

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

Writ Petition No. 1789 of 2011

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Advocate Khan Himayat Uddin and another
.....the petitioners

-Versus-

Government of Bangladesh, represented by the Secretary, Prime Minister's Secretariat, Tejgaon, P.S.- Tejgaon, District: Dhaka

.....Respondents

Mr. Manzill Murshid, Advocate

.....For the petitioners

Mr. ABM Abdullah Al Mahmud, DAG

... For the respondents

Present

Mr. Justice K.M. Kamrul Kader

And

Mr. Justice Mohammad Ali

Heard On: 18.11.2021, 08.06.2022,
10.08.2022, 24.10.2022,
05.12.2022, 17.01.2023

And

Judgment On: 16.03.2023.

K. M. Kamrul Kader, J :

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh Rule was issued on 02.03.2011, in following terms:-

“Let a Rule Nisi was issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to carry out the social forestation project in a way to make it useful for the public and environment development and to implement the plantation of forest as proposed in the letter dated 15.01.2009 (Annexure-A-2) to raise the nutrition level and standard of health of the citizen and

/or pass such other or further order or orders to this court may seem fit and proper.

Facts relevant for disposal of the Rule are brief that, the petitioner is an Advocate and well known tree-lover. He had an extensive knowledge on cultivation of land and tree. His theory on “poverty relieve by fruit plantation”, is already well-known plan through newspapers and appreciated by different organ of the Government. The petitioners as a member of Khulna Bar Association and being a conscious citizen, he is trying to execute a workable social forestation plan. As a conscious citizen, the petitioner sought for enforcement of social forestation project, in a way to make it useful for the public and to implement the plantation of forest for environmental development of the Country and its people. Thus, the petitioner filed this application under Article 102 of the Constitution of Bangladesh as a public Interest Litigation in order to playing a role to fulfil the nutrition of the citizen as the matter directly affect the people and environment of Bangladesh.

It is stated that forestation has been a part of “Daridro Bimochon Kormoshuchi” (DBK). However, this movement which has been taken by the Government has proven fruitless as the trees has been planted are not useful to the people. As it can be seen that previously the government took project relating to ‘forest’ and as such, one project for ‘fruit’ trees, required to be planted. It is stated that the Government may took initiatives to execute a workable social forestation plan relating to (1) forest, (2) fruit and (3) organic trees required to be planted. Provided that the forest and fruit plants cannot grow and cultivate together, if the forest and fruit trees cultivate together then the fruit trees will merely grow but will not produce any fruit, so these trees together will not grow and will not contribute to the public, thus the purpose of the entire scheme will fail. The petitioner has personal knowledge and experience relating to the tree plantation as being a son of a farmer and for his personal interest on plant and plantation. He has published a book naming “Daridromukto Desh Gorbar Ongikar- (Sohojtomo Daridro Bimochon Kousholpotro)” as translate in English, “Promise to create a poverty free Country–Easiest Technique to Overcome Poverty” wherein he categorically identifies the causes of poverty in Bangladesh and assign reasons as to why the tree plantation scheme of the Government has failed and under what conditions and/or techniques should be applied for a successful forestation and how to make a poverty free Bangladesh. It is further stated that in the year of 1977, the petitioner has submitted his book and explained his technique to the then Honourable President of Bangladesh who showed his interest and assured the petitioner that his plan will be implemented for forestation. Nevertheless, the petitioner did not stop there, but he with the help of his friends of Khulna District Bar Association, the then Deputy Commissioner and Divisional Commissioner who help him to organize several seminars on his techniques and plan relating to forestation. It is further stated that they also sent an application in the year of 1983 to the Honourable President to implement the petitioners’ plans, in response President’s office vide letter under Memo No. 20 (2) (GOP) 84-651/1, informed the Khulna Lawyer Association that an order has been passed to

