IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)

WRIT PETITION NO. 4242 OF 2009

In the matter of:

Application under article 102 of the Constitution of the People's Republic of Bangladesh

And
In the matter of:

Human Rights and Peace for Bangladesh represented by its President Advocate Manzill Murshid Supreme Court of Bangladesh.

… Petitioner

-Versus-

Bangladesh, represented by the Secretary Ministry of Local Government, Rural Development and Co-operatives, Bangladesh Secretariat, Police Station-Shahabag, Dhaka and others

… Respondents

Mr. Manzill Murshid, Advocate

…. For the petitioner

Ms. Israt Jahan, DAG

…. For respondent No. 5

Heard on 17.01.2018, 01.02.2018 & 19.02.2018

And

Judgment on the 14th March, 2018

Present:

Ms. Justice Zinat Ara
And
Mr. Justice Kazi Md. Ejarul Haque Akondo

Zinat Ara, J:

On an application under article 102 of the Constitution filed by petitioner-Human Rights and Peace for Bangladesh, as a public interest litigation, a rule nisi was issued in the following terms:-
"Let a Rule Nisi issue calling upon the respondents to show cause as to why a direction should not be given upon the respondents to take appropriate steps as per the provision of section 7 of Bangladesh Environment Conservation Act 1995 (amended in 2000 and 2002) and as per 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 and why a direction should not be given to the respondents to stop illegal encroaching upon Sandha River by filling earth at Banaripara, Barisal in violation of the provision of law and/or such other or further order or orders passed as to this Court may seem fit and proper."

At the time of issuance of the rule, an ad-interim order was passed directing the parties to maintain status quo in respect of filling earth over Sandhya River at Banaripara, Barisal for a period of three months, which was, subsequently, extended till disposal of the rule.

Case of the Petitioner

Petitioner-Human Rights and Peace for Bangladesh (shortly, HRPB) is a non-profitable registered organization with the aim and objects to up-hold the rights of 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. HRPB is also working to protect environment and to take legal steps against the activities of destroying environment. HRPB receives no foreign grant or donation from any foreign country. On 18.05.2009, a report was published in the Daily Prothom Alo that the Sandhya River (shortly, Sandhya River) is being filled up by some interested quarter violating the provisions of law. It was stated in the report that though such kinds of activities are continuing, but the concerned authorities are silent and not performing their duties properly. Consequently, the aforesaid act is seriously affecting the environment as well as the cultivation of the land. In the circumstances, HRPB in the interest of the farmers of the local area, who are poor people and unable to come before the Court to establish their rights, has filed this public interest litigation (PIL) to protect the environment. 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 (shortly stated as the Ain, 2000), specifically prohibits any change in the nature of any land that has been earmarked as a natural reservoir. Sandhya River is recognized as river. But, violating all applicable laws of the country, for the benefit of some interested quarters, the respondents are going to implement a housing project by encroaching upon the river. The respondents have miserably failed to administer the relevant laws and to protect the public

interest. Due to failure to ensure proper implementation of laws, the respondents have caused severe damages to the environment and the villagers are being adversely affected to the right of life. The respondents are public servants and they are duty bound to serve the people and to perform their public duties. Inspite of the same, they are, rather, filling the earth encroaching upon Sandhya River unlawfully. The respondents failed to implement the relevant laws. Their failure resulted in damage to the environment of the area and adversely affecting the cultivation of the land of the villagers. In the circumstances, the respondents are required to be directed to protect Sandhya River in accordance with law.
In the above background, HRPB has filed this writ petition and obtained the rule.

The petitioner filed a supplementary affidavit annexing copy of the news report published in the news-paper, namely, the Daily Kaler Kantho dated 22nd May, 2014 (Annexure-2 to the supplementary affidavit) stating that respondent No. 5, the Deputy Commissioner, Barisal (shortly, the DC) has allotted fund/wheat for earth filling within the boundary of Sandhya/Krishnakati River in order to implement a project. It is evident from the report of the news-paper that the area of the river has been encroached by way of earth filling. So, it is clear that the DC has created obstruction to normal flow of the river water by way of earth filling and encroaching upon the river. The DC also took initiative to change the nature of the river land claiming it to be alluvial land in the year 2008. The Assistant Commissioner (Land) passed an order declaring the land as Nal. Therefore, action should be taken against them for such kinds of malafide activities, which is contrary to the laws of the land. The area within which the DC is going to implement an Abashan Project is within the area of Sandhya/Krishnakati River as per CS and RS Maps. So, there is no scope to occupy the area of the river in the name of a project by way of earth filling violating the laws of the land.
In the supplementary affidavit, HRPB has sought for the following directions upon the DC and other respondents:-

i) To conduct a survey over Sandah River/Krishnakati River of Barisal district and identify the territory of the river as per CS and RS Maps and prepare a list of the persons/institutions occupying the area of the river within two months.

