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

WRIT PETITION NO. 891 OF 1994

IN THE MATTER OF:
An application under Article 102(1) and (2) of the Constitution of the People's Republic of Bangladesh.

- AND -

IN THE MATTER OF:
Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association (BELA) being dead Ms. Syeda Rizwana Hasan, Director (Program), representing Bangladesh Environmental Lawyers Association (BELA).

... Petitioner

- VERSUS -

Bangladesh and others

... Respondents.

Ms. Syeda Rizwana Hasan with
Mr. Md. Iqbal Kabir, Advocate

... For the Petitioner

Mr. Md. Zahirul Islam Mukul, A.A.G.

... For the Respondents.

Heard on: The 17th & 25th June & 15th July, 2001

Judgment on: The 15th July, 2001.

Present:

Mr. Justice Md. Joynul Abedin

And

Mr. Justice A.B.M. Khairul Haque.

A.B.M. Khairul Haque, J: This rule was issued at the instance of late Dr. Mohiuddin Farooque, the then Secretary General of Bangladesh Environmental Lawyers Association (BELA for short), an association registered under the Societies Registration Act, 1860, bearing registration No. 1457(17) dated 18-2-1992. Dr. Farooque, by a resolution of the execution committee of BELA dated 30-5-1994, was authorized to represent the said association, to move the High Court Division of the Supreme Court of Bangladesh, under Article 102 of the Constitution of Bangladesh, praying for appropriate relief relating to the matter of control of pollution from industries/factories situated up and down the country.

BELA has been registered as an association under the Societies Registration Act, 1860, with the aims and objects, inter alia, to organize and undertake legal of administrative actions and measures to protect, preserve, conserve or reinstate environmental and ecological systems, to protect environmentally sensitive and fragile eco-systems including protection of vulnerable groups, to protect biological diversity, to take measures on environmental or ecological issues regarding development activities. BELA has been active in the field of environment, ecology and related horizon of public interests since 1991 even before its formal registration as an association. Since its formation in 1992, it undertook detailed studies on environment and ecology and its wide-spread contributions in these fields earned its reputation and recognition both at home and abroad.

This rule was issued calling upon the Government of Bangladesh represented by the Secretary, Ministry of Industries and others to show cause as to why a direction should not be given to implement the decision of the Government dated 5th June, 1986, published in the Bangladesh gazette on 7th August, 1986 (Annexure-C to the petition).

This part of the world, which is now known as Bangladesh, had always been predominantly and agricultural based country and in early days pollution was never even felt in this region. Since early sixties, of necessity, industries of various kinds started to spring up slowly. Although in those days the questions of pollution did not cross any bodies mind but certain provision were made in the factories Act, 1965 (Act No. IV of 1965) rather as a precautionary measure against possible industrial accidents than as a deterrent to any threat of pollution. Chapter III provides for health and hygiene in a factory. Section 13 under the said

chapter provides for disposal of wastes and effluents. Rule 13 of the Factories Rules, 1979 provides for similar provision. Subsequently, East Pakistan Water Pollution Control Ordinance, 1970 (Ordinance V of 1970) was promulgated to provide for the control, prevention and abatement of pollution of waters in the then East Pakistan. Section 2 of the said Ordinance defined the works "pollution" and "wastes" among others, in the following manner:

> "2. .....
> (a) .....
> (e) "pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters, including change in temperature, taste, colour, turbidity, or colour of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;
> .....
> .....
>
> (h) “wastes” mean sanitary sewage, industrial discharges and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters.

After liberation of Bangladesh, this Ordinance was repealed and replaced by the Environment Pollution Control Ordinance, 1977 (Ordinance No. XIII of 1977) (Ordinance in short), to provide for the control, prevention and abatement of pollution of the environment of Bangladesh. Section 2 of the said Ordinance defines the word “environment”, among others, as follows:

> “2 .....
>
> (a) .....
>
> (f) “environment” means the surroundings consisting of air, water, soil, food, and shelter which can support or influence the growth of life of an individual or group of individuals, including all kinds of flora and fauna.

The said ordinance envisages constitution of a board, namely, the Environment Pollution Control Board. Section 5 of the Ordinance provides for the function of

the Board. Besides, there was an implementation cell, headed by a Director, for the purpose of implementation of the policies of the Board and the projects, approved by the Government.

It appears that in due course, a survey was conducted by the Department of Environment Pollution Control. They found that ecological imbalance is being caused continuously due to discharge of various industrial wastes into air and water bodies. They also found that the intensity of pollution caused by the factories and industrial units depend on their type, location, raw materials, chemical effects, production process and discharge of gaseous, liquid and solid pollutants to the natural environment. After the survey, the respondent No. 2 by a notification bearing number EPC/8.1/4c-1/85/419 dated 5-6-1986, published in the Bangladesh Gazette on 7th August, 1986 specified the names and address of the 903 industries and factories as polluters which were classified as follows:

" (a) Tanneries (176 Nos.)

(b) Paper and Pulp Industries (5 Nos.)

(c) Sugar Mills (16 Nos.)

(d) Distilleries (3 Nos.)

(e) Iron and Steel Mills (57 Nos.)

(f) Textile industries (298 Nos.)

(g) Fertiliser industries (5 Nos.)

(h) Insecticide and pesticide industries (25 Nos.)

(i) Chemical industries (23 Nos.)

(j) Jute industries (92 Nos.)

(k) Cement factories (3 Nos.)

(l) Rubber and Plastic Industries (34 Nos.)

(m) Pharmaceutical Industries (166 Nos.)"

The said notification also mentions that the Government, in order to combat the adverse effects of pollution caused by the industries/factories, took the following decisions:

" 2 .....

(a) The Ministry of Industries will ensure that the industries having no environmental pollution control/protection system will adopt measures to control pollution over a period of next three years.

(b) While sanctioning a new industrial unit the Ministry of Industries will ensure that necessary environmental pollution control/protection measures are adopted by it."

The decision of the Government also requires that the Department of Environment Pollution Control, which is represented by the respondent Nos. 4 and 5 would render necessary co-operation to the Ministry of Industries in implementing the above decisions.

The grievance of the petitioner BELA, in this writ petition is that it made several investigations up and down the country to assess the improvement, if any, made in the ecology of the country by lessening the adverse effects of pollution caused by the huge number of industries/factories identified by the Government itself and specifically pointed out in the notification dated 7.8.1986 (Annexure-C to the petition) but in its utter dismay found no evidence as to any effective measure of legal action taken against any of the 903 industries/factories to curb their continuing discharge of the affluent and wastes into air and water bodies, rather, such pollution is being continued unabated, uncontrolled and indiscriminately, not only by those industries/factories identified by the Government as mentioned in the list published in the Gazette notification dated 7.8 1986 but in many a new industries/factories sprung up since then and are severely polluting the environment and ecology endangering life and its support systems, thereby the respondents failed in performing their statutory duties and obligations cast upon them by the provisions of the Ordinance. As such, being aggrieved Late Dr. Mohiuddin Farooque on behalf of BELA obtained the instant rule. But he died during the pendency of the rule and Ms. Syeda Rizwana Hasan, Director (Program), BELA, has been authorized, by a resolution of the executive committee of BELA, taken on 30.6.2001, to represent BELA in the instant writ petition.

Ms. Syeda Rizwana Hasan, Director (Program) of BELA and also an Advocate of this Court, appears with Mr. M. Iqbal Kabir, Advocate, in support of the rule, while Mr. Md. Zahurul Islam Mukul, Assistant Attorney General, appears on behalf of the respondents.

This writ petition is in the nature of public interest litigation, as such, the first question comes up for consideration is as to the locus standi of BELA in maintaining this application as an aggrieved person under Article 102 of the Constitution of the People's Republic of Bangladesh.

In this case, any individual member of members of BELA do not claim to have been directly or specially effected by the toxic pollutants caused by the discharged of affluent and wastes, rather, the petitioner claims that the beneficiaries of this writ petition are the people, the inhabitants of this country and not simply the members of BELA. BELA as a registered association of lawyers, propagates the rights of the people of Bangladesh and champions their cause to enjoy their own life, free from pollution as bestowed upon them by the Lord in His unbounded mercy. From the narration of the writ petition it appears that BELA is directly involved since its inception for the preservation of the environment from the ill effects of ecological imbalance created by the senseless as well as reckless creation of environment hazards in violation of different legal provisions enacted in this regard and since BELA is trying to uphold the right to life as a fundamental right to the millions of people of Bangladesh as enshrined in Article 32 of the Constitution, it comes within the expression 'person aggrieved' appearing in Article 102 of the Constitution and has locus standi to maintain the present petition. In this connection it would be illuminating to quote Mustafa Kamal, J (as his Lord-ship then was) in the case Dr. Mohiuddin Farooque Vs. Bangladesh 49 DLR (AD) (1997)1 where the question of locus standi of BELA itself was considered in details. Mustafa Kamal, J held as follows :

> "..... it is obvious that the association-appellant as an environmental association of lawyers is a person aggrieved, because the cause it espouses, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject matter of public concern and it appears, on the face of the writ petition itself, that it has devoted its time, energy and resources to the alleged-ill effects of FAP-20 it is acting bona fide and that it does not seek to serve an oblique purpose. It has taken great pains to establish that it is not a busybody. Subject to what emerges after the respondents state their cause at the hearing of the writ petition the appellant cannot be denied entry at the threshold stage on the averments made in the writ petition" (Para-52).

The importance of public interest litigation had already been settled in various judgment of the superior Courts in our neighboring country India. While considering the observance of the provisions of various labour laws in relation to

workmen employed in the construction works, Bhagwati, J. (as his Lordship then was) forcefully propounded the legal position almost 20 (twenty) years back in this manner in the case of People's Union for Democratic Rights Vs. Union of India, 1982 SC 1473:

> ".... Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violation of constitution or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredrssed. That would be destructive of the Rule of Law, which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that law should be allowed to be prostitute by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor to have civil and political rights and the Rule of Law is meant for them also, though today it exists only on paper and not in reality." (Para-2).

Under such circumstances, we have no hesitation to hold that BELA being registered as an association with the aims and objects, inter alia, to undertake legal action to protect, preserve and reinstate environmental and ecological systems and since it profoundly active and vocal in this field public interest, it comes within the expression 'person aggrieved' under Article 102 of the Constitution.

During the hearing of the rule, a supplementary affidavit was filed on behalf of the petitioner on 15-07-2001, highlighting the legal and other developments in this field since issuance of the rule in 1994.

Ms. Syeda Rizwana Hasan, the learned advocate, submits that their investigations show that although the Government by a survey, itself identified the factories and industrial units creating ecological imbalance due to discharge of various industrial wastes into air and water bodies and published a notification on 7-8-1986 (Annexure-C) showing the types of factories polluting the environment but in violation of their declared statutory obligations failed to implement their own decisions taken and narrated in clause 2 of the Gazette notification dated 7-8-1986. She refers in this connection to the reply dated 11-7-1994 (Annexure-H) issued by Bangladesh Chemical Industries Corporation (BCIC for short) which

encloses a report bearing the heading "Environmental Management in BCIC". Besides, she refers to a number of news paper clippings (Annexure-D) series) showing continuous deteriorating environmental pollution in Bangladesh. She also refers to the new list prepared b the Department of Environment (Annexure-I). This new list, she submits, identified a total number of 1176 industries/factories up and down the country as polluters which only shows that the number of polluting industries/ factories are on the increase highlighting total failure to curb the ill effects of pollution in the country by the respondents. As such, she prays that the respondents should be directed to implement the declared policy of the Government made as far back as in 1986 in the Gazette Notification published on 7-4-1986 (Annexure-C) in the light of 'বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (Act No. 1 of 1995) Bangladesh Paribesh Songrakhkhan Ain) (Act for short), a new enactment for the preservation of environment in Bangladesh.

On behalf of the respondents, Mr. Md. Zahurul Islam, Assistant Attorney General files an affidavit in opposition.

After a historic war of liberation, the people of Bangladesh, established an independent and sovereign country of their own and through their Constituent Assembly gave themselves a Constitution. Any easy way to understand and appreciate the provisions of the Constitution is to look at its preamble. Paragraph 3 of the preamble reads as follows:

> " ..... Pledging that it shall be a fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens."

This paragraph of the preamble glorified the pledge of the nation to establish a society in which the rule of law, fundamental human rights and freedom, among others, will be secured for all citizen.

Part III of the Constitution enshrines the basic right of the people under the heading "Fundamental Rights'. This chapter contains Article 26 to Article 47A, Article 26 declares that the laws inconsistent with the fundamental right to life and personal liberty, Article 32 read as follows:

> "32. No person shall be deprived of life or personal liberty save in accordance with law."

