

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

WRIT PETITION NO. OF 2018.

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 Peace for Bangladesh (HRPB), represented by Advocate Md. Sarwar Ahad Choudhury, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

2. Advocate Ripan Barai, Son of Late Manohar Barai of 31 Central Road, P.S-New market, Dhaka 1205, Bangladesh.

.....Petitioner.

-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 Water Resources, 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 Director, Department of Environment, Director, Environment Directorate, Divisional Office, Boyra, Narayangonj, Bangladesh.

5. The Deputy Commissioner (D.C), Narayangonj, Office of the Deputy Commissioner, Narayangonj, Bangladesh.
 6. The Superintendent of Police (S.P), Narayangonj, Post and District- Narayangonj, Bangladesh.
 7. The Director (Enforcement), Department of Environment, Paribesh Bhaban, E- 16, Sher-E-Bangla Nagar, Agargaon, Dhaka.
 8. The Mayor, Sonargaon Porashava, Post and P.S.-Sonargaon, District- Narayangonj, Bangladesh.
 9. The Upazila Nirbahi Officer (UNO), Sonargaon Upazila, District- Narayangonj, Bangladesh.
 10. Assistant Commissioner (Land), Upazila: Sonargaon, District- Narayangonj.
 11. The officer in Charge (O.C), Sonargaon Police Station, P.S Sonargaon, District- Narayangonj, 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 সংরক্ষন আইন, ২০০০.

AND

IN THE MATTER OF:

Inactions/failure of the respondents to take necessary steps to stop and remove illegal earth filling/encroachment/ construction within the area of Menikhali River within Sonargaon Upazila, District- Narayangonj and to remove all the structures/earth filling/encroachment as made within the territory of Menikhali River within

Sonargaon Upazila, District- Narayangonj,
violating the provisions of 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, building permanent structures in the area of Menikhali River within Sonargaon Upazila, District- Narayangonj and illegal encroachment in Menikhali River within Sonargaon Upazila, District- Narayangonj, which is illegal. Hence direction may be given upon the respondents to stop earth filling, illegal encroachment and making building structures in the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj .

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 river Menikhali 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 Menikhali River within Sonargaon Upazila, District- Narayangonj, in accordance with law at one hand and to remove the earth filling/encroachment as made in 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 remove the said encroachment/earth filling from the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj and to remove the structures from the territory of the river.

IV. For that encroachment, earth filling and making permanent structures within the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj , is contrary to all applicable laws of the country. That the encroachment in the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj has created obstruction to the normal movement of the said river and boats plying in the said river.

V. For that the environment is being continuously endangered and threatened by various illegal activities such as encroachment, earth filling and making illegal structures in the territory of Menikhali River

within Sonargaon Upazila, District- Narayangonj. The unauthorized activities are the main causes for environmental degradation. Taking advantage of the silence of the concern authority, the illegal activities is being continued and as a result the environment is being destroyed.

V. 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.

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 and remove all kinds of encroachment/earth filling/ construction within the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj, should not be declared illegal and without lawful authority.

AND

Why a direction should not be given upon the respondents to demolish/evict/remove all encroachment/earth filling/ construction within the territory of Menikhali River within Sonargaon Upazila, District-Narayangonj

AND

Why a direction should not be given upon the respondents to protect the Menikhali River within Sonargaon Upazila, District-Narayangonj to its original position as per CS/RS record.

b) Pending hearing of the rule direct the respondents to take legal actions against the persons responsible for illegal encroachment/ construction/earth filling within the territory of Menikhali River within Sonargaon Upazila, District-Narayangonj, violating the provisions 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 সংরক্ষন আইন, 2000.

c) Pending hearing of the rule directs the respondents to maintain statuesque in respect of any further construction/earth filling/encroachment/dam construction within the territory of Menikhali River within Sonargaon Upazila, District- Narayangonj

d) Pending hearing of the rule direct the respondent no. 5, 9 and 10 to conduct a survey of the area of Menikhali River within Sonargaon Upazila, District- Narayangonj as per CS/RS record identifying the construction/earth filling/encroachment/ construction situated within the area of Menikhali River within Sonargaon Upazila, District- Narayangonj with name and address and submit a report within 60 days before this court through affidavit.

Present Status

The case was filled and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon'ble High Court Division.