ii) To evict /demolish /remove all structures /constructions /earth filling within the area of Sandha/Krishnakati River as per survey of CS and RS maps within three months.

iii) Rehabilitate the poor and landless people, for whom the project was initiated, to any other suitable place in the Government land situated within the Banaripara Upazila under Barisal district.

iv) To take legal steps as per section 7 of বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (shortly, the Act, 1995) and sections 5 and 8 of the Ain,

2000 against the persons liable for earth filling within the area of Sandhya/Krishnakati River of Barisal district.

v) To form a monitoring committee consisting of five members including two elected public representatives of the locality to look after the area so, that no one can encroach upon the area of Sandha/Krishnakati River of Barisal district.

vi) To take all necessary and effective steps to protect/save the original territory of all the rivers/canals situated within the area of Barisal district with the assistance of the Law Enforcing Agencies and the Department of Environment.

Case of Respondent No. 5
the Deputy Commissioner, Barisal

The news titled "বরিশালের সন্ধ্যা নদী ভরাট করে আবাসন প্রকল্প" published in the Daily Prothom Alo on 18th May, 2009 is not correct, because a part of Sandya River has been alluviated naturally. The respondents raised the land by earth filling for the purpose of making place for shelter of landless people of the locality under a project, namely, "Earth Filling of Kajlahar Abasan Project" (shortly, Kajlahar Project). By the said act of earth filling, neither the provision of the Act, 1995 nor the provision of section 5 of the Ain, 2000 has been violated. The earth from the owners of the land beside the river has not also been taken away for filling up the project area by the respondents. It is the Government policy decision to protect basic human rights of the disadvantaged citizens, who are landless and poor people of Banaripara Upazilla under Barisal district. For the said purpose, Kajlahar Project has been taken up by the Government for the welfare of the poor and landless villagers of the aforesaid area. The river Sandhya is under Plot No. 311 of Government Khas Khatian No. 1. The alluvium land is measuring an area of 11.00 acres within Mouja-Kajlahar of Upazila-Banaripara. Kajlahar Project is covering an area of 5.50 acres of land out of the said alluvium land.

In the supplementary affidavit-in-opposition, it has been stated that after publishing CS and RS maps, a long time elapsed. Meanwhile, the alluvium land arose in a part of Sandhya/Krishnakati River.

Arguments of the Contending Parties

Mr. Manzill Murshid, the learned Advocate for the petitioner, takes us through the writ petition, the supplementary affidavit, the annexures thereto and put forward the following arguments before us:-

(1) It is the responsibility of the respondents, including the DC, to protect Sandhya/Krishnakati River in view of the provisions of section 7 of the Act, 1995 and section 5 of the Ain, 2000.

(2) Under section 7 of the Act, 1995, respondent No. 2, the Director General of Paribesh Adhidaptar (shortly, the Adhidaptar) is legally bound to take steps, if any one causes any act which directly or indirectly affects the environment. But, in the instant case, the DC,

who is also legally bound to comply with all the laws of Bangladesh, violating the provisions of the aforesaid related laws, has been filling up the part of Sandhya/Krishnakati River in the name of Kajlahar Project illegally but no action is being taken by respondent No. 2.

(3) Sections 5 and 6 of the Ain, 2000 specifically prohibits change of any class of land i.e. playground, open space, Beel, river and natural reservoir. But, in the instant case, the respondents, without protecting Sandhya/Krishnakati River, are filling earth encroaching upon the land within the river boundary and thereby, creating obstacle to Sandhya/Krishnakati River, violating the provisions of section 7 of the Act, 1995 and sections 5 and 6 of the Ain, 2000.

(4) From the news-paper reports as well as the CS and RS maps produced from the office of the DC, it is evident that Kajlahar Project is being implemented by filling up earth on the river flow.

(5) As per provision of article 18A of the Constitution of the People's Republic of Bangladesh (shortly, the Constitution), the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources for the present and future generation.

(6) In the above facts and circumstances, directions should be given upon the respondents as mentioned in paragraph 7 of the supplementary affidavit to protect Sandhya/Krishnakati River.

