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

WRIT PETITION NO. 2896 OF 2009.

IN THE MATTER OF:

An application under Article 102 read with 44 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, Advocate Asaduzzaman Siddique, Hall No.2 Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

2. Ataur Rahman son of late Ali Hossain Matbar, of village Vakurta, Saver, Dhaka.

.....Petitioners.

-VERSUS-

1. Bangladesh, represented by the Secretary, Ministry of Local Government and Rural Development, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Shaabag, Dhaka , Bangladesh.

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

3. The Executive Engineer, Local Government and Engineering Department, Office of the Executive Engineer, District- Dhaka, 62, West Agargon, Dhaka-1207, Bangladesh.

4. The Superintending Engineer, Dhaka, Region, 62 West Agargan, Dhaka- 1207, Bangladesh.

5. The Upazila Engineer, LGED Office, Savar, P.S.-Savar, District- Dhaka.

6. The Deputy Commissioner, Dhaka, Office of the Deputy Commissioner, Collectorate Building, Johnson Road, District- Dhaka.

7. Upazila Nirbahi Officer (TNO), Savar, District-Dhaka.

8. The Officer in Charge, Savar Thana, District-Dhaka.

9. The project Director, Union Road & others Infrastructure Development Project, LGED, LGED Bhaban, Agargaon, Sher-E-Bangla Nagar, Dhaka.

----- Respondents.

AND

IN THE MATTER OF :

For a direction 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 **gmbMix wfWq kni** I **tRjv kn‡ii tcš GjWum f tki mKj tcš GjWu tLju gW** Db**F tb**, D``b Ges c**WZ**K **Rjvni msiTY AvBb**, 2000,

AND

For a direction o stop illegal earth filling over the cannal Chaira Mogorkanda within C.S. Dag No. 2494, 1769 and C.S Dag No. 2256 & 2235 at Vakurta, Savar, Which is continuing violating the provision of law.

GROUNDS

I. 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 villagers are adversely affecting to the right to life. Under these circumstance the respondents are legally bound to protect the sub flood flow zone/canal at Vakurta at Savar, in accordance with law.

II. 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 way of violating the provision o law the earth filling up is continuing in Chaira Mogorkanda cannel, which is illegal. Hence direction may be given upon the respondents to stop earth filling over the Vakurta, Savar.

III. For that the respondent are the public servants and they are duty bound at all time to serve the people and to perform the public duties. But they have failed to do their duty because no steps has been taken in step of earth filling over canal is continuing.

IV. For that the environment is being continuously endangered and threatened by various unplanned and illegal activities such as filling up the canal and sub flood flow zone. The unplanned and unauthorized filling up the canal in and around the Dhaka City are main causes for environmental degradation. Taking advantage of the silence of the concern authority, The illegal earth filling is continuing over the canal and resulting environmental is destroying.

V. For that according to the Master Plan, any unauthorized interference with the flood plains/sub flood flow zones will have devastating environmental effect and

hence the said Plan in clear terms prohibited raising the level of land through land filling in the flood flow zones/sub flood flow zones. According to the Master Plan the flood plain areas should be enabled to function properly as flood plains/sub flood flow zones and maintain them basic rural nature.

VI. For that under Section 5 of the **gmbMix wfWlq kni I tRjvkntii tcŠ GjtKvm f tki nKj tcŠ GjtKvi tLjvi gJ/DbF ~tb, D```b Ges cKvZK Rjvavi msi fly AvBb, 2000,** also prohibits change of the nature of any land that has been earmarked as a nature reservoir including flood flow zones. 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 violation of law the respondents are not taking appropriate action.

VII. For that earth filling up over the canal at Vakurta and in sub flood flow zone near Amin Bazar is contrary to all applicable laws of the country regarding urban development planning and environmental protection. Moreover the filling up the Canal will create obstruction to the normal water flow in the rainy season, consequently total area could be flood affected. The respondents are proceeding with the implementation of a road construction Project callously flouting all legal requirements and protect public interest and as such the project and earth filling is liable to be declared unauthorized.

VIII. For that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the environment of the area and adversely affecting the cultivation of the land of the villagers and as such the respondents are required to be directed to protect the sub flood flow zone and canal in accordance with law.

IX. For that the non-implementation of the laws by the respondents undermine rule of law and jeopardize peoples fundamental right as guaranteed under Article 31 of the Constitution of Bangladesh.

Wherefore, it is most humbly prayed that Your Lordships would graciously be pleased to;-

(A) A Rule Nisi calling upon the Respondents to show cause as to why a direction should not be given upon the respondents to take appropriate steps s per the provision of section 7 Bangladesh Environment Conservation Act, 1995 (amended in 2000 and 2002), and as per section 5 of the gmbNix wfWq kni I tRjv kntii tcš GjuKum f tki mKj tcš GjuKui tLjui gW DbF ⁻b, D⁻ b Ges cKuZK Rjuai msi¶Y ABb, 2000, and why a direction should not be given upon the respondents to stop illegal earth filling over the canal Chaira Mogorkanda within C.S Dag No. 2494, 1769 and C.S. Dag No. 2256 & 2235 at Vakurta, savar, which is continuing violating the provision of law.

(B) Direct the respondents to maintain statuesque in respect of earth over the canal Chaira Mogorkanda

within C.S Dag No. 2494, 1769 and C.S. Dag No. 2256 & 2235 at Vakurta, savar,.

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.
