

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

WRIT PETITION NO.11499 OF 2014

IN THE MATTER OF:

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

AND

IN THE MATTER:

Human Rights and Peace for Bangladesh (HRPB), represented by its Secretary Asaduzzaman Diddiqui, Hall no.2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

.....Petitioner

-VERSUS-

Government of Bangladesh, represented by the Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, Dhaka and others

..... Respondents

Mr. Manzill Murshid, Advocate with Mr. Sanjoy Mandal, Advocate

.....For the petitioner

Mr. Maqbul Ahmed, Advocate

.....For the Respondent No.2

Heard and Judgment on: 10.08.2016

Present:

Mr. Justice Obaidul Hassan

And

Justice Krishna Debnath

Obaidul Hassan, J.

This Rule Nisi was issued calling upon the respondents to show cause as to why failure of the respondents to protect the hill at Tiger pass area under Chittagong City Corporation in which Mayor house is being constructed should not be declared illegal and without lawful authority and why a

direction should not be given to take legal action against the Mayor of Chittagong City Corporation for destroying and cutting hill at Tiger pass, Double mooring, Chittagong and why a direction should not be given upon the respondents to remove all construction materials at the cost of City Corporation, Chittagong and why a direction should not be given upon the respondent no.2 to fill the soil of the hill at Tigerpass, Doublemooring Thana, under Chittagong City Corporation at their cost and/or such other or further order or orders passed as to this Court may seem fit and proper.

Subsequently, on 14.12.2014 this Court passed an order of stay of all sorts of construction of the Mayor Bhaban in Chittagong at Tigerpass for a period of 3(three) months from date.

Mr. Manzill Murshid, the learned advocate for the petitioner has filed this writ petition as a Public Interest Litigation (PIL) and sought a direction upon the respondents to stop the cutting of hills in Tigerpass area under Chittagong City Corporation, violating the provisions of law as well as avoiding the direction given in Writ Petition no.10848 of 2013. The petitioner also sought a direction to take legal action against the persons who are liable for hill cutting. Mr. Manzill Murshid, submits that by way of hill cutting, in violation of the provisions of law, the normal existence of hills has been threatened as well as it has seriously affected the environment and it, involves great public importance. He further submits that disregarding laws and legal provisions people are cutting hills of different area's of Chittagong and constructing houses. Failure to ensure proper implementation of laws by the respondents caused enough damage to the environment and adversely affecting the hills. Under these circumstances, the respondents are legally bound to protect the hills of Tigerpass under Chittagong City Corporation (CCC) in accordance with law. The duty and responsibility vested upon the respondents to serve the people and to take initiative of lawful steps. The respondents are also duty bound to obey the provisions of law, but the respondents have failed to perform their duties and responsibilities as vested upon them and also failed to protect the above mentioned hills, which is illegal. He also submits that on the basis of the report published in the Daily Prothom Alo on 30.09.2013 earlier a writ petition being no.10848 of 2013 was filed by the petitioner before this Court and rule was issued. Thereafter, on 04.06.2014 after hearing the parties this Court was pleased to pass a judgment disposing the Rule with some observations. In the observation, the respondent-CCC was allowed to make construction on the hill if all the concerned authorities give permission to do so. Mr. Manzill Murshid further submits that totally ignoring the observation of this Court the Mayor of CCC has been continuing construction of the building destroying hill without any proper permission. He further submitted that a member of the petitioner's organization visited the place on 28.11.2014 and found that, violating the provision of law construction was going on. Though in the judgment it was observed that construction can be done only after obtaining permission from the concerned authorities, but during the visit it was found that without obtaining any permission from the environment department the construction was going on. Some photographs were taken in which it is evident that top of the hill has been destroyed and

heavy construction has been made. Mr. Murshid emphatically submits that this is not only illegal, but also danger to the environment. He stated that one officer of Chittagong Environment Directorate namely Mr. Shahidul Islam informed the petitioner over telephone that no permission was given to the CCC in respect of the construction by way of cutting hills. Mr. Shahidul Islam was requested by the petitioner to visit the place and stop construction, but no steps were taken so far. Mr. Manzill Murshid also stated that although such kinds of activities were continuing, the concerned authorities were silent and did not perform their duties properly. Consequently hill has been destroying in Chittagong area so the nature is going lost it's character which is seriously affecting the environment.