In support of his submissions, Mr. Murshid has relied on the decisions in the following cases:-

(i) City Sugar Industries Limited and others vs Human Rights and Peace for Bangladesh and others, reported in 62 DLR (AD) 428 ; and

(ii) Human Rights and Peace for Bangladesh and others vs Bangladesh and others, reported in 29 BLD (HCD) 479.

In reply, Ms. Israt Jahan, the learned Deputy Attorney General appearing on behalf of respondent No. 5-the Deputy Commissioner, Barisal, takes us through the affidavit-in-opposition, the supplementary affidavit-in-opposition, the connected materials on record and contends that the DC has not filled up any land encroaching upon Sandhya/Krishnakati River at Banaripara, Barisal. She next contends that Kajlahar Project has been taken up by the Government for re-habilitation of landless and poor people of the area and the DC only raised the land by earth filling on the alluvium land of Sandhya/Krishnakati River.

Ms. Israt Jahan frankly concedes that the land on which the project is going to be implemented, according to both CS and RS maps, falls within the boundary of Sandhya/Krishnakati River at Banaripara area. But she adds that after long elapse of time, the said land has been alluviated and the said land belongs to the Government.

In the circumstances, she prays for discharge of the rule.

However, she fails to explain the claim of the DC that the said land is not within the area of Sandhya/Krishnakati River in relation to CS and RS maps as submitted by the DC.

Points for Determination

In view of the arguments as advanced by the learned Advocate for the petitioner and the learned Deputy Attorney General, the questions to be decided in this rule are:-

(i) whether part of Sandhya/Krishnakati River has been encroached upon and filled up by the Government functionaries (the DC and others); and

(ii)whether directions are necessary upon the respondents as sought for in this matter.

Examination of Records

We have examined the writ petition, the supplementary affidavit and annexures thereto, the affidavit-in-opposition, the supplementary affidavit-in-opposition filed by respondent No. 5, the annexures thereto and the connected materials on record. We have also carefully studied the provision of article 18A of the Constitution, the relevant provisions of section 7 of the Act, 1995 and sections 5 and 7 of the Ain, 2000 and the decisions as cited by Mr. Manzill Murshid, the learned Advocate for the petitioner.

Deliberation of the Court

The first question is whether any part of Sandhya/Krishnakati River was encroached upon and filled up by the Government functionaries (the DC) for the purpose of implementation of Kajlahar Project.

At the outset, it needs to be mentioned that the learned Advocate for the petitioner and the learned Deputy Attorney General both informed us that Sandhya and Krishnakati River is the same river, but known as Sandhya and Krishnakati at various places of Barisal district.

From the news report published in the Daily Protham Alo dated 18th May, 2009 (Annexure-A to the writ petition), it appears that the picture contained therein clearly shows the initial stage of earth filling at some places within the boundary of Sandhya/Krishnakati River , though the respondents claim that the land is alluvium land. Similarly, from the news report published in the Daily Kaler Kantho dated 25th May, 2014 (Annexure-2 to the supplementary affidavit), with the pictures of Kajlahar Project, it is apparent that in fact, some part of Sandhya/Krishnakati River was filled up by earth and there is apparent encroachment upon the river by constructing some boundaries for Kajlahar Project. These pictures have not been specifically denied by the DC. The DC has not also claimed that these pictures do not contain Kajlahar Project.

Even, if we do not rely on the reports of the news-papers with clear pictures about encroachment upon Sandhya/Krishnakati River, it transpires from the CS map of Kajhar Mouza (মৌজার প্রকাশ্য নাম কাজলাহার in the CS map) of the then Bakerganj district now Barisal district, which is produced by the DC (Annexure-2 to the supplementary affidavit-in-opposition), that entire river is shown in the CS map as a river flow without any interruption anywhere. The CS map was prepared in the year 1904-1905 as mentioned therein. Further, Sandhya/Krishnakati River is also shown in the RS map of Kajlahar Mouja under Banaripara Police Station (Annexures-3 to the supplementary affidavit-in-opposition filed by the DC) without any interruption within the river and with a continuous river flow. From this RS map, it appears that this map was prepared under the authority of the Government in the years 1940-1942 and 1943 to 1950.

Thus, it is evident that in the RS map prepared by the Government in the year 1950, there is no change in Krishnakati River. The boundary pillars are also clearly shown in this RS map.

However, an alleged RS map (Annexure-3A to the supplementary affidavit-in-opposition) has been produced from the office of the DC with some changes in the map by handwritings over the original map (prepared under the authority of the Government in the years 1940-1042 and 1945-1050). By hand, it is written as "বর্তমান নদী." But this map clearly shows that over the original RS map, these words were written by hand. But it is not the actual RS map prepared under the authority of the Government. In this map, some places were shown as "paddy filed." Part of this area is filled up by the DC on this river i.e. Sandhya/Krishnakati River.
It is a common knowledge and scenario that during dry season, when part of the river dries up, local people cultivates those places and grows paddy or other agricultural products. But in rainy season, the river gains its original shape with vast water.

