

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

Writ Petition No. 6970 of 2016

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)**

..... Petitioner

-Versus-

The Secretary, Ministry of Environment and
Forest, Dhaka and others.

..... Respondents

Mr. Manzill Murshid, Advocate

.... For the Petitioner

Mr. Sk. Shaifuzzaman, DAG with
Ms. Rokeya Akhter, AAG,
Mr. Md. Samiul Alam Sarker, AAG and
Ms. Umme Masumun Nessa, AAG

..... For respondent no. 1

Mr. M. A. Hannan, Advocate with
Mr. Abdus Samad Azad, Advocate

..... For respondent no. 5

Date of Hearing : 15.02.2022, 07.03.2022,
15.03.2022

Date of Judgment : 16.03.2022

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Md. Kamrul Hossain Mollah

Zubayer Rahman Chowdhury, J :

By this application under Article 102 (2) of the Constitution, the petitioner, a Human Rights Organization espousing the protection of the environment of the country, has prayed for issuance of a direction upon the respondents to stop the earth filling of the Banks of Chaktai Khal and Rajakhali Khal, both under the Chittagong City Corporation and located at Bakoliya, District Chittagong being in violation of the provisions of Bangladesh Environment Conservation Act, 1985 (as amended in 2000 and 2002) and also being in violation of the provisions contained in “মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্তস্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০” At the same time, the petitioner has also sought for issuance of a direction from the respondents to remove the temporary and permanent structures that have been built by the encroachers on the banks of Chaktai khal and Rajakhali Khal.

Mr. Manzill Murshid, the learned Advocate appearing in support of the Rule, having placed the application as well as the documents annexed thereto, submits that in clear violation of the provisions contained in the two Acts referred to above, some unscrupulous persons, using their influence have not only encroached the Chaktai Khal and the Rajakhali Khal, they have also built structures alongside the banks of the said two Khals. He submits that despite various efforts by the local community as well as the environmental organizations, the Authority has failed to solve the problem. He submits that because of such encroachment, the normal flow of both the khals are being obstructed, which in turn is having a serious detrimental effect upon the environment. The learned Advocate further submits that the residents of the city of Chittagong, numbering several lacs, are also dependent on these two khals as these two khals act as the main source of water supply to the port city. He submits that on account of the continuous encroachment by the land grabbers, the depth of both the khals have reduced drastically causing obstruction to the movement of the cargo vessels which ply in that region.

Referring to the provision of the “মহানগরী, বিভাগীয় শহর ও জেলাশহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্তস্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০”, in particular to section 5 and section 8 thereof, Mr. Murshid submits forcefully that it is prohibited under the said Act to change the natural reservoirs. He submits that on account of the continuous and unabated encroachment by the land grabbers, the natural character of the khals is being changed drastically, causing serious damage to the environment. Mr. Murshid lastly submits that although the Authority has been empowered by the Environment Conservation Act, 1985 to take correcting measures and also to punish the offenders of such

encroachment, till date, no steps have been taken, which goes to show the power and influence exerted by the encroachers.

Mr. M. A. Hannan, the learned Advocate appearing with Mr. Abdus Samad Azad, the learned Advocate appearing on behalf of respondent no. 5, does not oppose the Rule. He submits that the submission made by the learned Advocate for the petitioner are factually and legally correct. Mr. Hannan submits that the Authority has already taken steps to construct roads on the banks of two Khals. However, they are also facing obstructions in implementing the project owing to the unauthorized structures that have already been built by the land grabbers. He submits that the eviction process of the unauthorized occupants is already under way and once the process is completed, the roads would be constructed by the Authority.

We have taken note of the submissions advanced by both the learned Advocates. We have also considered the relevant legal provisions. We have also perused the unreported decision passed in Writ Petition No. 6306 of 2010 cited by Mr. Manzill Murshid.

The factual aspect of the case is not in dispute. The issue of environment is not only a national issue, it is now a global issue. It is undeniable that the protection or preservation of the water bodies is of paramount importance in order to maintain the environmental balance.

From Annexure D to the supplementary affidavit dated 22.08.2016, filed on behalf of the petitioner, it appears that a report was published in the Daily Bhorer Kagoj on 16th August, 2016 to the effect that despite the order of stay, Chaktai Khal and Rajakhali Khal were being filled up by certain influential quarters. From the photographs annexed as Annexure D-1, we find that structures are being built upon encroaching the canals. Furthermore, an affidavit of compliance dated 18.01.2018 has been filed on behalf of respondent no. 3 (Secretary, Ministry of Local Government and Rural Development, Dhaka.) disclosing the names of the land grabbers, together with the quantum of land that has been encroached by them.

It is therefore evident from the press report and the photographs, noted above, that the encroachment of land on both sides of Rujakhali Khal and Chaktai Khal is continuing unabated, causing irreparable damage to the environment. Time has come to take stern and positive steps against each and every person involved with such acts, no matter how influential they may be.

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

In the result, the Rule is made absolute.

The concerned respondents are directed to take positive steps to evict each and every unauthorized occupant(s) occupying the land on both sides of Chaktai Khal and Rajakhali Khal and demolish all the unauthorized structures that have already been set up and/or are being constructed on both sides of Chaktai Khal and Rajakhali Khal. The law enforcement Agencies are directed to provide necessary assistance and support to the local administration.

This directive shall remain in force until completion of the total eviction process.

The Authority shall provide a reasonable time to the unauthorized occupants to remove their structure(s) at their own cost from the occupied land. Once the eviction process is completed, the Government shall take appropriate steps to preserve and protect the banks of Chaktai Khal and Rajakhali Khal.

Before parting with the matter, we wish to put on record our appreciation for the time and effort that has been put in by the petitioner.

There will be no order as to cost.