Mr. Manzill Murshid also submits that in the judgment pronounced in Writ Petition no.10848 of 2013 their Lordships held that *“On perusal of the submission of the learned advocate of both the sides, the petitioner, affidavit in opposition and the available documents it very evident to note that the respondent nos.1,3 to 5 have undertaken of the project though on the same site on which there was a building i.e. old Superintendent of Police's Banglo, which is evident from the Khatian (annexure-6), however, this respondents did not acquire the necessary permission from the concerned authorities, as such, we are of the view that the respondents may construct and undertake the project subject to approval from all the concerned authorities, specially the Deputy Commissioner, Chittagong and the Department of Environment, and any other, if necessary.”* But the respondents certificate shows that till this date they could not obtain any permission from the Deputy Commissioner or from the Department of Environment. In the circumstances, they may be directed not to take any initiative for further construction and to remove all construction from the site.”

Mr. Maqbul Ahmed, the learned advocate appearing on behalf of the respondent no.2-CCC by filing an affidavit in opposition denied all material allegations brought against him and submitted that the hill in question is owned by the CCC. On those places the CCC has been making a building for the purpose of residence of the Mayor. They are not cutting any hill they have been constructing the building on a plain land.

Mr. Biswajit Roy, the learned Deputy Attorney General in pursuance of the order of this Court submitted an affidavit in compliance. In annexure-5 of this affidavit it is very clear that the environment directorate by giving a notice to the Chief Engineer of CCC and the contractor asked them to show cause as to why action shall not be taken against them for constructing the building and razing the hill in question without Environment Clearance Certificate from the Department of Environment. The date of hearing was fixed on 15.12.2014 regarding the permission for construction of the Mayor Bhaban. But subsequently till this date the Environment Directorate did not give any permission to the petitioner to build the construction.

We have gone through the writ petition, affidavit in opposition, affidavit in compliance and the annexures annexed thereto. We have also considered the submissions of the learned advocates for both the sides as well as the

relevant provisions of law. As per provision of section 6Kha of the Environment Conservation Act, 1995 that there is a clear bar to cut any hill without permission of the concerned authority. Section 6Kha of the said Act runs as follows:

“৬খ। পাহাড় কাটা সম্পর্কে বাধা-নিষেধ।- কোন ব্যক্তি বা প্রতিষ্ঠান কর্তৃক সরকারী বা আধা সরকারী বা স্বায়ত্বশাসিত প্রতিষ্ঠানের মালিকানাধীন বা দখলাধীন বা ব্যভিমানিকানাধীন পাহাড় ও টিলা কর্তন ও/বা মোচন (cutting and/or razing) করা যাইবে নাঃ

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

Mr. Manzill Murshid, the learned advocate took us to the Article 18A of the Constitution which has been added in our Constitution by 15th amendment. The provision of Article 18A runs as follows:

“The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens.”

Though this policy is not enforceable through any Court, but we must keep it in our mind that this is our State policy. For the present and future generation proper environment should be conserved. Since the respondents have not yet received any clearance certificate from the concerned authority to construct any building till this date, we are of the view that legally the respondent no.2 still is not in a position to construct the Mayor Bhaban. We find merit in the argument made by the learned advocate for the petitioner. Accordingly, the Rule is made **absolute**.

However, the respondent no.5 is directed to dispose of the application made by the Chittagong City Corporation, the respondent no.2 on 21.01.2014 within 2(two) months from the date of receipt a copy of this judgment in accordance with law.

Let a copy of this judgment be communicated at once.