the Planning Office to execute the plan of the petitioner. Thereafter, the Ministry of Environment and Forest has contact with the petitioner on several occasion. Next, the Ministry of Environment and Forest sent a letter vide Memo No.- POBAMA/SHA BON-2/FORESTATION-34/03(PART-1)/383 dated 11/08/2008 to the Chief Forest Protector requesting him to give his opinion relating to the book of the petitioner and a copy of the same was intimated to the petitioner (Annexure:-A to the writ petition). Thereafter, the Ministry of Environment and Forest sent another letter vide Memo No.-PABAMA/SHA BON-2/PARTFORESTATION-34/03(Part-1)/29 dated 14/01/2009 along with the book of the petitioner to the Chairman of Bangladesh Forest Industry Development Corporation, the Chief Forest Protector, Forest Director, and the Director, Bangladesh Forest Institution and directed them to take necessary steps as per relevant portion of the petitioner's book (Annexure:-A-1 to the writ petition). Similarly, the Ministry of Environment and Forest sent another letter vide Memo No.-PABAMA/SHA BA-2/PART FORESTATION-34/03(PART-1)28 dated 15/01/2009 to the Director General (D.G.) of Directorate of Agricultural Extension, Khamarbari, Dhaka, directed him to take necessary steps for plantation of Date and Palm trees as per recommendation of the petitioner's book (Annexure:-A-2 to the writ petition).

It is also stated that the "Social Forestation" under "Daridro Bimochon Kormoshuchi" has been failed due to government's wrong choice of trees and wrong plans. This is evidently clear that the trees which have been successfully planted in any foreign countries need not to have the same effect on our country. The weather, soil texture and water are needed to be same as of the trees inhabitant country. This country's weather, soil texture and water are useful and good for the plantation of date and palm and other trees and it will have a very significant effect on environment. These trees will grow naturally and will produce a lot of fruits. Nutrition is a part of right to life under Article 31 of Constitution of Bangladesh. In *Dr. Mohiuddin Farooque v. Bangladesh*, 48 DLR 438, it was held that "protection of health" is guaranteed as fundamental right under Article-31 of our Constitution. So, failure to use the Khas lands for forestation and to produce nutrition for the citizens is a failure to provide the protection of health under Article-31 of our Constitution.

Being aggrieved by and dissatisfied with the respondents for not taking any effective measure to implement necessary steps which is very essential for the citizen nutrition and health and having no other alternative, efficacious remedy, the petitioner filed this writ petition and obtained the instant Rule.

Mr. Manzill Murshid, learned Advocate appearing on behalf of the petitioners and submits that Palm and Date trees provide nutrition which is necessary for healthy life. Right to life includes healthy life. Right to life is also one of the fundamental rights as per our Constitution. He also submits that the palm tree plays an important role in making balance of environment. The palm tree absorbs carbon dioxide significantly which greater than other trees. Palm tree also plays role in reducing global warming caused by carbon dioxide emission. He further submits that palm

trees also absorb lightning strikes and thereby reducing death caused by lightning. Right to life includes normal period of life. Right to life excludes unnatural death or accidental death, like death caused by lightning, thunder storms, etc. and unnatural death is against normal period of life. He further submits that the Palm tree plays an important role to protect landslides, natural disaster, like-cyclone, tidal wave etc. Palm trees also play role in reducing soil salinity. He also submitted that date trees and palm trees provide fruit, juice and timber. Therefore, palm trees and date trees play important role in generating economic growth and reducing the poverty of people. He next submitted that under the facts and circumstances stated above, he prays for directions upon the respondents to take the following steps for forestation /plantation of Date and Palm trees (paragraph No. 07 (seven) of Supplementary Affidavit dated 01.06.2022 filed by the Petitioner No.2), which reads as follows:-

