahbag, Dhaka, Bangladesh.

3. The Secretary, Ministry of Water Resources, Bangladesh Secretariat, P.S -, Shahbag, Dhaka, Bangladesh.

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

5. Mayor, Akhaura Municipa, Police Station: Akhaura, District- Brahmanbaria, Bangladesh.

6. The Deputy Commissioner (D.C), Brahmanbaria, Office of the Deputy Commissioner, Brahmanbaria, Bangladesh.

7. The Superintendent of Police (S.P), Brahmanbaria, Post and District- Brahmanbaria, Bangladesh.

8. The Director (Enforcement), Department of Environment, Paribesh Bhaban, E- 16, Sher-E-Bangla Nagar, Agargaon, Dhaka.

9. Upazila Nirbahi Officer (UNO), Akhaura Upazila, District- Brahmanbaria, Bangladesh.

10. Assistant Commissioner (Land) Akhaura Upazila, District- Brahmanbaria.

11. The officer in Charge (O.C), Akhaura Police Station: Akhaura, District- Brahmanbaria, Bangladesh.

.....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:

Failure of the respondents to take necessary steps to stop encroachment/earth filing within the Kalindi Khal situated on side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria and for a direction to remove construction/Semi-Pacca structures /houses within the territory of Kalindi Khal situated on side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria, violating the provisions of law.

G R O U N D 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 structures in bed of the khal and illegal encroachment of bed of the khal and territory of the Kalindi Khal which is illegal. Hence direction may be given upon the respondents to remove earth filling, illegal encroachment and building structures in the territory of the Kalindi 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 khal 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 khal in accordance with law at one hand and to remove the factories, semi-pacca rooms, buildings as built in the khal.

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 factories, semi-pacca rooms, buildings and structures from the territory of the khal.

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

V. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and making illegal structures in the territory of Kalindi 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. 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 of the respondents to stop all kinds of encroachment/earth filling and constructions

of factories/ semi-pacca rooms/buildings etc. within the area of Kalindi Khal, on the side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria, should not be declared illegal and within lawful authority and why a direction should not be given upon the respondents to protect the Kalindi Khal, situated on the side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria as per record.

AND

Why a direction should not be given upon the respondents to demolish/evict all illegal structures/constructions/markets/houses built within the territory of Kalindi Khal, situated on the side of Akhaura-Agarotola Road, Akhaura, District-Brahmanbaria.

b) Pending hearing of the rule direct the respondent No. 5-7 and 9-11.to take immediate steps within 7 days to evict/remove/demolish all constructions/structure/earth filling within the area of Kalindi Khal situated on the side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria and submit a compliance report before this court within 2 weeks.

c) Pending hearing of the rule direct the respondent 11 to take legal actions against the persons responsible for illegal encroachment/ construction structure/building within the area of Kalindi Khal situated on the side of Akhaura-Agarotola Road, Akhaura, Brahmanbaria under the provisions 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, 2000.

Present Status

The case was filled and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon'ble High Court Division.

.....