This declaration in the Constitution is not mere empty words. These guarantees are of fundamental in nature, bestowed upon the people of Bangladesh by its Constitution. The expression life enshrined in Article 32 includes everything which is necessary to make it meaningful and a life worth living, such as, among others maintenance of health is of utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the life of the citizen at naught. Naturally, if the lives of the inhabitants living around the concerned factories are in jeopardy, the application of Article 32 becomes inevitable because not only a right to life but a meaningful life is an inalienable fundamental right of a citizens of this country.

In India, the first break through of importance in this regard came in the case of Rural Litigation And Entitlement Kendra V. State of UP AIR 1985 SC 652, popularly known as Doon Valley Case. The Dehradum Valley in India is surrounded in one side by the Himalayan range and the Ganges and Yamuna rivers in the other, has been an exquisite region but because of uncontrolled quarrying of limestone, its landscape lost its former beauty. In this case a letter received from the Rural Litigation and Entitlement Kendra, Dehradum, was treated as writ petition and the Supreme Court by its Judgment and Order dated 12th March, 1985, AIR SC 652, directed closing down the mines of 'A' category located within the municipal limits of Mussoorie and in doing so held as follows in paragraph 6:

> " This environmental disturbance has however to be weighed in the balance against the need of lime stone quarrying for industrial purposes in the country and we have taken this aspect into account while making this order."

In the aforesaid Doon Valley Case, several committees were appointed and their reports and schemes were considered by the Supreme Court and further directions were given from time to time. However, in the subsequent Judgment reported in AIR 1987 SC 359, considering the questions as to whether the mine leases can be allowed to carry on mining operations without in any way adversely affecting environment or ecological balance or causing hazard to individuals, cattle and agricultural lands, the Supreme Court of India answered as follows:

> "17 ..... It is for the Government and the Nation and not for the Court, to decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied.

18. Government both at the Center and in the State-must realize and remain cognizant of the fact that the stake involved in the matter is large and far reaching. The evil consequences would be last long. Once that unwanted situation sets in, amends or repairs would not be possible. The greenery of India, as some doubt, may perish and the Thar desert may expand its limits.

19. ..... We are not oblivious of the fact that natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way there may not be any depletion of water resources and long term planning must be undertaking to keep up the national wealth. It has always to be remembered that these are permanent assets of man kind and are not intended to be exhausted in one generation."
(Ranganth Misra,J.)

In the back up drop of this legal position, let us now consider the grievance of BELA raised on behalf of the inhabitants of Bangladesh. There is no doubt that the Government of the day was not in total oblivion of the problem of environmental pollution in Bangladesh and although slowly but they took the initiative to enact The Environment Pollution Control Ordinance, 1977. This Ordinance envisages an Environment Pollution Control Board and also appointment of a Director who shall be the executive head of the implementation cell created for the purpose of executing the policies of the Board.

In due course, it was under taken by the Department of Environment, Pollution Control. The said survey identified the types of factories polluting the environment and those factories and industrial units were also classified into 13 (Thirteen) classes, numbering in total 903 factories and industrial units. The classification with the list of factories and industrial units identified by the Government as polluting the environment was published in Bangladesh Gazette on 7-8-1986 (Annexure-C). On a further survey till the last one, the Department of environment, identified a total number of 1176 factories and industrial units polluting the environment (Annexure-I to the Supplementary Affidavit).

Meanwhile, the Act of 1995 replaced the earlier Ordinance. The Act establishes the Directorate of Environment which is headed by a Director General (মহাপরিচালক). Section 4 of the Act narrates the powers and functions of the Director General.

It appears that Sub-section 1 of Section 4 authorizes the Director General to take all such steps as may be deemed expedient and necessary for the conservation of environment, improvement of environmental standard and control and mitigation of pollution of environment and may give necessary directions in writing to any person for performing his duties under the Act. Sub-section 2(d) entitles the Director General to give advice or direction as the case may be to any person in respect of any dangerous materials and the use, preservation, transportation, export and import of any dangerous materials and or its ingredients. Sub-section 2(e) empowers him to examine any place, premises, plants, equipments, manufacturing or other processes, ingredients or substances for the purpose of improvement of environment and control and mitigation of pollution and may give orders or directions to appropriate authority or person for the prevention, control and mitigation of the environmental pollution. Under sub-section 3, directions may also be issued providing for the closure, prohibition or regulations of any industry, or process and the concerned person shall be bound to comply with such directions.

Section 7 of the Act contemplates the remedial measures if the eco-system is threatened. This provision stipulates that if it appears to the Director General that certain activity is causing damage of the eco-system whether directly or indirectly, he may, after assessing the extent of damage, direct the person responsible for taking appropriate corrective measures and such person shall be bound to comply with such directions.

Section 9 prohibits the discharge of excessive environmental pollution from all sources including the commercial and industrial enterprise.

Sub-section 1 of Section 9 envisages that where the discharge of any environmental pollution occurs in excess of the limit prescribed by any rule, or is likely to occur due to any accident or other unforced seen act or event, the person responsible for such acts or the person in charge of the place at which such discharge occurs, shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge. Sub-section 3 requires that on receipt of information under this section in respect of any incident of accident contemplated under this rule, the Director General shall, as soon as possible, initiate necessary remedial measures to prevent or mitigate the environmental pollution and such person shall be bound to render all assistance to the Director General as may be required by him. Sub-section 4 empowers the Director General to recover the expenses as public demand incurred in respect to such remedial

measures to control and mitigate the environmental pollution contemplated under this provision.

Subsequently, the Government in exercise of its rule making power conferred by Section 20 of the Act, promulgated the Environment Conservation Rules, 1997 (Rules for short). The Rules lay down the procedure for achieving the objectives provided for in the Act. Rule 7 describe the procedure for obtaining environmental clearance and also classifies the industrial units and projects into three broad categories depending on the possible degree of risk of pollution involved such as Green, Orange Ka, Orange-Kha and Red.

The industrial units and project which have very little pollution impact on the environment as classified as Green while those are environmentally hazardous are classified as Orange-ka, Orange-kha and the dangerous ones are classified as Red. These four categories of industrial units and projects are mentioned in Schedule I to the Rules, Schedule 2, 3, 4 and 8 has set the standard for air, water, noise, odour respectively. Schedules 10, 11, 12 of the Rules have also prescribed the emission standard limits of various liquid, gaseous, solid-wastes. The provisions of the Act and the Rules require that these standard limits have to be adhered to by the concerned industrial units and projects.

The grievance of BELA it appears is that in spite of all these provisions made in the Act and also in the Rules there is hardly any improvement in curbing and reducing the hazardous industrial pollution rather, the reports (Annexure-I) prepared by the Directorate of Environment itself shows that the number of industrial units and projects causing environmental pollution is on the increase all over Bangladesh. The papers annexed with the petition and the subsequent Supplementary Affidavit is not denied by the respondents.

The learned Assistant Attorney General appearing on behalf of the respondents No. 3 is vague in his submissions. He submits that the Government is taking all possible measures to reduce the environmental pollution but failed to elaborate as to what concrete measures are taken in this respect by the Government and more specifically by the Directorate of Environment. An Affidavit-in-opposition is filed on behalf of the Ministry of Environment and Forest, the respondent No. 3. The facts stated in the said Affidavit is equally vague do not deny the allegations of unresponsiveness on the part of the officials in implementing the letters of the law and the decisions of the Government taken in this regard and published in the Bangladesh Gazette as far back as on 7-4-1986 (Annexure-C), not to speak of the legislative intents so solemnly glorified in the Act of 1995 and the Rules made there under in 1997.

In this connection, it is worthwhile to refer to the Constitutional provision ensuring public health and morality. Article 18(1) reads as follows:

> "18(1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law of alcoholic and other intoxicating drinks and of drugs which are injurious to health" (under-linings are mine).

The Constitution also commands the duties of the citizens and of public servants in no uncertain terms. Article "21 reads as follows:

> "21 (I) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.
>
> (2) Every person in the service of the Republic has a duty to strive at all times to serve the people." (under-linings are mine).

But inspite of the Constitutional commands and the provisions of the Act and the Rules, the hiatus remained as before between the letters of law and the implementation thereof in the field of environmental pollution due to unresponsive of the apathetic concerned officials, indifferent to the Constitutional edicts so solemnly declared in Article 18 and Article 32.

The oath of office of the Judges of the Supreme Court requires that they will preserve, protect and defend the Constitution and the laws of Bangladesh. These are not mere ornamental empty words. These glorifying words of oath eulogizes the supremacy of judiciary. It is by now well settled that if the Government or its functionaries fails to act and perform its duties cast upon them by the laws of this Republic, the High Court Division of the Supreme Court, shall not remain a silent spectator to the inertness of the part of the Government or its officials, rather, in order to vindicate its oath of office can issue, in its discretion, necessary orders and directions, under Article 102 of the Constitution to carry out the intents and purpose of any law to its letter, in the interest of the people of Bangladesh because all powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of the Constitution.

In this connection let us consider certain decisions of the superior Courts in India. In Doon Valley case discussed earlier, the Supreme Court of India for the first time, in exercise of its epistolary jurisdiction, ordered closing down of lime-stone quarries, in order to preserve the ecological balance in Mussorie Hill range and also on account of hazards to public health.

In the case of Mr. M. C. Mehta V. Union of India AIR 1987 SC 1086, Oleum gas leaked in one of the units of Shriram Foods and Fertilizer Industries with serious apprehension of disaster, the Supreme Court, on the petition of Mr. M. C. Mehta, an Advocate of the Supreme Court, initially closed down the plant but after much deliberation with considerable hesitation, allowed the plant to re-start but subject to many a safety measures. P. N. Bhagwati, C.J. in considering the delicate issue involving closure of the plant causing loss of jobs to the hundreds of employees, economic loss to the Company and other ancillary issues, held as follows:

> " ..... The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had take all reasonable care and that the harm occurred without any negligence on its part.
>
> .... We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions. .... (Para-31).

In the case of L. K. Koolwal V. State of Rajasthan AIR 1988 Raj 2. one Mr. L. K. Koolwal moved the Court in its writ jurisdiction in connection with the acute sanitation problem in Jaipur City which became hazardous to the life of citizens of Jaipur for a direction on the Municipality. While directing the Municipality to remove the dirt, filth etc. within a period of six months, D. L. Mehta, J. of Rajasthan High Court held as follows:

> " Maintenance of health, preservation of the sanitation and environment falls within the purview of Art, 21 of the Constitution as it adversely affects the life of the citizen and it amounts to show poisoning and

> reducing the life of the citizen because of the hazards created, if not checked. "(Para-3).

The learned Judge while upholding the enforcement of the duty cast on the state held further as follows:

> " If the Legislature or the State Govt. feels that the law enacted by them cannot be implemented then the Legislature has liberty to scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty." Para-10).

On the question of water Pollution caused by the tanneries in discharging its affluent in the river Gannga naer Kanpur the Supreme Court of India ordered setting up of primary treatment plants, failing which directed closure of the concerned tanneries. In said case (AIR 1988 SC 1037), K. N. Singh, J. held as follows:

> "This Court issued notices to them but in spite of notices many industrialists have not bothered either to respond to the notice or to take elementary steps for the treatment of industrial effluent before discharging the same into the river. We are therefore issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people" (Para-21).

In another case, while directing the Municipal Corporation of Kanpur to take certain immediate steps, the Supreme Court of India on the application of Mr. M.C. Mehta (AIR 1988 SC 1115) held as follows:

> "The petitioner in the case before us is no doubt not a riparian owner. He is a person interested in protecting the lives of the people who make use of the water flowing in the river Ganga and his right to maintain the petition cannot be disputed. The nuisance caused by the pollution of the river Ganga is a public nuisance, which is wide spread in range and indiscriminate in its effect and it would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a Public Interest Litigation. On the facts and in the circumstances of the case we are of the view that the petitioner is entitled to move this Court in order to enforce

the statutory provisions which impose duties on the municipal authorities and the Boards constituted under the Water Act. (Para-16).

In the case of V. Lakshmipathy Vs. State of Karnataka AIR 1992 Karnataka 57, while issuing a mandamus with a direction to abate the pollution in the concerned area H. G. Balkrishna, J. held as follows:

> "The right to life inherent in Art. 21 of the Constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or effected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees in Art. 21 unfold penumbras shaped by emanations from those constitutional assurance which help them life and substance." (Para-28).

Similarly, in the case of Muniswamy Gowda Vs. State of Karnataka Air 1998 Karnataka 281, the rice mill situated near the residential house of the petitioners causing health hazard by emitting husk and dust in entire atmosphere in derogation of the fundamental right of the petitioners was directed to be shut down.

