

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

WRIT PETITION NO. OF 2021.

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-in-Charge, Advocate Md. Sarwar Ahad Choudhury, Hall No.2 Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

2. Advocate Akals Uddin Bhiuyan, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka.

3. Advocate Ripan Barai, Supreme Court of Bangladesh, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka.

.....Petitioners.

-V E R S U S-

1. Bangladesh represented by the Senior Secretary, Ministry of Local Government, Bangladesh Secretariat, P.S:- Shahbag, Dhaka, Bangladesh.

2. The Senior Secretary, Ministry of Water Resources, Bangladesh Secretariat, P.S:- Shahbag, Dhaka, Bangladesh.

3. The Secretary, Ministry of Environment and Forest, 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. The Director (enforcement), Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka, Bangladesh.
6. The Director, Department of Environment, Khulna Divisional Office, Boyra, Khulna, Bangladesh.
7. The Deputy Commissioner (D.C), khulna, Office of the Deputy Commissioner, Gazipur-1700, Bangladesh.
8. The Superintendent of Police (S.P), Khulna, Post and District- Khulna, Bangladesh.
9. The Executive Engineer, Khulna Management and Maintenance Division-1, Water Development Board, Khulna, Post and PS-Khulna, District-Khulna.
10. Upazila Nirbahi Officer (UNO), Dumuria Upazila, Post and PS- Dumuria, District-District- Khulna, Bangladesh.
11. Assistant Commissioner (Land) Dumuria Upazila, Post and PS- Dumuria, District- Khulna, Bangladesh.
12. The officer in Charge (O.C), Dumuria Thana, Post and PS- Dumuria, District-Khulna, Bangladesh.
13. Mr. Narayan Chandra Chanda, Member of Parliament, Kulna-5, (Former Minister of

Fisheries and Livestock) Owner of KPB Bricks, and President, Dumuria Upazial Brick Owners Association, Post and PS- Dumuria, District- Khulna, Bangladesh.

14. Mr. Ajaz Ahmed, Upazila Chairman, Dumuria Sadr Upazila, owner of Setu Bricks, Post and PS- Dumuria, District- Khulna, Bangladesh.

15. Mr. Humayun Kabir Bulu, Owner of KB Bricks, Chairman, Dumuria Sadr Union Parishad, Post and PS- Dumuria, District- Khulna, Bangladesh.

.....Respondents.

AND

IN THE MATTER OF:

Article 18A of the Constitution of Bangladesh, 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 Provisions of ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রন) আইন ২০১৩ (সংশোধিত-২০১৯).

AND

IN THE MATTER OF:

Inactions/failure of the respondents to take necessary steps to stop/remove encroachment construction/ structures/ Dam constructed within the territory of Bhadra and Hori river situated within Dumuria Upazila, District- Khulna, violating the provisions of law.

AND

IN THE MATTER OF:

For a direction upon the respondents to remove all the encroachment/construction/Dam/itvata/structures situated within the territory of river

Bhadra and Hori at Dumuria Upazila, District-Khulna, as it is illegal as per 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, constructing dam, structures, operating itvata within the area of Bhadra and Hori river situated within Dumuria Upazila, District-Khulna, which is illegal. Hence direction may be given upon the respondents to remove earth filling, Dam, illegal encroachment and structures within the territory of the said rivers.

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 rivers 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 rivers in accordance with law at one hand and to remove the itvata/dams/earth filling/encroachment as made within the river.

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 take legal steps against the law violators.

IV. For that encroachment, earth filling and making permanent dam structures in the territory of the Bhadra and Hori River situated within Dumuria Upazila, District-Khulna is contrary to all applicable laws of the country. That the encroachment of river and permanent structures in the territory of rivers has created obstruction to the normal movement of the said river and causing damage living entity of the rivers Bhadra and Hori.

V. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and making illegal dam structures in the territory Bhadra and Hori River situated within Dumuria Upazila, District-Khulna. The unauthorized activities are the main causes for environmental

degradation. Taking advantage of the silence of the concern authority, the illegal activities are being continued and as a result the environment is being destroyed. Hence direction may be given upon the respondents to stop it.

VI. For that as per the provision of section 8 of ইট প্রস্তুত ও ভাটা স্থাপন (নিয়ন্ত্রন) আইন ২০১৩ (সংশোধিত-২০১৯) any itvata set up within the area of jolabhumi is prohibited and any violation of this section is an punishable offence under section 18 of the said law. But the respondents are ignoring the prohibition of law and continuing degradation of environment. Hence a direction may be given upon the respondents to take necessary steps as per law against the law violators.

VII. 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. That though fresh and pollution free environment is inevitable requirement for healthy life, which is also ought to be secured as "right to life" under Art. 32 of the Constitution of Bangladesh. So Your Lordship may direct the respondents to stop and remove all environment degradation activities from the area of river Bhadra and Hori..

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/inaction of the respondents to stop/remove all kinds of encroachment, earth filling, itvata, permanent/temporary constructed dams within the area of Bhadra and Hori river situated within Dumuria Upazila, District-Khulna, should not be declared illegal and without lawful authority.

AND

Why a direction should not be given upon the respondents to demolish/evict all dam structures/constructions/itvata/encroachment within the territory of Bhadra and Hori river situated in Dumuria Upazila, District-Khulna and to protect the said Rivers Bhadra and

Hori as per C/S, R/S record to its original position.

b) Pending hearing of the rule direct the respondents to maintain statuesque in respect of earth filling/dam constructions/structures/operation of itvata/encroachment/ within the territory of Bhadra and Hori river situated in Dumuria Upazila, District-Khulna and submit a compliance report by the respondent no.5-11 within 2 weeks before this court.

c) Pending hearing of the rule direct the no. 6 and 8 to conduct a joint survey of the area of Bhadra and Hori river situated in Dumuria Upazila, District-Khulna to identify the area of rivers as per CS, RS record and submit a report within 30 days before this court through affidavit having the list and addresses of encroacher.

Present Status:

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi and passed an order of statuesque in respect of earth filling/dam construction/structure/operation of brick field/encroachment within the territory of Bhadra and Hori River. The matter is pending before the Hon'ble High Court Division.
