

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Writ Petition No. 9264 of 2016**

**Human Rights and Peace for Bangladesh**  
(HRPB), represented by it's Secretary and  
others.

..... Petitioners

-Versus-

Government of Bangladesh, represented by  
the Secretary, Ministry of Religious Affairs,  
Bangladesh Secretariat, Ramna, Dhaka and  
others

..... Respondents

**Mr. Manzil Murshid, Advocate**

..... for the petitioners

**Mr. Md. Layekuzzaman Mollah** with Mr.  
M.A. Latif Prodhan,  
Mr. Elias Ali Mondal, Advocate

..... for the respondent No.8

Present

**Mr. Justice Gobinda Chandra Tagore**

and

**Mr. Justice A.K.M. Shahidul Huq**

Heard on: 13.05.18, 20.05.18, 27.05.18, and

**Judgment on: 31.05.2018**

**Gobinda Chandra Tagore, J:**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule Nisi was issued calling upon the respondents to show cause as to why the inaction and failure of the respondents to protect the land of crematorium situated at Banail, Shibgonj Pourashava, Police Station- Shibgonj, District- Bogra and in which violating the law construction is going on, should not be declared illegal, without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to prevent any further construction on the said land and why a direction should not be given upon the respondents to protect and maintain the crematorium (Shmoshan) which is used as burning ground (crematorium) by the local Hindu people and recognized as crematorium situated at Banail, Shibgonj Pourashava, Police Station- Shibgonj, District- Bogra and/or why such other or further order or orders as to this Court may seem fit and proper, shall not be passed.

Pending hearing of the Rule, the respondent Nos.6 and 7 were directed to take necessary steps for preventing any further construction on the land of crematorium situated at Banail, Shibgonj Pourashava, Police Station- Shibgonj, District- Bogra and file a compliance report before the Court through Affidavit and the respondent Nos.3 and 4 were directed to conduct an onsite inquiry with regard to the allegations made in the instant Writ Petition as well as in the report published in the Daily Kaler Kontho on 26.06.2016 ‘শতবর্ষী শ্মশান দখলে আওয়ামী লীগ নেতা’ and “এলাকার সব হিন্দু প্রয়োজনে এলাকা ছাড়বে।” to this Court within 02(two) weeks from the date of receipt of this order.

Lemon Basher, Reporter and the News Editor of the Daily Kaler Kontho were also directed to authenticate the said report through swearing an affidavit and submit the same to this Court within 15(fifteen) days.

Shortly stated the relevant facts necessary for disposal of the Rule are as follows:

The petitioner Human Rights and Peace for Bangladesh (HRPB) is a non-profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their rights etc. The organization is engaged in promoting and defending human rights and supporting the victims of human rights violations. It also works to protect environment and to protect health of the citizen and to establish the Rule of law. The petitioner received an information from a newspaper as to that encroachment and construction were going on the land of crematorium illegally and hence, the petitioner decided to file the Writ Petition in the form of a public interest litigation. In the Writ Petition, the petitioner challenged the right to protect the crematorium from illegal construction and accordingly, the petitioner filed the instant Writ Petition for taking necessary steps against the land grabber and illegal constructor; who have violated the provision of law and the local administration who has failed to perform their duties as vested upon them under Article 21 and 31 of the Constitution of Bangladesh. The report as was published in the Daily Kaler Kontho on 26.06.2016 as to that about 27 decimals of land at Banail, Shibgonj Upazila, District- Bogra have been used as burning ground and recognized as crematorium (shmoshan) and the same has been used as such for about 200 years. Despite of the facts, under the leadership of respondent No.8 some influential local people were trying to grab the land and without permission they were going with the construction on the crematorium. Though it was within the knowledge of the local authority, the local administration failed to take any step against the land grabber and though the report was published in the daily newspaper, the local administration did not take any step to recover the land and to stop the

construction. Though the facts show that the land belongs to the crematorium, due to some unknown reason, the local administration did not take any practical and visible action against the illegal construction and to recover the said land from the illegal occupation. Due to the inaction of the respondents, some influential local people were making their construction on the land belonging to the crematorium by using their political power and in such facts and circumstances, the local administration was silent to protect the land of the minority people and hence, it was required to intervene by this Court. In the facts and circumstances, the petitioner filed the instant Writ Petition and obtained the Rule and the interim order of direction.