In the instant case, it appears that the Government took the decision as far back as in 1986, that the Ministry of Industries would ensure that the industries having no environmental pollution control/Protection system would adopt measures to control pollution over a period of next three years. The Affidavit in opposition, submitted on behalf of the respondent No. 3 or the learned Assistant Attorney General could not put before us evidence of any such measures implemented by any of those 903 industries/factories identified in the list published in the Bangladesh gazette on 7.8.1986 (Annexure-C). Rather, over the years the situation got worse in spite of enacting various laws in this respect. But we do not see on papers before us, evidence of implementation of any of the many functions cast upon the concerned officials of the Directorate of Environment by the act although it is their primary duty.

In this connection, it should be noted that Art. 31 of the Constitution entitles every citizen of this country to the right to protection of law. Art. 31 reads as follows:

> "31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every

> citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law". (the under linings are mine.)

This constitutional mandate guarantees protection of law on every citizen of this country. The Act of 1995 and the Rules of 1997 were enacted with specific purpose to preserve the hygienic condition of the country by eradicating pollution from the environment, as such protection of the citizens under such laws, is a guaranteed right under Art. 31, to make their lives meaningful and worth living. Under such circumstances, the concerned officials can however, be directed to perform their such primary, mandatory and obligatory duties as required under the provisions of the Act and Rules made there under and no excuse would be accepted in the performance of their such primary obligations.

In this connection, it should be noted that the Government is under a constitutional obligation to ensure that there is no violation of the fundamental rights of any persons, and the laws of the country are obeyed and implemented to the letter. The Act of 1995 are enacted with lofty ideas and solemn hope to eradicate the ill effects of pollution and to protect the lives of many millions of people of this country by keeping a balance in its eco-system. The people of Bangladesh, under Art. 31, is entitled to enjoy protection of such laws and under Art. 21, every person in the service of the Republic has a duty to ensure observance of the Constitutional mandates and the laws of the land, to strive at all times to serve the people to whom all powers in the Republic belong. As such, it is also the constitutional obligation of the Government to ensure that the rights of the people, so very glorified under Art.18 and Art. 32 of the constitution, are vindicated and defended and the provisions of the said Act is implemented in its real spirit to protect the interest of the people.

In case of any breach or latches in this respect, such constitutional obligations can be enforced against the Government under Article 102 of the constitution. In such a process, the Supreme Court is only instrumental under the constitution in achieving the constitutional objectives of a welfare state.

Art. 32 guarantees a right to life. This expression 'life' does not mean merely an elementary life or sub-human life but connotes in this expression the life of the greatest creation of the Lord who has at least a right to a decent and healthy way of life in a hygienic condition. It also means a qualitative life among others, free from environmental hazards. This is also one of the basic rights of the human being to live in a healthy atmosphere and constitutionals remedy under Art. 102

will be available if this basic human right is threatened due to violation of any of the provisions of the relevant laws enacted for such purpose or due to recklessness or negligence on the part of any person or authority which tends to upset the guarantees under Art. 31 and Art. 32 of the constitution. In this connection, it will be worthwhile to quote H. G. B. of Balakrisna, J: in the case of V. Lakshmipathy Vs. State of Karnataka AIR 1992 Kant 57, as follows :

> "By allowing the writ petition, if calamitious consequences visit the concerned respondents as a result of non- feasance or malfeasance or misfeasance on the part of public authorities or public officials, the doors of justice are open to them to sue the public authorities for pecuniary relief by enforcing the principle of accountability."(Para-28).

Apart from the constitutional guarantee embodied in Art.32 for a pollution free environment to protect the life from its ill effects, although various provisions are embodied in this Act and the Rules made there under but apparently, the Government, specially the respondent No. 4, who is charged with the duties to make the environment pollution free, failed to execute and perform their such duties to the letters of the law so far, meanwhile the 903 industrial units and the factories as identified by the Government and published in the Gazette on 7.8.1986(Annexure-c) or the 1176 industrial units and factories subsequently identified in 1994-95(Annexure-I) continued to pollute the waters, the rivers, the air and the environment as a whole, recklessly ignoring the constitutional mandates and the legislations on of this vital aspect of national importance and interest. We found to our dismay that the precautionary principles embodied in the Act is not properly implemented as it ought to have been, meanwhile, pollution continued unabated which may bring serious consequences to the lives of many millions of the people of this country and mauls the very core of Art.32 of our constitution.

The facts and circumstances, presented to this court shows that the respondent failed to implement their own decisions dated 5.6.1986 as spelt out in the notification published in the Bangladesh Gazette on 7.8.1986 (Annexure- C). In the meantime, the number of industrial units and factories identified as polluters of the environment continued to rise (Annexure-I). It is also found that although legislations were made from time but the Government apparently was never serious about implementing its own laws to the detriment of the eco-system of this country. The concerned officials and the Government as a whole appears to

be unresponsive to the Constitutional mandates so solemnly enshrined in Art. 31 and Art.32 read with Art.18 and Art.21. The sorry state of affairs cannot continue unabated. We are also constrained to hold that this unfortunate state of affairs is not due to any lack of legislation rather, due to unresponsiveness of the concerned Government officials to implement the letters of the law and executed into action to the intents and purposes of the said laws.

In this connection, we would refer to the case of Municipal Council, Ratlam V. Vardhichand, AIR 1980 SC 1622, where Krisna lyer, J. quotes with approval, "All power is a trust-that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exists." (Vivan Grey, BK. VI Ch. 7, Benjamin Disraeli). In that case, in upholding the order of a Magistrate, directing Ratlam Municipality for removing nuisances within six months, Krisna lyer, J. held as follows:

> "....The court will not sit idly by and allow municipal government to become a statutory mockery .The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal." (Para-24).

This is the correct exposition of law in a modern welfare Society.

In the result, we accept the writ.

The Director General, Directorate of Environment, the respondent No.4, is directed to ensure that the industrial units and the factories which come within the classification 'red' as stated in rule 7 of the Rules, must adopt adequate and sufficient measures to control pollution within one year from the date of receipt of this judgment and order and report compliance to this court within six weeks thereafter. The industrial units and the factories which are classified as Orange-Ka and Orange-Kha, must also adopt similar measures to control pollution within

a period of two years from date and the respondent No.4 shall ensure compliance within the said period and report to this Court soon thereafter.

The Secretary, Ministry of industries, respondent No.1, is also directed to ensure that no new industrial units and factories are set up in Bangladesh without first arranging adequate and sufficient measures to control pollution, as required under the provision of the Act of 1995 and the Rules of 1997.

The petitioner BELA is at liberty to bring incidents of violation of any of the provisions of the Act and the Rules made there under to the notice of this Court. The respondents are also at liberty to approach this Court for directions as and when necessary so that the objectives of the Act can be achieved effectively and satisfactorily.

Before parting with the case, we would like to place on record our deep appreciation for BELA and its members for their tireless, sincere and commendable service in their efforts for maintaining the ecological balance and also for the preservation of the environment in this part of the world.

Let copies of this judgment and order be forwarded to the Secretary, Ministry of Industries, the Respondent No.1, the Secretary, Ministry of Environment, the Respondent No.3 and the Director General, Directorate of Environment, Government of Bangladesh, respondent No. 4, for enabling them to take necessary steps in this regard immediately. A copy also be forwarded to the chairman, BELA.

A.B.M. Khairul Haque
Md. Joynul Abedin, J:
I agree
Md. Joynul Abedin.

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

WRIT PETITION NO. 891 OF 1994

IN THE MATTER OF:

Dr. Mohiuddin Farooque

... Petitioner

-VERSUS-

Government of Bangladesh and others

... Respondents.

Syeda Rizwana Hasan with
Mr. Iqbal Kabir, Advocates

..... For the Petitioner

Mr. Mustafa Zaman Islam, D.A.G.

... For the respondents.

The 23rd June 2009

Mr. Justice A. B. M. Khairul Haque
And
Mr. Justice Md. Mamtaz Uddin Ahmed

ORDER: In this matter earlier on the application of Bangladesh Environmental Lawyers Association (BELA), a Rule was issued on 6.6.1994 in respect of pollution in Bangladesh. The Rule was made absolute by the judgment and order dated 15.5.2001.

Although it was directed in the above quoted judgment that the director General, Directorate of Environment, the respondent No. 4, would ensure that the industrial units and the factories which come within the classification 'red' as stated in rule 7 of পরিবেশ সংরক্ষন বিধিমালা, ১৯৯৭ ('Rules'), must adopt adequate measures to control pollution within one year and report compliance but the said respondent miserably failed to do so. Of late, we came to learn about the deplorable condition of pollution as reported in various newspapers and the pictures printed thereon. As

such, by our order dated 28.4.2009, asked the respondent Nos. 1, 3 and 4, and also the petitioner to furnish reports in respect of the steps taken to implement the directions made in the judgment dated 15.7.2001, within a period of one month from the said date and fixed 1.6.2009 for further orders. Accordingly, reports are filed on behalf of the respondent No. 1 and the petitioner, sworn on 1.6.2009.

The much belated reports are far from satisfactory, rather highlights the sorry and the appalling condition of environmental pollution in Bangladesh, specially in and around the City of Dhaka. The condition of two rivers, namely, Buriganga and Shitalakkhya since 2001, deteriorated much and beyond recognition. The river Burriganga is no longer a river, but has become a large drain.

Under such painful circumstances, we brought the matter again in our daily cause list and heard the respondent No. 4 and also the petitioner. In the meantime, two further affidavits, sworn on 3.6.2009 and 23.6.2009, are filed on behalf of the petitioner.

Syeda Rizwana Hasan, the learned Advocate for the petitioner, took us through the various news-papers and the pictures printed thereon, Referring to the news paper reports she submits that tons of purple dye are pouring into the river Shitalakkhya through drain pipes from the dying industries, that huge effluents from the nearby industries are being disgorged in the river, poisoning fishes and every living being to death in the process. Pitch black effluents from Tajgaon Industrial Area containing heavy metals are causing serious pollution in various nearby canals leading to pollution of Balu River. She further submits that only a trickle of black liquid represents the Turag river which is already filled with free-for-all encroachments. The Buriganga is in its worst condition, she submits, millions of gallons of highly toxic wastes are being released from thousand of industrial units, 75 percent of the city's raw sewage and hundreds of tons of solid wastes are being dumped into the river Buriganga and the river resembles a huge gutter with pitch-black toxic chemicals in it, that stench in it has already become unbearable. She further submits that a ten-feet laying of discarded polythene bags, plastics, coconut shells and heavy sludge created by millions of tons of biodegradable wastes cover the bed of the river Buriganga.

Referring to the news-papers and from her own ghastly experience, the learned Advocate submits that Hazaribagh tanneries alone are the largest and the worst source of toxic pollution. This place, she submits, is the cancerous area in the Dhaka Metropolitan City and efforts are being taken since 1991 to shift and relocate the said tanneries, firstly to Kanchpur area then to Sonargaon Upazila and finally to Savar in 1993. For that purpose an area of 17.30 acres were acquired

there but without any visible response from the tannery owners although most of them obtained industrial plots there.

She submits that an inter ministerial meeting was held on 20th August, 1998, for relocation of tanneries from Hazaribagh area. It was also revealed as early as in 1998 that 15,000 cubic meter of untreated chemical wastes from the tanneries of Hazaribagh ultimately went into the river Buriganga and 70% of the pollution is caused by such wastes. Since then, the extent of pollution has increased many folds.

She further submits that since 1991, dozens of meetings were held in connection with relocation of the tanneries at Savar where all and full facilities are made by the Government but the tannery owners so far refused to move there inspite of their repeated promises. Lastly a 14 member committee headed by the Joint Secretary, Ministry of Industries, in its meeting held on 25.9.2008, resolved that all tanneries shall shift from Hazaribagh within February, 2010.

Besides, she submits, the whole of tannery area are of red category, but still they did not install ETP in direct violation of the relevant provisions of environmental laws. In this connection, she refers to the decision of Dr. Mohiuddin Farooque V. Bangladesh 55 DLR (2003) 69 in which one of us was the author Judge.

It appears that very little improvement has been made in minimizing pollution in Bangladesh but apparently the situation deteriorated to the extreme since 2001, specially in and around the city of Dhaka.

Nobody can deny that the rivers around the City have become moribund. Those are ravaged by the effluence disgorged by the tanneries, mills and factories. These are not rivers any more. We have seen the pictures of those pools of chemicals which were once picturesque rivers. We are simply at a loss, seeing the horrendous situation of such an incredible magnitude. Admittedly, the ground water level in and around the city is also going down by 9 feet per year, besides, the polluted water is percolating into the subsurface but although it has all the powers under the provisions of Act 1 of 1995 and the Rules of 1997, to protect the environment of Bangladesh but for some reasons or other it remains somewhat indulgent. Special courts were established in 2002 under the provisions of পরিবেশ আদালত আইন, ২০০০ (২০০০ সনের ১১নং আইন) but action in accordance with law are not much visible although there are instances of hundreds and thousands of violations of the environmental laws without any redress. Besides, the Department failed to implement the directions given by this Court in the above noted decision given in 2001. It did not even feel it necessary to approach the Court for further direction,

while the City has been continuously sinking in pollution. This conduct on the part of the officials of the Republic is highly deplorable and deprecated.