- i) to utilize the unused governmental land for Date trees and Palm trees plantation.
- ii) to plant date trees and palm trees alongside railway, highway and embankment.
- iii) to plant date and palm trees in observing various National days and international days.
- iv) to take appropriate steps to develop preservation and marketing system for Date, Palm juice and timber and to export date palm juice and timber after meeting of local demand.
- v) to preserve seeds of palm and date and provide the seeds to people/organization/institution for plantation/ forestation of palm and date trees in time.
- vi) to raise awareness of date and palm trees forestation /plantation through networking, training, workshop, participations and news.
- vii) to provide fund to the concern authority for implementation and expansion of date and palm trees forestation/plantation.
- viii) to take a project in a large scale for date and palm tree plantation across the country and form committees at National, District, Upazilla and Union level to implement and monitor date and palm tree plantation project.
- ix) to create scope for involvement of rural people to alleviate poverty where in women, farmer and young people should be given priority in date and palm trees plantation project across the country.

By filing a supplementary affidavit learned Advocate for the petitioner No.2 again referred online report which was published in the daily “Bangladesh Post” on 22.06.2022, updated on 23.06.2022 with a caption that, “Deaths from lightning increase”. In their report it was stated that, Bangladesh is one of the countries in the world considered to have reported one of the highest number of deaths due to lightning strikes. He

next submits that in the aforesaid report, it is also stated that Curtin University in Australia has conducted a research on this natural disaster in Bangladesh. According to their research, at least 1878 people died in Bangladesh due to lightning from 2013 to 2020. Out of them, 72 percent were farmers and according to the Ministry of Disaster Management and Relief and the Non-Governmental Organization Disaster Forum, 3,162 people had died in lightning strikes from 2011 to 2021. As per the said news report as of June 17 of this year, at least 48 people had died for the same reasons. Most of the victims were farmers who were struck by lightning while working or going to work in the crop fields. These news reports shows that in 2021, at least 362 people died in 2020 and more than 250 people died in 2019, the number was around two hundred. Some 250 people were killed in lightning strikes in 2016 and the government identified the thunderstorm as a natural disaster for the first time after so many people were killed on that year. In the said news report Dr. Khondoker Mokaddam Hossain, Professor (Institute of Disaster Management and Vulnerability Studies) of Dhaka University told in the Bangladesh Post, "Lighting is a normal occurrence. It has happened before, but in recent times its trend has increased. Bangladesh has the highest number of lightning strikes in South Asia. On an average, about 300 to 400 people died in lightning strikes every year." He also submits that an online report was also published in the daily "Shomyeralo" on 24.06.2021, updated on 24.06.2021 with a captioning that "শতকোটি টাকার তালগাছ কোথায়": Another online report was published in "NewsBangla24.com" on 10.06.2021, captioning is that, "তালগাছঃ কাগজে আছে সড়কে নেই": These reports shows that the 'KABITA' Scheme of the Respondents had already failed. However, so many palm saplings were said to be planted, but none of them actually existed. These trees have lost their existence due to negligence /lack of care. The report also reveals that Palm trees planted in different districts namely-Gaibandha, Nilphamari, Thakurgaon and Lalmonirhat were, mostly lost their existence due to lack of care and he prays for making the Rule absolute and seeking direction upon the respondents as per paragraph:- 07 of Supplementary Affidavit filed by the petitioner No. 2 dated 01.06.2022.

Mr. Ashique Rubaiat, learned Assistant Attorney General appearing on behalf of the respondent No.3 opposing the Rule by filing an affidavit-in-opposition and an affidavit-in-compliance, submits that as per relevant official documents it shows that the logistic steps taken by respondent to complete the project of plantation of Palm trees across the countries. According to the direction of this Court the respondent No.3 submit a report relating to the plantation project which has been done in fiscal yearly basis, i.e. 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022. He further submits that the Government has so far planted more than 4(Four) million Palm trees on both sides of the rural roads. Those trees were grown up on the roadsides and surrounding of the ponds and canals for enhancing the production of molasses with a view to reduce pressure on imported sugar. He also submits that the main thrusts of the plantation programs were to reduce the rate of casualty caused by a thunderbolt, increase forest resources, enhance awareness of farmers about the plantation, improve condition of