The respondent No.4 in compliance with the direction submitted an Affidavit-in-Compliance annexing thereto an inquiry report signed by the Superintendent of Police, Bogra. From the report, it appears that the land belonged to the crematorium. It further appears that one Osman Goni Mollah, son of Sobatullah Mollah of village- Banail, Shibgonj Pourashava, Police Station- Shibgonj, District- Bogra obtained settlement of .25 acre of land vide Settlement Case No. 66(12)/66-67, but as there was a crematorium on the land, the Additional Deputy Commissioner (Revenue) by the order dated 15.09.1994 cancelled the said settlement. In spite of knowing the said cancellation, the respondent No.8 namely, Md. Azizul Haque, President of Shibgonj Upazila Unit, Bangladesh Awami League entered into an unregistered contract for sale with that very Osman Goni Mollah in respect of .05 acre of land and Md. Azizul Haque tried to take over possession thereof by filling up earth. As the local Hindu people raised objection against such filling up earth, Md. Azizul Haque entered into a hassle with them. The local people also informed the matter to the local Police Station and the Upazila Administration and at the intervention of the local police, the said Md. Azizul Haque could not enter in the possession of the case land. The land has been recorded under Khas Khatian No.1 and as per the record, it has been used as crematorium for the local Hindu people. After receiving the direction of this Court, the Superintendent of Police, Bogra directed the Officer-in-Charge, Shibgonj to maintain status quo in respect of any construction on the case land.

During hearing of the Rule by the order dated 13.05.2018, respondent No.8 namely, Azizul Hoque purportedly Upazila Awami League President, Shibgonj was directed to appear before this Court in person on 20.05.2018 at 10.30 a.m. to explain his conduct in forcefully taking over the possession of the crematorium situated at Banail, Shibgonj Pourasava, Police Station- Shibgonj, District- Bogra and also to show cause as to why appropriate direction should not be given to the concerned authority to take appropriate legal action against him for such illegal activities which is nothing but criminal activities. In compliance with the said order dated 13.05.2018, respondent No.8

appeared before this Court in person through his learned Advocates and prayed for time for taking step as to that he would unconditionally apologise to the local people in presence of the organizers of the crematorium and also would submit an Affidavit-in-Compliance with the photograph thereof in this Court. In compliance with the said undertaking made by the respondent No. 8, he on 27.05.2018 submitted an Affidavit-in- Compliance, but the same appeared to have been filed not in compliance with his undertaking. Accordingly, he further submitted an Affidavit-in-Compliance. The same was also not in conformity with his undertaking. Today, the respondent No.8 filed another Affidavit-in-Compliance upon annexing thereto a photograph which shows that the petitioner in presence of the local people including the organizers of the crematorium unconditionally apologize to the local people, which reads as under:

“নিঃশর্ত ক্ষমা প্রার্থনা

আমি মোঃ আজিজুল হক সভাপতি শিবগঞ্জ থানা আওয়ামী লীগ। বানাইল মহাশাসনের জায়গা দখলের চেষ্টার জন্য অনুতপ্ত। এ কারণে মহাশাসনের কর্তৃপক্ষ সকল সনাতন ধর্মাবলম্বি লোকসহ জনগনের নিকট নিঃশর্ত ক্ষমা প্রার্থনা করছি। ভবিষ্যতে এ ধরনের ধর্মীয় অনুভূতিতে আঘাত লাগে সে সকল কাজ থেকে বিরত থাকবো।

নিবেদক

মোঃ আজিজুল হক

সভাপতি, শিবগঞ্জ থানা আওয়ামী লীগ”

Upon going through the Affidavit-in-Compliance, Mr. Manzil Murshid, learned Advocate appearing for the petitioners submits that since the respondent No.8 already complied with his underaking upon tendering unconditional apology to the local people, including the organizer of the crematorium and the respondent No.8 has also undertaken not to repeat such activities in future, the Rule may be disposed of as this Court may seem fit and proper.

We have perused the Writ Petition, the Affidavit-in- Compliance filed by the Superintendent of Police, Bogra and the Affidavit-in-Compliance filed by the respondent No.8.

From the inquiry report submitted by the Superintendent of Police, Bogra, it appears that the land in question belongs to the crematorium and though it has been recorded in the Khas Khatian No.1, the same is still being used as crematorium by the local Hindu people. The crematorium was established on the land long before 200 years and now, the land has been recorded in the Khas Khatian No.1 and the same is being used by the local Hindu people in general. It is the duty of the local administration to protect and preserve the crematorium which they are required by law to do. But it appears that the respondent No.8 being an influential person belonging to the party in power, the local administration though was sincere to protect the crematorium they could not do it. The local administration is required by law to perform

their duties in accordance with law irrespective of the personal identity or political identity of the perpetrators of such mischief. As the local administration failed to perform their duty, the Court has to intervene in the matter. Thanks to the Daily Kaler Kontho and the Reporter thereof for publishing the news item which was brought to the notice of this Court by filing the instant Writ Petition. There is no doubt that the petitioner should also be appreciated for its pro-people activities.

It appears from the undertaking made by the respondent No.8 particularly, from the banner which was hanged in the crematorium premises that he himself become repented and also undertakes not to repeat such activities in future. During the pronouncement of the judgment, the respondent No.8 also personally promises that he will help the local people develop the crematorium and he will not do anything against the crematorium. From the subsequent conduct of the respondent No.8 it appears that he has learnt a lesson by this time and any further action against him would be deemed to be a double jeopardy against him.

In such facts and circumstances, it appears that the purpose of the Rule has already been satisfied and exhausted.

Accordingly, the Rule is disposed of.

However, there would be no order as to costs.

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