However, the present Director General, Department of Environment, personally appeared before us and assured their full co-operation. Of late, they have also started taking steps in this regard.

We have given our utmost attention to the pollution created by the Tanneries, the Dying Industries, the Textile Industries, and other Industries. We are also not unmindful of the large number of workers engaged in those industries. But we have to weigh the crisis, that may be created because of redundancy of the workers which may be caused by the possible closure of various industries due to their reckless failure to install the obligatory ETP. On the other hand, if we fail to act and act quickly to implement the provisions of Environmental laws meticulously in its letters and spirit, there shall be no river, no water left in and around Dhaka and it will be a dead-city very soon. In such an impending precarious life-threatening situation do we have a choice? We are of the opinion that unless are act quickly disaster will be inevitable.

As such, on balance we are left with no alternative but to implement the provisions of law strictly. We have to take the risk of redundancy of few thousand, workers to save the city and its 12 million inhabitants. Otherwise, the future of this country, as a whole is bleak indeed and the health condition of millions of its citizens will be seriously jeopardized.

It is admitted and agreed that the tanneries at Hazaribagh is the single most serious source of pollution in the river Buriganga.

It may be noted that Article 32 of the Constitution guarantees right to life. Article 32 reads as follows:

> 32. No. person shall be deprived of life or personal liberty save in accordance with law." (underlining is mine).

This has been explained in Dr. Mohiuddin Farooque's case in this manner:

> "23. This declaration in the Constitution is not mere empty words. These guarantees are fundamental in nature, bestowed upon the people of Bangladesh by its constitution. The expression "life" enshrined in Article 32 includes everything which is necessary to make it meaningful and a 'life' worth living, such as, among other, maintenance of health is of

> utmost importance and preservation of environment and hygienic condition are of paramount importance for such maintenance of health, lack of which may put the 'life' of the citizen at naught Naturally, if the lives to the inhabitants living around the concerned factories are in jeopardy, the application of Article 32 becomes inevitable because not only a right to life but a meaningful life is an inalienable fundamental right of citizens of his country."

In the said case, it has been noticed that by a Gazette Notification published in 1986, 903 industries and factories were identified as polluters 23 years back and the tanneries, even at that time toped the list of polluters. It was classified as dangerous ones and was placed at red category.

In the above decision, it was further observed

> "51. This Constitutional mandate guarantees protection of law on every citizen of this country. The Act of 1995 and the Rules of 1997 were enacted with specific purpose to preserve the hygienic conditions of the country by eradicating pollution from the environment, as such, protection of the citizens under such laws, is a guaranteed right under Article 31, to make their lives meaningful and worth living. Under such circumstances, the concerned officials can however, be directed to perform their such primary, mandatory and obligatory duties as required under the provisions of the Act and the Rules made there under and no excuse would be accepted in the performance of their such primary obligations."

In the back-drop of the above legal position, the following directions were given in the said Judgment:

> "The Director General, Directorate of Environment, the respondent No. 4, is directed to ensure that the industrial units and the factories which come within the classification 'red' as stated in rule 7 of the Rules, must adopt adequate and sufficient measures to control pollution within one year from the dated of receipt of this judgment and order and report compliance to this Court within six weeks thereafter. The Industrial units and the factories which are classified as Orange-Ka and Orange-Kha, must also adopt similar measures to control pollution within a period of two years from date and the respondent No. 4 shall ensure compliance within the said period and report to this Court soon thereafter.

The Secretary, Ministry of Industries, respondent No. 1, is also directed to ensure that no new industrial units and factories are set-up in Bangladesh without first arranging adequate and sufficient measures to control pollution, as required under the provisions of the Act of 1995 and the Rules of 1997.

The petitioner BELA is at liberty to bring incidents of violation of any of the provisions of the Act and the Rules made thereunder to the notice of this Court. The respondents are also at liberty to approach this Court for directions as and when necessary so that the objectives of the Act can be achieved effectively and satisfactorily. (Underlining are mine).

The above directions were given nearly 8(eight) years back but during this period the pollution continued unabated, rather, increased manifolds, specially from the tanneries at Hazaribagh, threatening the civic life of the inhabitants of the city of Dhaka. No improvement has been indicated since passing of the above Judgment in 2001, rather, the pollution has increased to horrendous proportion. But under the provisions of the Environmental laws no industry of red category can at all operate in residential areas, but the tanneries continue at Hazaribagh inspite of extreme sufferings of the inhabitants of the neighbouring localities. It has also been reported that even the workers suffer from various diseases because of the extreme unhealthy conditions in their working places. In order to save the city and its inhabitants the Government in exercise of its Constitutional duties ought to have taken appropriate measures long ago to curb the pollution but apparently id did not, leading to the present disastrous situation.

Under such painful circumstances, we are constrained to issue the following directions.

i) All the Industries of red category must install Effluent Treatment Plant (ETP and other appropriate pollution fighting devices by 30.6.20 10 positively, failing which they shall be subject to the legal sanctions as spelt out under section 4(3), 4A and 7 of বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫, without any exception.

ii) The tanneries at Hazaribagh are of red category. None of those tanneries installed ETP inspite of our such direction in the Judgment dated 15.7.2001, in dr. Mohiuddin Farooque's case mentioned above. The chemicals and other deadly effluents disgorged by those tanneries at Hazaribagh caused the ghastly death of the river Buriganga. As such, we have no other alternative but to direct

(a) As resolved earlier by the Government, let the tanneries be relocated from Hazaribagh by 28 February, 2010, failing which those shall be shut down since the life and well being of the

citizens take precedence above everything and cannot be sacrificed even for the industries.

(b) Once relocated, those tannery industries shall function only on setting up and operating ETPs, sanitary land fill and other appropriate pollution mitigation devices.

iii) Meticulous compliance of the provisions of Environmental Laws by all kinds of industries failing which the Department of Environment, the respondent No. 4, is obliged to take necessary actions in accordance with the provisions of laws.

The Director General, Directorate of Environment, the respondent No. 4, must ensure that these directions are complied with to the letter and spirit with out any exception. The Ministry of Industries, the Ministry of Environment and Forest, are also directed to co-operate with the respondent No. 4, in this regard.

The Metropolitan Police Commissioner, Dhaka, is directed to co-operate with the Director General, Department of Environment, in implementing these directions so far the Dhaka City is concerned. The Inspector General of Police, Bangladesh, is also so directed to afford necessary protection to the concerned officials so that the directions of this Court are meticulously and thoroughly implemented.

The Secretary, Ministry of Home Affairs, Government of the People's Republic of Bangladesh, shall also be accountable if any impediment is caused for the implementation of the orders of this Court.

The Director General Department of Environment is directed to produce the reports of compliance in this respect by 30.7.2010, before the appropriate Bench of this Court.

Let copies of this order be forwarded to the Secretary, Ministry of Affairs, Inspector General of Police of Bangladesh, the Metropolitan Police Commissioner, Dhaka, for their information and necessary compliance.

This writ petition for this purpose shall be treated as continuing mandamus.

Let this matter be posted in the daily cause-list for further orders on 30.7.2010. In the meantime, if any of the respondents feel it necessary for further direction, they are at liberty to approach the Court.

A. B. M. Khairul Haque
Md. Mamtaz Uddin Ahmed

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

Md. Mozammel Hoque and Md. Hasan Ameen, JJ.

Writ Petition No. 2636 of 1996
Mrs. Parvin Akhter

... Petitioner's

VERSUS

The Chairman, Rajdhani Unnayan Kartipakkha and others.

... Respondents.

Date of Judgment : The 2nd of September, 1997
Result : Rule absolute
Constitution of Bangladesh, 1972

Article-102

Locus standi

The lake is situated just by the side of the residential area of the Culshan Model Town and this lake is in fact beautifying the area and environmental advantages giving to the lessees of the area by this lake. So, the petitioner has got the locus-standi and she is an aggrieved person in view of the fact that it the lake is filled up, the lessees of the entire Gulshan Model Town will be affected. Since she is one of the lessees and since the entire area will be affected by the action of respondent No. 1. she has got locus-standi as an aggrieved person to file the writ petition.

(Para-11)

Dr. Mohiuddin Farooque Vs. Bangladesh, 17 BLD (1997)(AD)1-relied upon.

Article-102

The petitioner is moving this application for her personal interest as well as for the interest of all the residents of the Gulshan Model Town who are, in fact, enjoying the greeneries and the Gulshan lake with its environmental facilities. Since it relates to common interest of all the persons of the Gulshan Model Town Area, the petitioner is an aggrieved person and has got the locus stnadi to file the writ petition.

(Para-15)

Public Interest Litigation-Environmental benefits

Everybody is willing to have better environmental progress and benefits. But the problem which the petitioner is facing now has not been agitated before the court at any time before hand. There should be a decision to that effect so that in the future the leaseholder of not only the Gulshan Model Town area but also the leaseholders of the other areas of the Metropolitan city may get a protection of the Court for saving their greeneries, lake parks and other environmental benefits.

(Para-18)

Mr. M. Amir-ul Islam, Advocate for the Petitioner.

Mr. A.F. Hasan Arif with Mr. Borhanuddin and Mr. Ziauddin Ahmed Mamun, Advocates for Respondent No. 1.

Judgement

Md. Mozammel Hoque, J: This Rule was issued calling upon the respondents to show cause as to why their destruction of GREENERIES and the lake for the purpose of constructing a road and residential plots on the land adjoining to plot No. C.E.S. (G)-3. New 41B. Gulshan Model Town. Dhaka, should not be declared to have been made without lawful authority and is of no legal effect.

2. At the very outset it may be mentioned that this a personal as well as a public interest litigation. Respondent No. 1 is the lessor of the property leased out to the lessee for 99 years on 20.8.1966 by a registered instrument. One Mrs. Sultana Mahmud, wife of Mr. H. Mahmud, was one of the predecessors of the petitioner. As per original plan on the basis of which the said plot as well as other plots were allotted the plots are adjacent to the eastern boundary of the said plot of land, a lake and greeneries making the plot an ideal location for building residential accommodation. The copy of the lease agreement as well as the layout plan dated 9.11.96 have been annexed as Annexure-A and A-1 to the writ petition. Clause 4 of the terms of the lease agreement made it mandatory for the lessee to build a residential house in the demised property within 4 years or such longer period as might be allowed by the lessor and clause 6 provides that such residential house shall be constructed in accordance with such plans, elevations and specification as shall be approved in writing by the lessor. Accordingly the predecessor of the petitioner Mr. Monjurul Islam submitted a plan for a residential building suggesting the location of the building as the eastern most part of the land, clearly to reap the maximum benefit from the adjacent lake and the greeneries and to enjoy privacy which would be secured therefore. Respondent No. 1 duly approved

the plan accepting the lake and greeneries as the major factor for choosing the location of the dwelling house as close to the greeneries and the lake as possible. Accordingly the said predecessor built a bigh three-storied dwelling house on the location stated with the latest amenities costing crores of Taka. The petitioner accrued the leasehold interest in the said property in August, 1993 deeply induced by the breath taking scenery of the greeneries and the lake, situated so close to the dwelling house as per they layout plan and accordingly he paid a hand some price for the privilege. Respondent No. 2, in a letter dated 29.12.93 confirmed that their records had been amended to show the petitioner as the current lessee of the said property.

3. The Respondents have now embarked on a project to dismantle the said lake and greeneries and build plots of land for allocation where upto now stands a lake, and construct a road namely, 130/A for the access to the new plots immediately adjoining to the house where once stood greeneries and vegetation. A copy of the layout plan of plot 41B and its surroundings is annexed with the petition as Annexure-C. The respondents have already embarked in full fledge to fill up the adjoining low land which had so long been a part of the greeneries and lake, by bringing truck loads of earth and soil through their contractors, in order to prepare the land for allocation of plots in due course to the other allottees. It is submitted that if the Respondents plan to construct the said road and residential plots in allowed to go ahead, the petitioner will not only be deprived of the view of the lake and greeneries but the location of the house will be such that the petitioner's right to privacy will be shattered rendering it impossible for the petitioner to reside in the property as it now stands. It is further submitted that the Respondent's plan to damage and destroy environment adjacent to the land and property occupied and enjoyed by the petitioner breaches the fundamental right of the petitioner to hold property without facing any unlawful detrimental action and further tends to breach the right which she became entitled to as the lease of her predecessor since transferred was based on the layout plan which cannot be altered or changed to the detriment of the petitioner without her consent. It is further submitted that no land is sold or brought in isolation. It's surrounding area and location and so on always determine the value of the property and therefore a seller can not be allowed to sell a property creating a breath taking surrounding giving an impression of its permanency and then upon selling the property, destroying the surrounding for commercial gains. Therefore in this case the seller is bound by the layout plan on the basis of which the original lease was granted.