the soil and create employment opportunities in the area. Roadside palm tree plantations activities are progressing successfully which will ultimately help to reduce carbon emission at a substantial level. The government is also encouraging to plant Date trees in many Districts of Bangladesh including Gazipur, Manikganj etc. He also submits that the social forestry is a key activity of the Forest Department for socio-economic development and poverty alleviation of rural communities in Bangladesh and it plays important role in climate change mitigation and biodiversity conservation and as such, the Forest Department started involving people with this activity since early 1960s through the forest extension programs. During early 1980s, local people from 7(seven) Districts of northern Bangladesh were involved for the plantation in marginal government land. In 2004 (as amended in 2011) the government approved the social forestry rule to give legal basis for benefit sharing among the local people (participants) through implementing this activity. Under the social forestry program, plantation was raised for an area about 99,313.78 hectare and strip plantation was raised for an area about 73,223.36 kilometer and about 2955 hectares of long term, short term, non- mangrove plantation and 2664 KM of strip plantation was established with the Climate Change Trust Fund. About 7,01,488 participants were involved with the social forestry of which 1,34,542 participants were female. About 10,15,40,000 (ten crore fifteen lakh forty thousand) sapling were sold at a minimum price from forest nursery and distributed between 2002 to 2015- 16 in order to increase the number of tree all over the country. Under the social forestry in Bangladesh trees were cut from 43,943 hectare area and strip plantation from 18,362 KM till 2018-19 and about 1,217, 82,18,910/- (one thousand two hundred seventy crore eighty two lakh eighteen thousand nine hundred ten taka) were earned by selling wood, fuel wood and poles and the department distributed 3,83,23,5045/- (three hundred eighty three crore twenty three lakh five thousand forty five taka) amongst 1,91,854 (one lakh ninety one thousand eight hundred fifty four) participants. In addition about 1,10,20,17,385/- (one hundred ten crore twenty lakh seventeen thousand three hundred eighty five taka) has been deposited as Tree Framing Farm (TFF) to plant trees in the cutting areas. So far the department deposited 4,33,85,45,532/- (four hundred thirty three crore fifty eight lakh forty five thousand two hundred thirty two taka) as revenue. In addition, 2,18,49,73,214/- (two hundred eighteen crore forty nine lakh seventy three thousand two hundred fourteen taka) was distributed to the landowners, the union council and others. It appears from the letter dated 17.11.2021 issued by Assistant Chief Conservator of Forests, Social Forestry wing that from 1980-81 to 2020-2021 at total of woodlot trees have been planted in the area of 1,2,339.29 (one lakh two thousand three hundred thirty nine point twenty nine) hectors and strip forest have been planted in 76,652.76 (seventy six thousand six hundred fifty two point seventy six) km areas of Bangladesh. Total beneficiaries of the program is 7,26,654 (seven lakh twenty six thousand six hundred fifty four) out of 1,40,865 (one lakh forty thousand eight hundred sixty five) are female and due to such program hundred crores of taka has been distributed among the beneficiaries and more than 500 crore taka has been deposited to the treasury of government. He lastly submits that various media published

news and documentary focusing the tremendous success of the steps taken by the Department such as সামাজি বনায়নে হত দরিদ্র ও হুচে লাখপতি published in Jagonews24.com dated 06.12.2017, পরিবেশ রক্ষায় নোয়াখালী উপকূলে সামাজিক বনায়ন published in Boishakhi TV online dated 16.02.2022, সামাজিক বনায়নে প্রান্তিক জনগোষ্ঠী published in the Daily Bangladesh dated 12.02.2020, স্থানীয়দের সম্পর্কিত করে ৫০ একর published in the daily Amader Shomoy dated 30.01.2022 with regard to the socio-economic and ecological development of poor rural people due to the social forestation of the Forest Department. The Forest Department is now concentrating to plant Arjun, Bokai Neem, Mehagoni, Raintree and other local varieties of trees covering herbal trees, forest trees and fruit trees under the program instead of planting foreign trees like eucalyptus considering the adverse affect on ecology and environment and as such, he prays for discharging the rule.