Therefore, it is evident that both in the original CS and RS maps, Sandhya/Krishnakati River at Mouja Kajlahar under Banaripara Police Station was shown as a continuous river flow in the same manner. Subsequently, on the previous RS map, a deviation was shown, in hand-writing, without any preparation of fresh RS map under the authority of the Government. If the original CS and RS maps, the photographs as published in the news-papers and the RS map vide Annexure-3A are compared together, it is evident that Kajlahar Project is being implemented within the boundary of Sandhya/Krishnakati River as shown in the CS and RS maps by encroaching upon a part of the river. Therefore, it cannot be said that the question whether the project is being implemented by encroaching upon a part of Sandhya/Krishnakati River is a disputed question of fact, as the documents produced by the Government clearly support the petitioner's case about encroachment upon the river.

Further, it is also admitted in paragraph 4 of the affidavit-in-opposition filed by the DC that the respondents raised the land by earth filling with a view to make a place for landless people of the locality, which also supports the news reports published in the news-papers relating to earth filling on the part of the Sandhya/Krishnakati River by the respondents.
In view of the discussions made hereinbefore, we are of the considered view that Kajlahar Project is being implemented by encroaching upon a part within of the river boundary, according to CS and RS maps.
Now, let us study the relevant laws on the subject of encroachment upon the river, etc.

Article 18A of the Constitution of the People's Republic of Bangladesh reads as under:-

> "18A. The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens."

Article 18A has been inserted in the Constitution by the Parliament by the Constitution (Fifteenth Amendment) Act, 2011.
Thus, under the "Fundamental Principle of the State Policy" of our Constitution, it is the duty of the State to protect and improve the environment, wetlands, natural resources, which includes water, etc.

Therefore, the Government cannot implement a project violating the Fundamental Principle of the State Policy.

In such circumstances, the plea that the Government functionaries are implementing a policy decision of the Government for the poor people is not acceptable. The Government has to take a policy decision which does not violate the Fundamental Principle of the State Policy as enunciated in our Constitution as well as the laws of the land.

Section 7 of বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ reads as under:-

> "৭। **প্রতিবেশ ব্যবস্থার ক্ষতির ব্যাপারে ব্যবস্থা গ্রহণ**।- (১) মহা-পরিচালকের নিকট যদি প্রতীয়মান হয় যে, কোন ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ অথবা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠীর ক্ষতিসাধন করিয়াছে বা করেছে, তাহা হইলে তিনি উক্ত ক্ষতির পরিমাণ নির্ধারণপূর্বক উহা পরিশোধ এবং যথাযথ ক্ষেত্রে সংশোধনমূলক ব্যবস্থা গ্রহণ বা উভয় প্রকার ব্যবস্থা গ্রহণের জন্য নির্দেশ দিতে পারিবেন এবং উক্ত ব্যক্তি এইরুপ নির্দেশ পালনে বাধ্য থাকিবেন।
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> (২) উপ-ধারা (১) এর অধীনে প্রদত্ত নির্দেশ অনুসারে নির্দেশপ্রাপ্ত ব্যক্তি ক্ষতিপূরণ প্রদান না করিলে মহা-পরিচালক যথাযথ এখতিয়ারসম্পন্ন আদালতে ক্ষতিপূরণের মামলা বা উক্ত নির্দেশ পালনে ব্যর্থতার জন্য ফৌজদারী মামলা বা উভয় প্রকার মামলা দায়ের করিতে পারিবেন।
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> (৩) উপ-ধারা (১) এর অধীনে ক্ষতিপূরণ নির্ধারণের বা সংশোধনমূলক ব্যবস্থা গ্রহণের উদ্দেশ্যে যথাযথ ক্ষেত্রে যে কোন বিশেষজ্ঞ এবং অন্যান্য ব্যক্তিকে মহাপরিচালক দায়িত্ব প্রদান করিতে পারিবেন।
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> (৪) সরকার এই ধারার অধীনে যে কোন ব্যবস্থা গ্রহণ এবং তৎসম্পর্কে প্রতিবেদন দাখিলের জন্য মহাপরিচালককে নির্দেশ দিতে পারিবেন।"(Underlined by us)

Sections 5 and 6 of the **প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০** reads as under:-