4. It is further submitted that the first lessee and her successors including the petitioner was induced to buy the property on the basis of the existence of the greeneries and the lake as was represented by the layout plan and on such

representation as where made in the layout plan, the property was purchased and the value of the property was determined to a large extent by the fact that the property was situated so close to the greeneries and the Gulshan lake. Respondent No. 1 was well aware that the value of the property was greatly enhanced due to the environmental advantage of its location and therefore to that extent the environmental it stood formed a part of the property and as such its destruction tantamount to unlawful interference with her right to enjoy the property. Such a breach of action offends fundamental right of the petitioner. It is further submitted that such breach also offends the principle of natural justice by taking such a drastic move without any consultation with the petitioner to alter the surrounding area of the petitioner's home which surrounding was the determinant factor in choosing the location of the dwelling house with the approval of Respondent No. 1 and that the said lease was granted and it was purchased on the representation as made on the basis of the layout plan and the petitioner as well as her predecessor in the title acted upon such representation and the Respondent No. 1 now cannot alter the said representation to her detriment of the petitioner particularly because the entire plan of the building and its design was made on the basis of original layout plan and the said plan did not lake into consideration of the possibility of the original greenery and the take being converted into building a road and creating new plots by filing the lake. It is further submitted that such an action of the respondents offends petitioner's fundamental right guaranteed under Article 31 and 42 of the Constitution and as such the Respondents should be stopped from doing such an action in the area of Gulshan Model Town and from destroying the greeneries and the lake concerned.

5. On behalf of Respondent No. 1 an affidavit-in-opposition and also a supplementary affidavit-in-opposition have been filed. The deponent has denied the material allegations as made in the writ petition. It is stated that the approved plan was given according to the provisions of Building Construction Act and Rules and the physical location of lake and greeneries adjacent to the said plot did not play a major factor or any factor in the said approval of plan. The petitioner is not authorized to say anything about state of mind of the Respondents. The Building Construction Act and Rules have nothing to do with lake and greeneries. It is stated by the Respondents that they are not aware whether the breath taking scenery of the greeneries and the lake induced the petitioner to purchase the plot at a handsome prices. It is further stated that an estimate for the development of plot Nos. 16, 18, 20, 22, 24, 26, 28 and 30 of the Road No. 130 has been prepared in the light of approved layout plan of Gulshan Model Town. After the approval of estimate by the authority, the work was executed by engaging a contractor observing the formalities and norms of Rajuk. Those plots, roads, which are part of the layout plan are outside the schedule of the lease deed between Rajuk and

transferor of the present leasee. The said lake and the greeneries are not within the said lease deed making said lake and the greeneries part of the lease. There is no legal and contractual obligation under the lease deed to provide the lake and the greeneries. The layout plan Annexure-C, is not part of the lease deed. It is further stated that the development of the area is within the domain of the Respondents and in discharge of their responsibilities under the Town Improvement Act the Respondents are taking that steps. The petitioner has no legal right under the lease deed and /or Transfer of Property Act on the lake or the greeneries which are properties of the Respondents. The rights of the petitioners are confined to the terms of the lease deed in respect of the property converted by the schedule thereto, Respondent No. 1 prepared layout plan and can modify the plan to meet the needs of the time.

6. It is stated that with the passage of time the population of Dhaka City has exploded and increased manifold resulting in serious scarcity of land for constructing residential houses. In order to meet the highly increased demand for land for residential accommodation. Respondent No. I made plan to increase the number of residential plots. As such petitioner's complaints of affecting her privacy because of construction of the road and residential plot forgetting that increase of residential plots to meet the high demand of accommodation is a common feature in every capital of the world and that a man living in the city has no exclusive subjective right to privacy of the nature and extend claimed by the petitioner. In fact, the privacy of the petitioner is not affected by the construction of road and residential plot. There is no legal obligation of the Respondents to protect and oversee subjective privacy of the petitioner. The issue of privacy is an issue of Tort and is not relatable to any statutory right of the petitioner and corresponding statutory obligation of the Respondents and as such not a subject to adjudication under Article 102 of the Constitution. It is stated that the Respondent's plan to construct road and residential plots does not damage and destroy environment adjacent to the property of the petitioner and as such does not infringe petitioner's fundamental right.

7. It is further stated by the answering Respondent that the Rajuk had not sold any land to the petitioner or to the transferor of the petition. Rather the Respondents had granted lease for 99 years. The lessee is competent to transfer the subsisting leasehold interest to the petitioner who has acquired the residuary of the lease hold interest in the property. The relationship between the Respondents and the petitioner is that of lessor and lessee covered by the provisions of Chapter-V. Sections 105 to 117 of the Transfer of Property Act.

8. Mr. Amir-ul Islam, the learned Advocate appearing for the petitioner, submits that it is admitted position that the present petitioner is a lessee on 99 years lease of the plot in question. This plot with the three storied building is situated on just western bank of the lake, namely, Gulshan Lake. He submits that Gulshan is a residential area and the plots were allotted to the lessees by Rajuk and plan for construction of the buildings were also given by Rajuk according to the Building Construction Act. The greeneries as well as the Gulshan Lake are situated there which has not been denied by the Respondents. If the greeneries and the lake are destroyed, not only the petitioner, but also all the lessees of the area, namely. Gulshan Model Town will be affected in view of the fact that the lake as well as the greeneries are the beautiful sites and it will keep the environmental beauty of the area concerned. Mr. Islam submits that the petitioner as well as other lessees actually got lease of their plots of the aforesaid areas inasmuch as it is an aristocratic area having greeneries and the lake near it. If the Gulshan Lake is destroyed and if the lake is filled up and the new plots are allotted to other persons, not only the petitioner, but also the other lessees who are living there by constructing their buildings will be affected and prejudiced in view of the fact that the environmental situation will be greatly changed. It is submitted that not only in this country, but in the whole world environmental policies are being followed and the people at large are trying to protect the environmental beauties and nature only for peaceful habitation of the human beings. Similarly the present petitioner as well as all other lessees of the Gulshan area will have a right to protect the greeneries and environmental sites of the area and thereby they will be highly prejudicied and affected if the beautiful lake namely. Gulshan Lake is filled up and the plots are allotted to some other persons. It will not only damage the beauty of the area, but also it will affect the environmental situation of the Model Town. He submits that the Rajuk. Respondent No. 1 has admitted to position that they are constructing a new road, namely. Road No. 130A of the Gulshan Area and they are going to fill up some portion of the lake by earth and several persons will be allotted the several plots. So, it is admitted by Rajuk that it was going to extend the residential area of the Gulshan Model Town by filling the low land of the lake and new plots will be created in future.

9. Mr. Amir-ul Islam has produced before the Court the Dhaka Metropolitan Master Plan, Volume-II. Urban Area Plan (1995-2005). He has shown the development plan of Gulshan, Banani, Baridhara and Badda. The future plan has been incorporated in this Metropolitan Development Plan, So, Mr. Amir-ul Islam submits that when this Metropolitan Master Plan is going to be implemented and further development will take place with regard to Gulshan, Banani, Baridhara and Badda, at that time the Rajuk was taking step to fill up and destroy the

Gulshan Lake and construct and build plots for leasing out the same to other persons. This is contrary to the development project of the Government.

10. Mr. Hasan Arif, the learned Advocate appearing for Respondent No. 1, submits that the present petitioner is not the owner of the property, rather she is a lessee only for one plot of Gulshan Model Town. She is not an aggrieved person and she has no locus-standi to file this writ petition. He further submits that Respondent No. 1 being the lessor is at liberty to extend, change, modify and alter the residential area according to its own need and the present petitioner is not in any way an aggrieved person and she cannot stop the further extension of the residential area of Gulshan Model Town. He submits that low lands of the lake is going to be filled up with earth and the same would be allotted to the different persons in new of the fact that there is tremendous growth of population in the city of Dhaka and that is why Respondent No. No. 1 is taking such step for extension of the area. He further submits that the lease deed does not contain any provision that the greeneries and the lake will be kept in fact to the desire of the lessees. He submits that even if the greeneries and the lake is going to be affected, that will not cause any harm to the present petitioner and as such this writ petition is absolutely a malafide. The learned Advocate further submits that a road will be extended and several plots will be created for allotment. So, he admits that Respondent No. 1 is going to fill up a portion of the Gulshan Lake by earth for making plots and the road will be constructed there. So, he admits that by the side of the house of the present petition which is existing just on the bank of the lake several other plots will be contracted by filling up the lake and plots will be distributed to some other persons.

11. As regard locus-standi as well as aggrieved person Mr. Amir-ul Islam submits that at the very out set he submitted before the Court that this is a personal interest as well as public interest litigation. Mainly the lake is situated just by the side of the residential area of the Gulshan Model Town and this lake is in fact beautifying the area as well as the environmental advantages are being given to the lessees of the area by this lake. So, the present petitioner has got the locus-standi and she is an aggrieved person in view of the fact that if the lake is filled up, the lessees of the entire Gulshan Model Town will be affected. Since she is one of the lessees and since the entire area will be affected by the action of the Respondent No. 1, she has got locus-standi as well as she is an aggrieved person to file this writ petition. In this connection, Mr. Amirul Islam has referred to the case of Dr. Mohiuddin Farooque Vs. Bangladesh, BLD 1997 (A.D.), I (January Issue). It was a public interest litigation where the point of aggrieved person and locus-standi has been raised in that case before the Appellate Division of he Supreme Court of Bangladesh. In the judgment of the aforesaid case the learned Chief Justice Mr.

Justice A.T.M Afzal observed that the expression any person aggrieved' approximates the test of or if the same is capsulized, amounts to, what is broadly called, 'sufficient interest'. Any person other than an officious intervener or a wayfarer without any interest in the cause beyond the interest of the general people of the country having sufficient interest in the matter in dispute is qualified to be a person aggrieved and can maintain an action for judicial redress of public injury arising from breach of some public duty or for violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. The real rest of sufficient interest', of course, essentially depends on the co-relation between the matter brought before the court and the person who is bringing it.

12. In that judgment, his lordship Mr. Justice Mustafa Kamal observed that the expression 'any person aggrieved' is not confined to individual affected persons only but it extends to the people in general, as a collective and consolidated personality. If an applicant bonafide exposes a public cause in the public interest he acquires competency to claim a hearing from the Court. The appellant as an environmentally association of lawyers is 'a person aggrieved' because the cause it bonafide exposes, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject-matter of great public concern.'

13. His lordship Mr. Justice Latifur Rahman observed that the language used by the framers of the constitution must be given a meaningful interpretation with the evolution and growth of the society. An obligation is cast upon the Constitutional Court, which is the apex Court of the Country, to interpret the Constitution in a manner in which social, economic and political justice can be advanced for the welfare of the state and the citizens. When a person approaches the Court for redress of a public wrong or public injury, though he may not have any personal interest, must the deemed to have 'sufficient interest' in the matter if he acts bonafide and not for his personal gain or private profits or for any oblique considerations. In such a case he has locus standi to move the High Court Division under Article 102 of the Constitution.

14. His lordship Mr. Justice B.B. Roy Chowdhury observed that the expression 'person aggrieved' means not only any person who is personally aggrieved but also one whose heart bleeds for his less fortunate fellow-beings for a wrong done by the Government or a local authority in to fulfilling its constitutional or statutory obligations. It does not, however, extend to a person who is an interloper and interferes with things which do not concern him. This approach is in keeping

with the constitutional principles that are being evolved in the recent times in different countries of the world.

15. The principle enunciated by their lordships of the Appellate Division in the aforesaid case may be applicable in the facts and circumstances of the present case inasmuch as the present petitioner is moving this application under Article 1002 of the Constitution for her personal interest as well as for the interest of all the residents of the Gulshan Model Town who are in fact enjoying the greeneries and the Gulshan Lake on environmental facilities. Since it relates to common interest of all the persons of the Gulshan Model Town Area, we are of the view that the present petitioner is an aggrieved person and has got the locus-standi to file the present writ petition.

16. Mr. Amir-ul Islam submits that the petitioner and all the residents of the are3a have got the leasehold interest in the property and it is in fact a permanent lease and in the area the lease holders are living by constructing their own buildings. The benefits, interest and convenience of the greeneries and the lake are in fact attached with their leasehold rights inasmuch as there is nothing in the lease agreement that the lessor will have the right to use the lake and other greeneries in any manner whatsoever or even they have the right to fill up the same and make any construction there. In absence of such assertion in the lease deeds of the inhabitants of the area, Mr. Islam submits, this benefit of greeneries and Gulshan Lake between attached with their leasehold right they are entitled to have the benefit and enjoy the same inasmuch as the same are protected under the fundamental rights guaranteed in the Constitution as the leasehold right are being guaranteed under the fundamental right of the Constitution. Mr. Amir-ul Islam further submits that for environmental purpose this Gulshan Lake and greeneries must be protected.

