

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

WRIT PETITION NO. OF 2020.

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 Ripon 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 Secretary, Ministry of Environment and Forrest, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh.

2. The Secretary, Ministry of Land and Forest, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh.

3. The Director General, Department of Environment, Paribesh Bhaban, E-16, Sher-E Bangla Nagar, Agargaon, Dhaka, Bangladesh.

4. The Chairman, BIWTA, Head Office, 141-143, Motijheel Commercial Area, Post Box 76, Dhaka-1000, Bangladesh.

5. The Director (Enforcement), Department of Environment, Paribesh Bhaban, E- 16, Sher-E-Bangla Nagar, Agargaon, Dhaka.

6. The Deputy Commissioner, Panchagarh, Post and District- Panchagarh.

7. The Police Super, Panchagarh, Post and P.S.- Panchagarh, District- Panchagarh, Bangladesh.

8. The Additional Deputy Commissioner (Land) Panchagarh, Post and District- Panchagarh, District- Panchagarh.

9. Assistant Commissioner (Land) Panchagarh Sadar Upazila, District- Panchagarh.

10. Upazila Nirbahi Officer (UNO), Panchagarh Sadar Upazila, District- Panchagarh, Bangladesh.

11. The officer in Charge (O.C), Panchagarh Sadar Police Station: Panchagarh, District- Panchagarh, Bangladesh.

..... Respondents.

AND

IN THE MATTER OF:

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 সংরক্ষণ আইন, ২০০০.

AND

IN THE MATTER OF:

Inaction/Failure of the respondents to stop earth filling/construction/encroachment within the area of River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh, violating the provisions of law and directed the authority to protect the same river to its original territory as per C.S/R.S. records.

AND

IN THE MATTER OF:

For a direction upon the respondents to remove the all the illegal construction/Semi-Pacca structures /houses within the territory of Talma River situated at Panchagarh Sadar, Panchagarh, District- Panchagarh.

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 and by stay of violating the provision of law the earth filling/encroaching is continuing within the River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh, which is illegal. Hence, direction may be given upon the respondents to stop encroachment and earth filling and to protect River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh, to its original territory as per C.S/R.S record.
- II. For that disregard to laws and legal provisions and failure to ensure proper implementation of laws the respondents have caused enough damage to the environment and the local people are being adversely affected in context of right to life. Under these circumstances the respondents are legally bound to protect the River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh, situated within Panchagarh district, in accordance with law.
- 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. In spite of that provision of law the respondents are not taking any steps in case of encroachment/earth filling River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh. Hence a direction may be given to stop earth filling/encroachment/construction of the River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh and to protect the same to its original territory as per C.S/R.S record.
- IV. For that the Hon'ble High Court Division was pleased to pass judgment in Writ Petition being number-----of ----- declaring the living entity/legal status of all the river of the country. Finally it was affirmed by the Hon'ble Appellate Division in Civil Miscellinious Petition no. ---- of ----- . As

per the judgment the river Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh has a right to survive and any obstruction to it's is illegal in the eye of law.

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 inaction/failure of the respondents to protect the River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to protect the River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh to its original territory as per C.S/R.S record

AND

Why a direction should not be given upon the respondents to evict/demolish earth filling, encroachment and construction made within the area of River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh (as reported in Bangladesh Pratidin on 03.11.2020).

b) Pending hearing of the rule direct the respondent no. 10 and 11 to take immediate steps within 72 hours to stop encroachment/earth filling/any kinds of further construction within the area of River Talma at Panchagarh Sadar, Panchagarh, District- Panchagarh (as reported in Bangladesh Pratidin on 03.11.2020) and file a compliance report within 2 weeks through affidavit before the court.

c) Pending hearing of the rule directs the respondent no. 6 to submit a copy of C.S, R.S Porcha and Noksha identifying and showing the encroach area of river of the specific area as reported in Bangladesh Pratidin on 03.11.2020, before this court within 30 days through Registrar of the High Court Division, Supreme Court of Bangladesh.

d) Direct the office to serve the notices and copies at the cost of office.

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 directing to stop encroachment/earth filling/further construction within the territory of river Talma at Ponchogor. The matter is pending before the Hon'ble High Court Division.