"৫। **খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধারের শ্রেণী পরিবর্তনে বাধা-নিষেধ**।- এই আইনের বিধান অনুযায়ী ব্যতীত, খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার হিসাবে চিহ্নিত জায়গার শ্রেণী পরিবর্তন করা যাইবে না বা উক্তরুপ জায়গা অন্য কোনভাবে ব্যবহার করা যাইবে না বা অনুরুপ ব্যবহারের জন্য ভাড়া ইজারা বা অন্য কোনভাবে হস্তান্তর করা যাইবে না।

ব্যাখ্যা।- এই ধারার উদ্দেশ্য পূরণকল্পে, কোন উদ্যানের মৌলিক বৈশিষ্ট্য নষ্ট হয় এইরুপে উহার বৃক্ষরাজি নিধনকে উদ্যানটির শ্রেণী পরিবর্তনরুপে গণ্য করা হইবে।

৬। **জায়গার শ্রেণী পরিবর্তনের আবেদন, ইত্যাদি**।- (১) ধারা ৫-এ বর্ণিত কোন জায়গা বা জায়গার অংশবিশেষের শ্রেণী পরিবর্তন করার প্রয়োজন হইলে উক্ত জায়গার মালিক, প্রস্তাবিত পরিবর্তনের কারণ লিপিবদ্ধ করিয়া, সংশ্লিষ্ট কর্তৃপক্ষের মাধ্যমে সরকারের নিকট আবেদন করিবেন।

(২) উপ-ধারা (১) এর অধীন আবেদনপত্র প্রাপ্তির ৬০ দিনের মধ্যে কর্তৃপক্ষ আবেদনপত্রটি বিবেচনা করিয়া আবেদনাধীন জায়গার শ্রেণী পরিবর্তন জনস্বার্থে সমীচীন হইবে কিনা সেই সম্পর্কে, অন্যান্যের মধ্যে, নিম্নবর্ণিত বিষয়ের উপর সুস্পষ্ট মতামত এবং সুপারিশ সরকারে আবেদনটি সরকার বরাবরে প্রেরণ করিবে, যথাঃ-

(ক) আবেদনাধীন জায়গার শ্রেণী পরিবর্তন করা হইলে মাস্টার প্লানের উদ্দেশ্য ক্ষতিগ্রস্ত হইবে কিনা, হইলে উহার পরিমান, এবং

(খ) শ্রেণী পরিবর্তনজনিত কারণে সংশ্লিষ্ট এলাকার পরিবেশের উপর কোন ক্ষতিকর প্রভাব পরিবে কিনা বা বসবাসকারীগণের অন্য কোন প্রকার ক্ষতি হইবার সম্ভাবনা আছে কি না।

(৩) শ্রেণী পরিবর্তনের জায়গা যদি সরকারী, স্থানীয় কর্তৃপক্ষ, বিধিবদ্ধ সংস্থা বা কোম্পানীর হয় সেক্ষেত্রেও এই ধারার বিধানাবলী একইভাবে প্রযোজ্য হইবে।

(৪) উপ-ধারা (২) এর অধীন মতামত এবং সুপারিশ প্রদানের সুবিধার্থে সংশ্লিষ্ট কর্তৃপক্ষ আবেদনকারীর নিকট হইতে এতদসংশ্লিষ্ট প্রয়োজনীয় তথ্য ও দলিল চাহিতে পারিবে এবং আবেদনকারী উক্তরুপ তথ্য ও দলিল এতদুদ্দেশ্যে কর্তৃপক্ষ কর্তৃক নির্ধারিত সময়সীমা, যাহা নোটিশ প্রাপ্তির তারিখ হইতে অন্যুন ১৫ দিন হইবে, এর মধ্যে সরবরাহ করিতে বাধ্য থাকিবে।

(৫) এই ধারার অধীন কোন আবেদন গ্রহণ করা হইবে না যদি উহার সহিত নির্ধারিত ফিস কর্তৃপক্ষের বরাবরে নির্ধারিত পদ্ধতিতে জমা করার রসিদ সংযুক্ত করা না হয়।"

(Underlined to put emphasis)

Thus, under section 7 of the Act, 1995, it is the duty of the Director General of the Environment to take action against any person, whoever be it is, if such person directly or indirectly causes damage to the environment in accordance with the above quoted provisions of the laws.