17. He submits that Government authority may be changed after five years or so, and when a new Governmental authority will come, interested persons may try to take advantage of the area and may influence the Rajuk to fill up the lake and for their personal interest that they get plots in their own names. In order to protect the greeneries and the lake from such future invasion by the interested quarters there must be a direction and/or in junction and /or prohibitory order upon the Rajuk about the destruction of the greeneries and the lake so that in future if any question comes up to fill up the lake and destroy the greeneries the Rajuk may take a stand to the effect that it can not be done against the judgment of the Supreme Court and thereby Rajuk will be able to protect the greeneries and the lake and to save the environmental benefit of the lessees of the aforesaid Gulshan Model Town. We find force in the above contention of Mr. Amir-ul Islam. In

view of the fact that the leaseholders are really entitled to have the benefit of the greeneries and the lake for the environmental purpose and in view of the fact that in future such greeneries and the beneficial environment of the lake may be protected, we are of the view that a decision to that effect should be given by this Court so that in future there may not be any invasion by any interested quarter for destroying the greeneries and the lake.

18. In this connection it may be mentioned that everybody is willing to have better environmental progress and benefits. But the problem which is facing now in the instant writ petition has not been agitated before Court at any time before hand. The aforesaid judgment of the appellate Division was on a different purpose of environmental matter, but with regard to this Capital City of Dhaka we are not aware of any judgment of any Court for protecting the greeneries, natural beauty, lake and other environmental benefit of the people. In this view of the matter, we find that there should be a decision to that effect so that in future the leaseholder of not only Gulshan Model Town area, but also the leaseholders of the other area of the Metropolitan City may get a protection of the Court for saving their greeneries, lake, parks and other environmental benefits.

19. Mr. Hasan Arif submits that since there is no stipulation lake that in the lease deed and since the lessor, namely, Rajuk can use its properties in any manner whatsoever cannot be accepted in view of the fact that the Rajuk may be the lessor of the properties, but at the same time Rajuk must maintain the greeneries, natural beauties, lake and parks for the benefit of the lessees which are in fact part and percel of their leasehold right. In this view of the matter we do not find any substance in the contention of Mr. Hasan Arif.

20. In the result, this Rule is made absolute and the Respondents are directed not to destroy the greeneries and Gulshan Lake for the purpose of constructing a road and residential plots on the lands adjoining the plot of C.E.S. (G)-3, New 41B of Gulshan Model Town and like other plots and the impugned action of the Respondent No. 1 is hereby declared to have been made without lawful authority and is of no legal effect. The Respondents are further directed not to destroy a greeneries and Gulshan Lake, which are being used for beneficial and environmental purpose by all the lessees of the Gulshan Model Town, by filling up the same for any residential or other purpose at any time in future.

Considering the facts and circumstances of the case we pass no order as to cost.

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

WRIT PETITION NO. 5121 OF 1996 AND
WRIT PETITION NO. 948 OF 1997[1]

IN THE MATER :
An application under Article 102 of the Constitution of the people's Republic of Bangladesh.

IN THE MATTER OF
Mahmuda Parveen
... Petitioner (In W.P. No. 5121/96

Dr. Mohiuddin Farooque. representing Bangladesh Environmental Lawyers Association (BELA)
... Petitioner (In W.P.No. 948/97)

-Versus-
The Chairman, RAJUK and others
...respondents (In two W.Ps)

Mr. Mahbub-E-Alam. Advocate
...for the petitioner (In W.P.No. 5121/96

Mr. Abdul Wadud Bhuiyan with
Mr. S.R.M. I Lutfor Rahman Akhand Advocates
...for respondents No. 2 and added respondent

Nos. 4.5 and 6
Ms. Syeda Rizwana Hasan with
Mr. Iqbal Kabir, Advocate
... for the petitioner (In W.P. No. 948/97

Mr. Abdul Wadud Bhuiyan with
S.R.M. Lutfor Rahman Akhand, Advocate
..... for added respondent No. 1

[1] On appeal, the Appellate Division upheld the judgment

Judgment on 17th February, 2004

Mr. Justice Shamim Hasnain

Mr. Imman Ali. J.: In Writ Petition No. 5121 of 1996 Rule Nisi was issued, calling upon the respondent to show cause as to why the impugned revised layout plan prepared by respondent No. I creating plots at sector 3 thereby blocking the cross ventilation of the petitioner should not be declared to have been made without lawful authority and is of no legal effect.

In Writ petitioner No. 948 Rule Nisi was issued calling upon the Respondents to show cause as to why the adoption and implementation of the impugned layout plan on the bank of the lake water body of the Uttara Model Town, causing threat to the natural environment of the area and the water body shall not be declared to have been made without lawful authority and why the Respondent No. 3, should not be directed to perform its statutory duties under the Environment Conservation Act, 1995 to protect the environment of the water body and its surroundings in the Uttara Model Town endangered by the implementation of the impugned layout plan by the respondent No. 2.

Since both the Rules challenging the same revised layout plan of RAJUK, both writ petitions are taken up for hearing together and for disposal in this judgment.

The facts of the case, relevant for disposal of the Rules, briefly stated, are that the petitioner of Writ Petition No. 5121 of 1996 purchased hand of plot No. 9 of Road No. 20 Sector No. 3. Uttara Model Town from the original allottee on 11.12.94 and RAJUK accepting the petitioner as lessee of the plot, mutated her name in their records. Subsequently a plan for permission to construct a building on the land was approved by RAJUK. In November, 1995 the petitioner and other lesees of plots situated on the western side of Road No. 20 came to know that RAJUK has decided to revise the layout plan for sector 3 (old 13) and create 6 plots by dividing the strip of land bordering the lake. The petitioner made representations on 24.9.96 to respondent No. 1 stating therein that the creation of new plots on the western edge of the lake is outside the layout plan and would block cross ventilation. Bangladesh Environmental Lawyers Association (BELA) who through their Secretary General filed Writ Petition No. 948 of 1997, served a legal notice on a RAJUK and others requesting them not to create plot on the said of the lake by earth filling and thereby destroy the adjoined ecological system.

Mr Mahbubey Alam the learned advocate appearing for the petitioners in Writ Petition No. 5121 if 1996m submitted that the plots in the vicinity are located in such manner leaving a space for cross ventilation between each of the plots allowing a common passage of air and light to pass easily and freely and to relieve the area from congestion. It is further submitted that RAJUK has unilaterally revised the layout plan and proposed to develop the narrow strip of land beside the petitioner's plot of land to add another 6 plots and also to construct another road namely Road No. 22, which is intended for vehicular traffic and the width of which being only 30 ft. is in violation of Section 54 of the Town Improvement Act. 1953. The learned advocate submitted that the revised plan was prepared by RAJUK without proper approval of the Government as required by law, with mala fide motive and extra consideration.

The learned Advocate pointed out that in response to a complain by the residents of Uttara Model Town, the Department of Environment conducted an enquiry and submitted a report recommending that RAJUK be requested not to fill in the lake and destroy the ecological system around Sector. 3.

In Writ Petition No. 948 of 1997, Mrs. Syeda Rizwana Hasan appearing on behalf of the petitioner submitted that in response to the appeal of the residents of Uttara Model Town respondent No. 3 (The Director General of the Department of Environment and forest) conducted investigation in the said area and found that there was a deviation from the original Master Plan and fully supported the concern of the inhabitants with regard to the degradation and pollution of the environment in case the lake was filled up for allocation. The investigators have reported a construction on the vacant land of a part of the lakeside shown as part in the original Master Plan. It is further contended that respondent No. 3 suggested to the Ministry of Environment and Forests to ask RAJUK to develop the Uttara Model Town without disturbing the layout plan all the legal requirements under the Town implement Act, 1953 have been mindlessly flouted by respondent No. 2 which has acted in a arbitrary and unlawful manner. It is submitted that the adoption of the impugned layout plan deviating from the original master plan, is illegal arbitrary and without any lawful authority. It is further submitted on behalf of BELA that the law requires the vehicular roads to be constructed 40-60 feet wide. Whereas Road No. 20 is shown in the original master plan to be 20 ft. wide and is meant for pedestrian way to maintain the view and utility of the water body. It is further submitted that the layout plan shows an open space in front of Roads No. 20 thus making a representation to the lessees on that Road that the open space will remain. The learned Advocate has referred to

the decision in the case of Rajdhani Unnayan Kartipakhya and another –Vs- Mohshinul Islam and another reported in 53 DLR (AD) 79 and submitted that RAJUK can develop new sites, but on at the expenses of open spaces. She also referred to the unreported decision of the High Court Division in Writ Petition No. 1046 of 1993. (Which was upheld by the Appellate Division) which held that the respondents could make alternation for improvement schemes, but keeping the open spaces intact.

The learned advocate for BELA further submitted that the layout plan is part of the master plan and cannot be deviated from without following the procedures laid down in Sections 69. 73 and 74 of the Town Improvement Act.

In support of the petitioner's cases the case of Rajdhni Unnayan Kartipakhya and another –Vs- Mohshinul Islam and another reported in 11 BLT (AD) 56, was referred wherein it was held that although under Section 40(b) of the Town Improvement Act. 1953 RAJUK may alter the layout plan, this power must be exercised for the purposes of improvement. It was submitted that the instant case there was no improvement and on the contrary open space greenery and pollution free atmosphere was being taken away.

Mr. Abdul Wadud Bhuiyan, the learned Advocate appearing on behalf of the RAJUK and also representing the added respondent in W.P.No. 948 of 1997, submitted that the layout plan for the 6 additional plots is a continuation of the earlier plan to incorporate under developed land. The learned Advocate referred to the decision in Writ Petition No. 1001 of 1993 and submitted that in that writ petition the High Court Division did not interfere with the allotments, which had taken place prior to the filing of the writ petition. He further submitted that the land, where the additional plots were reclaimed was not carmarked as open space or park, nor any area of the lake was reduced as a result of the reclamation. He further referred to the decision in the case of Chairman RAJUK and others –VS- Parvin Akhter reported in 7 BLC (AD) 167 where it was held that the petitioners did not get any vested right to have open space between her house and the lake. He further submitted that there is no evidence that the lake has in any way been reduced in size as a result of the additional plots and the new Road No., 22. The learned advocate submits that the petitioner knew about the revised plan in November, 1995 but did not challenge the same at that time. Referring to the application by the added respondent in W.P.No. 5121 of 1996, he submitted that

the new plots were allotted on 25.10.1995, whereas the writ petition was filed on 24.11.96. He further submitted that the petitioners have not produced any Master plan to show how there has been any unauthorized deviation from it. In fact, as was found in the 7 BLC case there is no separate Master Plan for the new development schemes. He went on to submit that the revised layout plan has been authorised as has been sworn by the respondent in his affidavit in opposition. Which has not been controverter by filing any reply to the same. The learned Advocate submitted that Sections 69, 73 and 74 of the Town Improvement Act are not attracted in this case. On the other hand Section 40(b) allows alteration or revision of the plan for improvement.

We have perused the petitions, affidavits, as well as the annexures and considered the submissions of the learned advocates. The facts of the instant writ petitions are in many respects similar to those in the case report in 7 BLC (AD) 167. In that case eight plots were developed on the bank of the Lake along a 20 ft. wide road under similar circumstances. Their Lordships held that:

"Having considered the facts and circumstances we find that the respondent had no vested legal to have open space between her house and lake. There is no evidence that the lake has been or is being filled up for he project; The narrow strip of vacant land which is being converted into plots is only an extension/addition to Gulshan residential plots by altering the layout plan, and would not adversely affect environment of Gulshan or destroy the greeneries or the lake. There has been no change of the master plan either."

In the instant case also we find that there is no evidence or material with regard to filing up of the lake in anyway. On the contrary, the report of disadvantage than any of her other neighbors in Uttara. In the instant case, there is no evidence that lake has been reduced in size. On the other hand the new road will provide a promenade overlooking which will be for the enjoyment of all the residents in the locality.

The decisions in the case report in 53 DLR (AD) 79 (same as 11 BLT (AD) 56) and the unreported decision in W.P. 1046 of 1993 are somewhat different in that in those cases there was a clear finding that land car marked for park, school mosque etc had been reallocated as residential plots. In the facts and

circumstances of he instant case we are satisfied that the land in question was not earmarked for any Civic amenity nor was the lake encroached upon.

We find ourselves in complete agreement with the decision of their lordships in the case reported in 7 BLC (AD) 167 and find no merits in the instant writ petitions, which are liable to be discharged.