We have heard the learned Advocates for both sides, perused the writ petition, affidavit-in-opposition, affidavit-in-compliance and other materials on record annexed herewith.

It transpires from the report of the respondent No.3 that the government has so far planted more than 4 millions palm trees on both sides of the rural roads and other areas and these trees were grown on the roadsides and surrounding of ponds and canals and as such, it can be understood that the social forestation program became successful in reducing the rate of casualty caused by thunderbolt, increasing forest resources, enhancing awareness of farmers about the plantation, improving organic matter, status of soil, creating employment opportunities, reducing pressure on imported sugar, reducing carbon emission etc. On the other hand, it appears from the online report which was published in the daily “Shomyeralo” on 24.06.2021, updated on 24.06.2021 with a captioning that “শতকোটি টাকার তালগাছ কোথায়”: The report shows that Dr. Md. Enamur Rahman, State Minister for Ministry of Disaster Management and Relief admits that approximately 45 lakhs Palm saplings and Seeds were planted across the country in 2017 to prevent lightning/thunderbolt and almost all of them were eaten by cows and goats. Another online report was published in “NewsBangla24.com” on 10.06.2021, captioning is that, “তালগাছঃ কাগজে আছে সড়কে নেই”: That report shows that under KABITA Scheme, 1,04,767 palm saplings have been planted in six upazilas out of eight upazilas of Rangpur District in the fiscal year 2019-20. However, so many palm saplings were said to be planted, none of them actually existed. The report also reveals that Palm trees planted in different districts namely-Gaibandha, Nilphamari, Thakurgaon and Lalmonirhat were, mostly lost their existence due to lack of care. These trees have lost their existence due to negligence /lack of care of the respondent. Thus, we are of the view that the respondents have failed to implement the project, namely Kabita Scheme, due to lack of care and negligence of the respondents.

We also noticed that Bangladesh is one of the countries in the world considered to have reported one of the highest numbers of deaths due to lightning strikes. Curtin University, Australia has conducted a research on this natural disaster in Bangladesh. According to their research, at least 1878 people died in Bangladesh due to lightning from

2013 to 2020. Out of them, 72% (percent) were farmers and according to the Ministry of Disaster Management and Relief and the Non-Governmental Organization Disaster Forum, 3,162 people had died in lightning strikes from 2011 to 2021. Most of the victims were farmers who were struck by lightning while working or going to work in the crop fields. The government identified the thunderstorm as a natural disaster as so many people were killed by lightning. Bangladesh has the highest number of lightning strikes in South Asia. On an average, about 300 to 400 people died in lightning strikes every year. Admittedly, the forestation /plantation of the date and palm trees across the country will save life of the people from lightning strikes.

A pollution free environment is inevitable requirement for healthy life, which ought to be secured as “right to life”. Plants, which are suitable for the soil texture, ecology and environment, are best to protect the environment and people of the country. Hence, the Palm and Date trees naturally grow in Bangladesh. So, these can be planted for protecting the life and environment of Bangladesh.

Considering these aspect of the matter, we are of the view that justice will be met if we direct the respondents to carry out the social forestation/plantation project in a way to make it useful for the public at large, ecological and environmental development of Bangladesh.

Accordingly, the Rule is disposed of with direction. The respondents are directed to carry out the social forestation project in a way to make it useful for the public at large, ecological and environment development of Bangladesh and to implement the plantation of forest as proposed in the letter dated 15.01.2009 (Annexure-A-2 to the writ petition) to raise the nutrition level and standard of health of the citizen of Bangladesh. The respondents are also directed to consider the recommendation made by the Petitioner No.2 in paragraph No. 07 (seven) of Supplementary Affidavit dated 01.06.2022, so far it's relate to the plantation /forestation of Date and Palm trees all over Bangladesh, within 06(six) months from the date of receipt of this order, in accordance with law, without fail.

However, there will be no order as to costs.

Communicate at once.