Section 5 of the Ain, 2000 provides,-……প্রাকৃতিক জলাধার হিসাবে চিহ্নিত জায়গার শ্রেণী পরিবর্তন করা যাইবে না বা উক্তরুপ জায়গা অন্য কোনভাবে ব্যবহার করা যাইবে না বা অনুরুপ ব্যবহারের জন্য ভাড়া ইজারা বা অন্য কোনভাবে হস্তান্তর করা যাইবে না।"

We have already seen in the CS and RS maps that the land of Sandhya/Krishnakati River on which Kajlahar Project is going to be implemented is shown as a "প্রাকৃতিক জলাধার." River is a প্রাকৃতিক জলাধার under section 2(cha) of the Ain, 2000. Therefore, there is no scope to implement a project by encroaching upon the river boundary or to transfer it to any person.

In the case of City Sugar, the Appellate Division, considering the Act, 1995 on illegal encroachment, earth filling and temporary and permanent

structure building on the rivers Buriganga and Turag in Dhaka and the river Shitalakkhya at Narayangonj, decided as under:-

> "It appears that the High Court Division while rejecting the petitioners' applications considered the judgment and order dated 24th and 25th June, 2009 passed in Writ Petition No. 2503 of 2009 and **correctly considered the facts and circumstances of the cases for removal of all structures on the rivers in question and therefore committed no illegality in rejecting the applications.**
>
> From the notice annexure-'F' series to the writ petition it appears that the authority found the **petitioners have constructed structures on the river illegally which were ascertained in the survey of the rivers as held as per direction of the High Court** Division given in Writ Petition No. 3505 of 2009 vide order dated 21.03.2010.
>
> It is true that mandamus cannot be issued against law but fact remains that Act XXXVI of 2000 has provided for non-obstante clause in section 12(2) providing that notwithstanding any provision in any other law for the time being in force the **provisions of Act XXXVI of 2000 shall prevail and since rivers are "jaladhar" (জলাধার) within the meaning of the Ain, the law relating to Act XXXVI of 2000 must prevail over all other laws and the High Court Division rightly issued the directions in order to the save the rivers from encroachments and pollution.**
>
> We also find that **the public interest lies in protecting the rivers from encroachments and pollution by all means.** The maxim 'Salus Papuli Suprema lex' should be put in the imperative i.e. 'Salus Papuli Suprema lex esto' **let the safety of the people be the Supreme Law.**"

(Bold, emphasized)

Similarly, in the case of Human Rights and Peace for Bangladesh and others vs Bangladesh and others, reported in 29 BLD (HCD) 479, this Division, considering the provisions of Inland Water Transport Authority Rules, 1959, the Ports Act, 1908, Cadastral Survey Map (CS Map) about its presumptive value, the State Acquisition and Tenancy Act relating to alluvial and ecological condition of rivers, its banks, etc., finally observed and decided as under:-

> "এমতাবস্থায় আমরা নিম্নলিখিত ৩টি পদক্ষেপ গ্রহণ করিবার জন্য সরকারের প্রতি আহ্বান জানাইবঃ
>
> ক) বাংলাদেশের সকল নদী দখল ও দূষণমুক্তকরণ, নদীগুলির যথাযথ রক্ষণাবেক্ষণ, উন্নতি সাধন ও নৌ-পরিবহন যোগ্য হিসাবে গড়িয়া তুলিবার জন্য সংশ্লিষ্ট বিশেষজ্ঞ সহযোগে একটি 'জাতীয় নদী রক্ষা কমিশন' গঠন;
>
> খ) উক্ত নদী রক্ষা কমিশনের সুপারিশ অনুসারে বাংলাদেশের সকল নদীর উন্নতি সাধনের জন্য একটি স্বল্পকালীন (Short term) এবং দীর্ঘকালীন (Long term) পরিকল্পনা গ্রহণ;

গ) বুড়িগঙ্গা, তুরাগ, বালু ও শীতলক্ষ্যা নদীগুলির নাব্যতা আগামী ৫(পাচঁ) বৎসরের মধ্যে ফিরাইয়া আনিবার জন্য প্রয়োজনীয় এবং কার্যকরী তড়িৎ পদক্ষেপ গ্রহণ।