In the result both the Rule are discharged without any order as to costs.

Shamim Hasnain, J. The investigation by the Ministry of Environment shows that the lake has not been filled. On scrutiny of the original layout plan, it appears that the amenities such as park, playground, school mosque etc are clearly marked in the map itself. The open space in front of Road no. 20 does not appear to have been marked for any such purpose. It appears to us that the benefit of the open space in front of the petitioners plot was a momentary fortuitous benefit which has been taken away for the greater benefit of the community at large, which is for the provision of extra plots necessary to meet the demands of the population.

The claim that Road No. 20 was meant for pedestrians use only and that a 20 ft. wide road is in violation of Section 54 of the Town Improvement Act does not held good, since it can not be claimed that Road No. 20 would not be used by the enquiry that Road No. 20 was 20 ft, wide. Moreover, we note that there are number of the other roads within the vanity, which are less than the 40 ft. wide roads required by law as propounded in Section 54 of the Act. In any event, since the petitioners did not complain about the size of the other roads they cannot now complain that the road is only 20 ft. wide. With regard to access of air cross ventilation the petitioner and the other residents adjoining her plot are no worse off than the residents on either side of Road No. 20. All the plots are back to back as are the new plots with the petitioner's plot. She has not suffered any greater.

Shamim Hasnain, J.

IN THE SUPREME COURT O BANGLADESH
(Appellate Division)

Present:
Mr. Justice Mainur Reza Chowdhury, Chief Justice
Mr. Justice Mohammad Fazlul Karim
Mr. Justice Syed J.R. Mudassir Husain
Mr. Justice Abu Sayeed Ahmed

CIVIL PETITION FOR LEAVE TO APPEAL NO. 588 OF 2000

(From the judgment and order dated 23rd May 2000 passed by the High Court Division in Writ Petition No. 3155 of 1999).

Professor Dr. Niaz Zaman

... Petitioner

Versus

Rajdhani Unnayan Kartipakhya and others

... Respondents

For the Petitioner : Dr, M. Zahir, Senior Advocate, instructed by Amir Hossain Chowdhury, Advocate-on-Record.

For the Respondents : Mr. A. F. Hassan Ariff, Senoir Advocate, instructed by Mr. Ataur Rahman Khan, Advocate-on-Record.

Date of hearing : The 24th day of March 2003.

(JUDGMENT)

Mohammad Fazlul Karim, J. The petitioner seeks leave to appeal against the impugned judgment and order dated 23.05.2000 passed by the High Court Division in Writ Petition No. 3155 of 1999 discharging the rule with cost of Tk. 5000/=.

The petitioner filed the writ petition stating, inter alia, that the petitioner's mother Mrs. Sukina Nigar Ali wife of Mr. H.T. Ali was allotted Plot No. SE(H)4 at Gulshan by the then Dacca Improvement Trust (DIT) in 1961 on 99 year's lease and possession was handed over to her on 29 July 1967. That the plot was gifted

to the petitioner by his mother in 1970 and the respondent Nos. 1 and 2 recognized the transfer by mutating the name of the petitioner as owner of the plot by memo dated 3.2.1975. That at the time of allotment of the plot in 1961 the petitioner was given a layout plan of the area by the then DIT which showed a road in front of the petitioner's plot and nothing beyond but the Gulshan lake. That recently the petitioner has noticed starting of a construction just in front of the petitioner's plot on the other side of the road by respondent No. 3. That the respondent No. 3 is giving out that the respondent Nos. 1 and 2 have approved a plan to construct in the lake's open area which the respondents cannot do, open space cannot be filled up in violation of the petitioner's rights and expectations by virtue of the lease deed along with the design map of the area at the time of the granting of the petitioner's lease. That the respondent Nos. 1-2 have no lawful authority to change the layout plan except in accordance with law; the layout plan prepared in the 1950s showed open beyond the road in front of the petitioner's house; the amended layout plan in the 1990s also keeps the open space and promises to keep the space open.

Dr. M. Zahir, the learned Counsel appearing for the petitioners submits that the High Court Division erred in holding that the effect of the layout plan is to prevent public construction and not private construction inasmuch as RAJUK cannot approve plans and allow buildings to be constructed in violation of layout plan. The learned Counsel further submits that the High Court Division erred in not appreciating that if Gulshan and other lakes and open space are allowed to be encroached upon then the environment of Dhaka will suffer, even a "land hungry" country deserve to be spared being a ghetto.

The High Court Division, on consideration of the material found that:

> "There is a 40' feet wide public road between the house of the petitioner and that of the respondent No. 3 and how the petitioner's right to enjoy light and air can be effected/Further both the petitioner and the respondent No. 3 are the lessee of the Government land under RAJUK and to claim an amount of light or air it must be enjoyed without interruption for sixty years. Creation of residential plots between the said open space cannot be vilolative of environmental atmosphere of Gulshan or the city. Dr. Zahir has cited three decisions reported in 1991 SC 1902, 17 BLD (AD) 1 and 15 BLD (HCD) 117-We do not find their relevance to the instant cases. The petitioners, we find, was not satisfied with a plot in Gulshan which he ought to be as few persons among his millions of fellow citizens got such plots. But the petitioner wants more. He wants that the land beyond the 40' wide road up to lake is to be left open for his enjoyment of light and air. This is unjust, too much and illegal in a land hungry country. This writ petition is vexation and arrogant."

Upon hearing the learned Counsel for the parties we have ourselves directed the respondent to earmark the Gulshan lake with proposed road and walkway to be constructed inside the lake in order to protect the lake and environment in the area for ecological balance.

Accordingly RAJUK filed an additional paper book with statements clarifying the status of the lands around the Gulshan lake and the proposed land to be acquired. The respondent RAJUK thereupon supplied necessary and required clarification in the annexed layout plan stating further that area delineated in pink colour is required to be acquired, the area now do form part of lake is under water and is required to be preserved as lake. In order to prevent private encroachment in the lake a direction is required to be made upon RAJUK not to approve any building plan in the area covered by lake including the area proposed to be acquired for preserving the lake. That a layout plan has already been prepared by RAJUK for the existing Gulshan, Baridhara lake and the plots and lands adjacent to the lake. In the said layout plan all the existing and proposed roads and walkway alignments have been delineated and depicted using different colours. The cross section of the lake has been shown also in the said layout. It has been proposed that the slanted space (greenery) in between the lake and the walkway, will be used for preserving the navigability and depth of the lake and the proposed road and walkway will be constructed on the boundary wall of the duly allotted plots. That the area marked under red hatching in the layout plan of Gulshan Baridhara lake and its side lane is now in existence as part of the lake and is intended to be acquired and preserved as part of the lake. The signed statements dated 14th January, 2003 and 25th January, 2003 and the layout plan No. TP/RLT/234/APRIL-3(53) dated 4th April, 1994 have been made Annexure-A, B and C respectively and prayed for forming part of the additional paper book filed in this Court.

Annexure-A as referred to above is quoted below as under:-

বিষয়ঃ গুলশান-বারিধারা লেক ও পাশ্ববর্তী ভূমির লে-আউট প্ল্যান প্রসংগে।

গুলশান-বারিধারা বিদ্যমান লেক পাশ্ববর্তী প্লট ও জমিসহ একটি লে-আউট প্ল্যান প্রণয়ন করা হইয়াছে।

- লে-আউটে বিদ্যমান ও প্রস্তাবিত সড়ক এবং Walkway এবং এলাইমেন্ট ভিন্ন ভিন্ন রং দ্বারা চিহ্নিত করা হইয়াছে।
- লে-আউট প্ল্যানে লেকের Cross Section দেখানো হইয়াছে।
- Walkway and Open Space (Greenery) এর পর থেকে লেকের পাশ্ববর্তী ভূমির Slops ১ঃ২ অনুপাতে লেকের নাব্যতা সংরক্ষণ করার ব্যবস্থা গ্রহণ করা হইবে।

- প্রস্তাবিত সড়ক এবং Walkway বরাদ্দকৃত প্লট বাউন্ডারী পার্শ্ব দিয়া নির্মাণের প্রস্তাব করা হইয়াছে।"

Annexure-B as referred to above is quoted below as under:-

গুলশান বারিধারা লেক ও পাশ্ববর্তী ভূমির লে আউট প্ল্যান প্রসংগে।
নকশায় চিহ্নিত Red hatching বর্তমানে লেকের অংশ হিসাবে সরেজমিনে আছে।"

Annexyre-'C' as referred to above is the layout plan of lake and side land in between Gulshan and Baridhara being drawing No. TP/RLP/2340/April-3(53) dated 4.4.94.

We have perused the writ petition, annexures thereto and considered the submission of the learned Counsel for the petitioner and found no merit therein for our interference with the impugned judgment and order.

But since this petition is also by way of public interest litigation and accordingly, we gave directions to RAJUK to clarify the status of the land proposed to be acquired and for preparing a layout plan depicting the proposed road around the Gulshan and Baridhara lake and walkway with slops which must be constructed and maintained by the side of the boundary wall of the adjacent allottees. Rajuk has stated the land within the red hatching in the layout plan of Gulshan-Baridhara lake filed by RAJUK in its additional paper book together with the layout plan etc. showing its side land now in existence as part of the lake and is intended to be acquired expeditiously and preserved as part of the lake. Preservation of the lake and to maintain a road and walkway with reasonable slop around the lake is a public purpose and accordingly we directed that with end in view the land inside the periphery of the lake should be acquired in the public interest as early as possible and the same should be maintained in a similar manner for preserving the lake with a road and walkway with reasonable slop towards water. We, accordingly, further give the direction to the RAJUK for implementation of our aforesaid directions as soon as possible.

Accordingly, the signed statements dated 14.1.2003 and 25.1.2003 annexed as Annexure-A and B respectively to the additional paper book filed by RAJUK as quoted above and the layout plan No. TP/RLT/234/April-3(53) dated 4th April 1999 annexed as Annexure-C annexed thereto do form part of this order.

With the above observation and the aforesaid directions this petition is dismissed.

IN THE SUPREME COURT OF BANGLAESH
Appellate Division

Present:
Mr. Justice Syed J. R. Mudassir Husain.
-Chief Justice
Mr. Justice Mohammad Fazlul Karim
Mr. Justice M. A. Aziz.
Mr. Justice Amirul Kabir Chowdhury.

CIVIL PETITION FOR LEAVE TO APPEAL NO. 564 OF 2004.

(From the judgment and order dated 17th February, 2004 passed by the High Court Division in Writ Petition No. 948 of 1997)

Dr Mohiuddin Farooque.
... Petitioner.

- Versus –

Government of the People's Republic of Bangladesh and others.
... Respondents.

For the petitioners.	:	Mr. Mahbubey Alam, Senior Advocate Instructed by Mr. A. S. M. Khalequzzaman, Advocate –on-Record.
For respondent No. 4	:	Mr. Abdul Wadud Bhuiyan, Senior Advocate, Instructed by Mr. Nurul Islam Bhuiyan, Advocate –on-Record.
Respondent Nos. 1-3	:	Not represented.
DATE OF HEARING	:	The 22nd May, 2004

(ORDER)

SYED J. R. MUDASSIR HUSAIN, C. J. : Late Dr. Mohiuddin Farooque as the Secretary General of Bangladesh Environmental Lawyers Association shortly BELA, was the original Writ-petitioner and on his death petitioner Ms. Syeda Rizwana Hasan having been situated in his [lace, is now seeking leave to appeal

against the judgment and order dated 17th February, 2004 passed by the High Court Division in Writ Petition No. 948 of 1997 discharging the Rule.

The petitioner brought the above writ petition challenging the legality of implementation of partly revised layout plan on the back of lake/water body of Uttara Model Town causing threat to the natural environment of the area and allotment of the plots in favour of the private individual and thereupon the said original writ-petition obtained the Rule calling upon the respondents to show cause as to why the adoption and implementation of the impugned layout plan on the bank of the lake water body of the Uttara Model Town causing threat to the natural environment of the area and the water body shall not be declared to have been made without lawful authority and why the respondent No. 3, the Director General, Department of Environment, should not be directed to perform its statutory duties under the Environment Conservation Act, 1995 to protect the environment of the water body and its surrounding in the Uttara Model Town endangered by the implementation of the impugned layout plan by the respondent No. 2.

