

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

Writ Petition No. 4886 of 2014

In the matter of :

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Human Rights and Peace For Bangladesh (HRPB) and another

..... Petitioners

-Versus-

Bangladesh, represented by the Secretary, Ministry of Environment, Dhaka and others.

..... Respondents

Mr. Manzill Murshid, Advocate

.... For the Petitioners

Mr. Sk. Shaifuzzaman, DAG with

Mr. Md. Samiul Alam Sarker, AAG

..... For Respondent No. 7

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 15.06.2022, 25.07.2022 & 01.08.2022

Date of Judgment : 08.08.2022

Zubayer Rahman Chowdhury, J :

The instant Rule was issued in the following terms :

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to stop encroachment and earth filling in the ponds situated in Rajshahi City area and why a direction should not be given upon the respondents to

remove sand/earth filling from the pond situated at Sagorpara, Rajshahi and why a direction should not be given upon the respondents to protect all the ponds in Rajshahi City area in an effective manner and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, the respondents were directed to take immediate steps to stop encroachment/earth filling of the ponds situated in the city of Rajshahi. Furthermore, respondent nos. 9 and 10 were directed to maintain status quo in respect of encroachment/earth filling of the ponds in the city of Rajshahhi and file compliance before this Court within two weeks thereafter.

Briefly stated, facts relevant for disposal of the Rule are that the petitioners moved this court under Article 102(2) of the Constitution praying for issuance of a direction upon the respondent to take steps to prevent the encroachment and earth filling of the ponds situated in the city of Rajshahi, being in violation of the relevant provisions of Bangladesh Environment Conservation Act, 1995 and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ (hereinafter referred to as the Act of 2000). It was further stated in the application that on 21.04.2014, a news item was published in the Daily Prothom Alo stating that as per the report of an environmental Organization, several thousand ponds had been filled up in the city of Rajshahi in the last fifty years and only 165 ponds, measuring one bigha or more in size, are still existing in Rajshahi. In such circumstances, the petitioners have filed the instant writ petition as a public interest litigation.

The Rule is being opposed by respondent no. 7 by filing an affidavit-in-opposition as well as a supplementary affidavit-in-opposition.

Mr. Manzill Murshid, the learned Advocate appearing in support of the Rule submits that due to inaction of the concerned respondents to take preventive steps, the earth filling of ponds has been carried on at a rampant pace during the last fifty years, which has created a negative impact on the environment, causing sever ecological damage. He submits that despite representations to the concerned Authority by different groups and individuals, very little has been done to stop the encroachment. He submits that unless necessary directive is passed by this Court, the remaining ponds will cease to exist in no time, causing irreparable damage to the environment. Referring to Annexure B of the supplementary affidavit dated 19.06.2022. Mr. Murshid submits that a press report was published in the Daily Kalerkondha on 23.02.2022 along with a photograph showing that some influential quarters were filling up the famous Sukan Dighi, even during pendency of the instant Rule.

Mr. Md. Samiul Alam Sarker, the learned Assistant Attorney General appearing in opposition to the Rule does not, in principle, contradict the submission advanced by Mr. Murshid. However, Mr. Sarker adds that the Government is presently taking some positive steps to stop further encroachment. Referring to Annexure 2 series of the affidavit-in-opposition dated 02.04.2017, the learned AAG submits that a list has been filed before this Court by the concerned respondent giving details of the ponds located within the city of Rajshahi. He submits that steps are now being taken to ensure that no further encroachment/earth filling of ponds takes place within the city of Rajshahi.

Referring to Annexure 4 of the supplementary affidavit dated 28.07.2022, the learned AAG submits that steps are being taken by the Authority to take legal action against the persons involved with the filling up the ponds. Referring to Annexure 5 of the said supplementary affidavit-in-opposition, the learned AAG submits that it is evident from the copy of the First Information Report (FIR) that a complaint has been lodged against the concerned persons under the relevant sections of the Environment Protection Law, 2010. He submits that the Authorities are now very much vigilant in preventing any further encroachment and earth filling of the ponds.

The issue that has been raised before this Court by the petitioner is a matter of grave concern not only for the city of Rajshahi, but for the entire country as well the issue of the conservation and protection of the environment.

It has been asserted by the petitioners, and not denied by the contesting respondent, that a large number of ponds located in the city of Rajshahi have already been filled up in utter disregard to the environmental law. No doubt, such actions by the land encroachers have contributed to the rapid deterioration of the environment. It is also to be noted that in the instant case, the land encroachers are protected by influential quarters, using their political influence.

We have noted, albeit with some concern, that over the last fifty years, out of several thousand ponds in Rajshahi, most have already been filled up and only 165 ponds, measuring one bigha or more in size, remain intact. Under such circumstances, the petitioners have filed the instant writ petition praying for issuance of a direction upon the concerned respondent to take necessary measures so that no further encroachment is made and the existing ponds are protected and maintained in their original nature and character.

There is no gainsaying the fact that the environmental pollution is a major concern for most of the countries in the world. Bangladesh is no exception. It is also to be noted that in many countries, the environmental organizations have taken steps to protect the environment and in most cases they have sought shelter from the Court of law.

Be that as it may, having regard to the facts and circumstances of the case, we are of the view that the instant Rule merits positive consideration.

In the result, the Rule is made absolute.

Respondent nos. 2, 4, 5, 6, 7 and 8 are hereby directed to take immediate and positive steps to ensure that not a single pond out of the remaining 165 ponds in the city of Rajshahi is encroached and/or filled up.

The above named respondents are further directed to ensure that the ponds are maintained in their original nature and character.

This order shall operate as a continuous mandamus to ensure that no further encroachment takes place in future.

The respondents are further directed to take immediate and positive steps to restore the famous Sukan Dighi to its original nature and character by reclaiming the encroached portion/part of the Dighi from the occupiers by taking steps in accordance with law.

There will be no order as to cost.