এ প্রসঙ্গে উল্লেখ্য যে পৃথিবীর প্রধান ও সুন্দর মহানগরীগুলি নদী পার্শ্বে অবস্থিত। যেমন, লন্ডন শহর টেম্‌স নদী, নিউইয়র্ক শহর হাড্‌সন নদী, প্যারিস শহর সীন নদীর পার্শ্বে অবস্থিত। দানিউব নদীর পার্শ্বে তিন তিনটি রাজধানী অবস্থিত। উক্ত নয়নাভিরাম নদীগুলি ও ইহার স্ফটিক সদৃশ পানি রক্ষনার্থে সেইসব দেশের জনগণ ও সরকার সদা সচেষ্ট। ঢাকা মহানগরীর চতুর্পার্শ্বে একটি নয় সাতটি নদী অবস্থিত। কয়েক বৎসর পূর্বেও এইগুলিও স্রোতস্বিনী প্রবাহমান নদীই ছিল কিন্তু এখন এইগুলোকে আর নদী বলা যায় না। উপরে বর্ণিত টেম্‌স ও অন্যান্য নয়নাভিরাম নদীগুলি ইহার পার্শ্বে অবস্থিত দেশ ও জাতিগুলির সভ্যতার উৎকর্ষতার নিদর্শনও বটে। ইহার বিপরীতে বুড়িগঙ্গা ও অন্যান্য নদীর আলকাত্‌রা সদৃশ পানি বাংলাদেশ সভ্যতার উদাহরণ।

উপরে প্রদত্ত নির্দেশাবলী সংক্ষেপে নিম্নরূপঃ

ক) সিএস ও আরএস ম্যাপ অনুসারে আগামী ৩০.১১.২০০৯ তারিখের মধ্যে সংশ্লিষ্ট নদীগুলির সীমানা জরিপ কাজ সম্পন্ন;

খ) ৩০.১১.২০০৯ তারিখের মধ্যে সংশ্লিষ্ট নদীগুলিকে প্রতিবেশগত সংকটাপন্ন এলাকা (Ecologically Critical Area);

গ) ঘোষনা এবং পরবর্তী ৬ (ছয়) মাসের মধ্যে নদীগুলি রক্ষায় প্রয়োজনীয় নির্দেশিকা প্রণয়ন;

ঘ) ৩০-১১-২০১০ তারিখের মধ্যে সীমানা পিলার স্থাপন এবং নদী-সীমানায় Walk-way/Pavement নির্মাণ বা বৃক্ষরোপন করণ;

ঙ) ৩০-১১-২০১০ তারিখের মধ্যে নদীগুলির অভ্যন্তরে অবস্থিত সকল প্রকার স্থাপনা অপসারণ;

চ) আগামী ৩(তিন) মাসের মধ্যে একটি ‘জাতীয় নদী-রক্ষা কমিশন’ গঠন;

ছ) আগামী ২(দুই) বৎসরের মধ্যে মহানগরীর চর্তুপার্শ্বের ৪ (চার) টি নদী খনন এবং পলিথিন ব্যাগসহ অন্যান্য বর্জ্য ও পলি অপসারণ;

জ) সংশ্লিষ্ট কর্তৃপক্ষ অনতিবিলম্বে সংশ্লিষ্ট আদালতে পরিবেশ সংক্রান্ত বিচারাধীন মোকাদ্দমা নিস্পত্তির জন্য প্রয়োজনীয় পদক্ষেপ গ্রহন করিবেন;

ঝ) আগামী ২(দুই) বৎসরের মধ্যে ঢাকাস্থ বাকল্যান্ড বাঁধসহ নদী তীরস্থ সকল সরকারী ভূমি হইতে দোকানপাট ও অন্যান্য স্থাপনা অপসারণ করিতে হইবে;

ঞ) আগামী ৫(পাঁচ) বৎসর সময়কালের মধ্যে যমুনা-ধলেশ্বরী, ধলেশ্বরী-বুড়িগঙ্গা, পুরাতন ব্রক্ষ্মপুত্র-বংশী, বংশী-তুরাগ, যমুনা-পুংলীখাল, তুরাগ ও টঙ্গী খাল খনন।

এই সুজলা-সুফলা শস্য-শ্যামলা বাংলাদেশের ভবিষ্যৎ নদীগুলির নাব্যতার উপর নির্ভরশীল। অন্যথায় আমাদের সকল উন্নয়ন পরিকল্পনা ব্যর্থতায় পর্যবসিত হইবার সমূহ সম্ভাবনা থাকিবে।

এমতাবস্থায়, সকল প্রতিবাদীর উপরে নির্দেশিত বিভিন্ন পদক্ষেপ অত্র রায়ের কপি পাইবার পরপরই কার্য আরম্ভ করিবার জন্য নির্দেশ প্রদান করা হইল।
এমতাবস্থায়, অত্র রুলটি খরচা ব্যতিরেকে এ্যাব্‌সলিউট্‌ করা হইল।

এই রীট মোকাদ্দমাটি continuing mandamus হিসাবে অব্যাহত থাকিবে।”

(underlining by us)

Considering the facts and circumstances of the aforesaid cases reported in 62 DLR (AD) 435 and 29 BLD (HCD) 479, we are of the view that the principles settled in those cases are squarely applicable in the facts and circumstances of this case.

Before parting with the judgment, we would like to add a few words on water, lives and natural resources of water.

Water is the sole essence of life. Without drinking water/sweet water, homo sapience i.e. human being cannot survive. Water is also an integral part of human life for agriculture, farming, cleaning, bathing, etc. River is the principal natural source of sweet water. So, from time immemorial, all the civilizations of the world grew up on the banks of various rivers. Similarly, the main cities of our country are also situated on the banks of different rivers i.e. Dhaka is situated on the bank of the River Buriganga, Chittagong on the bank of the River Karnaphooli, Rajshahi on the bank of the River Padma, Khulna on the bank of the River Rupsha, Sylhet on the bank of the River Surma and Barisal on the bank of the River Kirtankhola. Sandha/Krisnakathi, river is also situated within Barishal.

Right to life means right to water, clean air, food, etc. Therefore, to save human life for the present and also for the future generation, the principal source of natural water i.e. the rivers must be protected at all costs. Otherwise, the environment would be destroyed. Where water flow of the river was obstructed or/and diverted by making embankment upon a river, it resulted in transforming a vast area as a desert causing endless/immense suffering to the people of such area.

In our country, perhaps, the rivers Buriganga, Turag, Shitalakkhya and some other rivers would have been non existent unless judgments were passed by both the Divisions of the Supreme Court to protect all the rivers of the country as discussed hereinbefore.

Therefore, it is not only the duty of the Deputy Commissioner of a district, the Department of Environment and other concerned authorities but of all the citizens of the country to protect and preserve the natural source of water like river, etc. from any encroachment upon the rivers as well as prevent pollution of water of the rivers.

In the instant case, from the documents produced by the petitioner and the DC (respondent No. 5), specially, the CS and RS maps, it is evident that Kajlahar Project is being implemented by encroaching upon a part of Sandhya/Krishnakati River. Therefore, directions should be given upon the respondents in the light of the judgments discussed hereinbefore.

However, we are of the view that the Government must implement the project for rehabilitation of the landless people to some other Government land outside the boundary of the river as shown in the original CS and RS maps.

In such view of the matter, we find merit and force in the submissions of Mr. Manzill Murshid and we find no merit in the submission of Ms. Israt Jahan.

In view of the discussions made in the foregoing paragraphs, vis-à-vis the law, directions need to be given upon the respondents to remove the obstacles created by the Government functionaries and also to take necessary steps for preservation and protection of the river Sandhya/Krishnakati in the following manner:-

i) To conduct and complete survey over Sandah/Krishnakati River of Barisal district and identify the boundary of the river as per CS and RS maps within 31.05.2018.

ii) To construct/install pillars on the boundaries of the river upon demarcating and identifying the same.

iii) To prepare a list of persons/institutions who are in occupation of any land within the boundaries of the river within 31.06.2018.

iv) To remove the earth filled by the DC from Kajlahar Project within 31.06.2018.

v) Respondent No. 5 to rehabilitate the poor and landless people for whom the project was initiated to any other suitable land of the Government situated within Barisal district.

vi) To remove all structures/constructions/filled earth from the area of Sandhya/Krishnakati River as per survey in accordance with CS and RS maps within four months from date.

vii) To take legal steps as per section 7 of the Act, 1995 and sections 5 and 8 of প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০ against the persons liable for earth filling within the area of Sandha/Krishnakati River of Barisal district.

viii) To form a monitoring committee consisting of five members, one renowned water resource expart, one from the Professors of Water Resource Department of BUET, one from the office of the Deputy Commissioner, Barisal, one from the Department of Environment and one from the Land Record & Survey Department to look after Sandha/Krishnakati River of Barisal district so that no one can encroach upon the aforesaid river or its boundary areas as per original CS and RS maps.

ix) Respondent No. 5 to take all necessary and effective steps to protect/save the original territory of all rivers/canals situated within the area of Barisal district with the assistance of Law Enforcing Agencies and the Department of Environment.

x) Jatiyo Nadi Rakkhya Commission is to ensure protection of Sandhya/Krishnakati River."

All the respondents are directed to take necessary steps immediately upon receiving copy of the Judgment.
The rule is made absolute with the above directions.
This writ petition shall continue as a continuous Mandamus.
Communicate copies of the judgment to the respondents and the Chairman of Jatiyo Nadi Rakkhya Commission as well as the Ministry of Land.