The petitioner's case as stated in the said writ petition, is to the effect that the BELA has been active since 1992 as one of the organization with expertise in the regular field of environment ecology. And since its inception BELA has undertaken a large number of public interest litigations and to promote in creating public awareness for the safe and sound environment and to establish a sound ecological order, because of the fact that the environment of the country is more particularly in the urban areas is being continuously endangered and threatened by various unplanned activities by private and public bodies. The worst scenario exists in Dhaka City and its environment are subjected to many threats and injuries due to unplanned and unauthorized construction of the building in Dhaka City. It is stated that the respondent No. 1 is the Ministry of Housing and Public Works, which is responsible for the urban development in specific cities and townships. The respondent No. 2 is the Rajdhani Unnyan Kartipakka (herein after referred to as "RAJUK") created under the Town Improvement Act, 1953 as amended by Ordinance No. XII of 1987 which has been authorized and entrusted with the responsibilities, among others, to adopt Master Plan, allot plots, approve building construction, recreation, recreational and other civic facilities, infrastructure plans for the Dhaka City. That the respondent No. 3 is the Department of Environment (herein after referred to as "DoE") which is the implementing agency of the Environment Conservation Act, 1995 (Act No.1 of

1995) and assumed all responsibilities regarding environmental protection and conservation and the National Environmental Policy, 1992.

Uttara Model Town (hereinafter referred to as U.M.T) situated at both side of Dhaka Tongi Highway adjoining the Zia International Airport was developed as a Model Town for residential purpose in the early 1980 by the respondent No. 2 i. e, the erstwhile Dhaka Improvement Trust (DIT), a statutory body created under the Town Improvement Act, 1953, subsequently renamed as RAJUK through an amendment in 1987; that since the creation of the UMT, its inhabitants have been enjoying the calm and pacifying flow of a water body through the heart of the township popularly known as "Uttara Lake". While preparing the Master Plan of the UMT by the respondent No. 2, this water body was kept to be viewed and purposes of a lake as an essential environmental component. A part of the water body has its flow by the side of Road No. 20 in Block/Sector-3 (hereinafter "Sector") of UMT. The lakeside or bank adjacent to Road No. 20 is a narrow strip of land and was left by the respondent No. 2 in the original Master Plan as space for developing Park, quite logically, to enhance the view and purpose of the water body as lake.

The respondent No. 2 recently has adopted a revised part layout plan (hereinafter referred to as the impugned layout plan) for Sector-3 (Old-13). In this impugned layout plan that the narrow strip of the lake side land adjacent to Road No. 20 be filled up and plots be reclaimed and allotted thereafter to new allottee for construction of residence. At the same time, the southern side of the lake would also be filled up for constructing a new Road No. 22 and connecting it to Road No. 20. The Respondent No. 2 has already initiated the process to implement the impugned layout plan and has started allotting plots on the lakeside land deviating from the original Master Plan; that the reclamation and allocation of the plots on lake side created wide dissatisfaction amongst the inhabitants of the UMT in general and more particularly the nearby residents who made several representations to the appropriate authorities and agencies including the respondent Nos. 2 and 3 for taking effective measures against such unlawful, irregular, environmentally hazardous and arbitrary decision and action of the said respondents. Alleging deviation from the original Master Plan, the residents of Road No. 20 have repeatedly expressed their concern about the environmental degradation which the implementation of the impugned layout plan would create in their vicinity and the water body; that in response to the appeal of the resident

of the UMT, the respondent No. 3 conducted investigation in the said area and have submitted its report dated 3 September, 1996 which is supportive of the allegations of the residents. The said report has recorded the fact of deviation from the original Master Plan and factually supported the concern of the inhabitants with regard to degradation and pollution of environment in case part of the lake was filled up for allocation on the vacant land of a part of the lakeside shown as park in the original Master Plan; that in view of the said report, the respondent No. 3 vide its letter dated 23 September, 1996 suggested the Ministry of Environment and Forest (MoEF) for requesting respondent Nos. 1and 2 for developing the UMT without disturbing the natural environment of the lake. Accordingly, the said Ministry vide its letter dated 13 October, 96 conveyed the findings and requested respondent Nos. 1 and 2 not to disturb the natural environment of the lake by their proposed allocation; that in response to the letter of the MoEF dated 13 October, 96, the respondent No. 1 vide its letter dated 27 November, 1996 requested the respondent No. 2for initiating necessary steps in furtherance of the said letter of 13 October, 1996 which was not acted upon; that despite such requests from the residents of UMT and the respondent No. 3 (as annexure-"F") requesting non-interference with the present state of the lake, the respondent No. 2 in pursuance of the impugned layout plan, in allotting new plots for the purpose of housing construction on the lakeside land adjacent to Road No. 20 of Sector-3 lefts as Park in the original plan; that the original Master Plan shows that the Road No. 20 Sector-3 as about 20 feet of width having building line on one side and lake on the other side while all other roads of the UMT are 40-60 feet in width having lessees on both sides. This also indicates that while drawing the Master Plan, there was no plan to develop the lake side for any other purposes than to maintain a natural water body with further greening of the site. Accordingly, the lessees of the road side adjoining the lade have designed their houses and have been living with the benefit of the excellent lake-view. The allotment of plot on the lake side would render the area as a congested one adversely affecting the residential trait of the UMT and will add to another example of disaster by unplanned development with questionable motives; that the residents of the UMT being seriously aggrieved by the aforesaid unlawful acts of the said respondents appealed to the petitioner for appropriate legal assistance vide letter dated 19 September, 1996; that on conducting necessary field investigation, scrutinizing relevant papers and analyzing laws, the petitioner, being satisfied with the truth of the allegations raised by some local people of UMT, issued a notice demanding justice on 23 October , 1996, on the respondents

requesting the respondents to cancel, abandon the implementation of the revised part layout plan immediately in the greater interest of the public and the natural environment of the lake and the adjoining areas. But none of the respondents have replied to the notice till date.

Upon the aforesaid allegations, the petitioner moved the High Court Division under writ jurisdiction and the Rule was obtained. The respondent Nos. 1-3 did not file any affidavit-in-opposition to oppose the Rule and the added-respondent No. 4, a private person individually contested the Rule by filing affidavit-in-opposition denying the allegations made in the writ-petition and it was claimed that the impugned revision of the layout plan was not contrary to law and there was no environmental risk involved in it.

Upon hearing the parties, the learned Judges of the High Court Division discharged the Rule.

Mr. Mahbubey Alam the learned Counsel appearing for the petitioner placed before us the impugned judgment of the High Court Division and also the relevant laws. He firstly contended that the learned judges of the High Court Division have committed an error of law in passing the impugned judgment relying on the judgment reported in 7 BLC(AD) at page 167inasmuch as the learned Judges failed to appreciate that the decision reported in 53 DLR(AD)79 which is the governing case was not cited by any of the parties despite the same being an earlier judgment. It is further contended that the learned Judges of the High Court Division committed an error of law in discharging the Rule with a finding to the effect, “Benefit of the open space in front of the petitioner’s plot was a momentary fortuitous benefit, which has been taken away for the greater benefit of the community at large” is manifestly erroneous the petitioner filed the Writ Petition No. 948 of 1997 for public interest on the ground that by creating new plots in the open and vacant space the respondent No. 2 have acted against the public interest inasmuch as it would amount to denial of right to life to the citizens.

His argument is that the High Court Division committed an error of law in holding that the judgment reported in 53 DLR(AD) at page 79 is distinguishable inasmuch as the aforesaid judgment laid down the general principle which must be established in order to revise a layout plan under Section 40 of the Town

Improvement Act 1953 as such the judgment reported in 53 DLR(AD)79 ought to have been followed. In such view of the matter, the findings and decisions as arrived at by the High Court Division can not be sustainable in law.

Mr. Abdul Wadud Bhuiyan, the learned Counsel appearing for the respondent No. 4, has however tried to support the impugned judgment of the High Court Division submitting that the layout plan for 6 additional plots is a continuation of the earlier plan to incorporate the underdevelopment plan and he relying upon the decision in the Writ Petition No. 1001 of 1993 and the case reported in 7 BLC(AD) at page 167 has argued that there is no illegality in the impugned judgment of the High Court Division for interference.

We have considered the submissions of the learned Counsels appearing for the parties. The contentions raised by the learned Counsel for the petitioner deserve consideration.

Accordingly, leave is granted.

Security of 1000/-(One thousand) is to be deposited within 1 (one) month.

Preparation of paper book is dispensed with as prayed for.

The parties are directed to maintain Status-quo for 6 (six) months.

Mr. Justice Syed J. R. Mudassir Husain. -C. J
Mr. Justice Mohammad Fazlul Karim J.
Mr. Justice M. A. Aziz. J.
Mr. Justice Amirul Kabir Chowdhury. J.

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

WRIT PETITION NO. 11003 OF 2006.

IN THE MATTER OF:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh

AND

IN THE MATTER OF:
Omar Sadat and another

...Petitioners.

VERSUS

1. Bangladesh represented by the Secretary, Ministry of Housing and Public Works, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka and others.

…Respondents.

Ms. Syeda Riwana Hasan, with
Mr. Omar Sadat
Mr. Iqbal Kabir, Advocates

…For the Petitioners.

Mr. Akram Hossain Chowdhury, Deputy Attorney General

... For the respondent no. 2.

Present:

Mr. Justice A.H.M.Shamsuddin Choudhury
And
Mr. Justice Md. Delwar Hossain.

Heard on 8th April, 2010 and

Judgment on 24th May, 2010.

A.H.M.Shamsuddin Choudhury, J.: By this Public interest litigation the petitioner successfully asked for a Rule requiring the respondents to show cause as to why they should not be directed to ensure that Gulshan-Mohakhali Lake, adjacent to Road No. 23 Gulshan 1, remains beyond the clutches of the lake fillers and polluters, that no plot is created allotted or sold in or around the said lake side and no planning and/or building permission is granted to anyone to commence any construction or development work on any area of the lake which has already been filled up with deposition of soil and why they should not be directed to construct a walkway along the bank of the Gulshan-Mihakhali Lake at Road No.23, Gulshan 1, and to eject all illegal encroachers who have transgressed upon the already filled up areas and to make such squatters excavate the area at their own cost so that the water body reappears in those encroached areas and as to why it should not be declared that the respondent nos.3 and 4 have failed to perform their statutory duty under the Environment Conservation Rules 1997, Wetland Protection Act 2000, as well in terms with the contents in the notification the respondent no. 2 channeled to other respondents with a view to protect the environment and the waterbody known as Gulshan-Mohakhali Lake.

In advancing its cause, the petitioner portrayed a rather pathetic and Gloomy scenario that has been allowed to develop with impunity around the water body that flows through Gulshan-Banani-Mohakhali as well as Gulshan-Baridhara, known as Gulshan-Mohakhali and Gulshan-Baridahara Lake.

The petitioners, long standing residents in the vicinity of the lake concerned and, executive committee members of a social conglomerate of the area, named Gulshan Society, averred rather dispassionately, that the ecology of the capital city has been, and remain subjected to danger of catastrophe proportion due to, visibly impunised, unlawful activities, involving unauthorized building construction and development project etc. on such places which remain officially designated as water bodies. The encroachers, who are public as well private bodies, are financially well endowed people, having enormous muscle and economic power under their disposal to enable them to do as they wish, having scant regard to the environmental standard, planning laws and the interest of the city dwellers in general. Conducts of such out laws are virtually transforming, the city into a place of uninhabitability, depriving the citizenry of their opportunities to breath fresh air, enjoy the panaromic view of the city and its water bodies.

Pressure on available open space, multiplied by the population boom on a geometric progression, is being pretexted by the perpetrators as an excuse for their diabolical activities, geared only to make improper gain to the peril of the city dwellers as a whole. Gulshan Residential Area, was developed by the respondent No. 2 as a model town which development opened an opportunity to enable the water body, named Banani-Gulshan and Baridhara Lake to provide, a tranquil flow of uncontaminated water, in the region.

The subject lake is one of the very few water bodies that have, some how, been able to survive the onslaught of greedy and unscrupulous land grabbers in or around the capital city. Encircled by three mighty rivers, canals and drains flowing throw the city, once provided natural drainage for the city's waste. Frenzied urbanization during the last decades, however resulted in the virtual annihilation of the city's water bodies and wetlands after the sprce of "free for all' encroachments commenced.

Notwithstanding the disappearance of most of the lakes that connected Dhaka with the river surrounding it, the few remaining ones still clay irreplaceable role in keeping intact, as far as possible, they city's ecological essentiality. It fulfils the job of a water retention basin during monsoon, remains a major source of recharging ground water and helps maintain temperature equilibrium during the hot summer season. As the scientists have it, it also acts as the absorber of impurities at all times.

Yet it's very existence is under incessant threat. It has already been substantially reduced in size in the face of merciless acts of ravage by insensate grabbers, its water has lost purity. The hazardous effect of the grabbers acts of ravishment become conspicuous when water logging in Gulshan area shows up during rainy days.

Absence of sewer system in the vicinity further compounded the malady severely polluting the water, which are also used by water supply authority as drinking water for human consumption and household necessities. Though the links have been served, the lakes are still integral part of the eco-system, being a source of biodiversity of the area, over and above the fact that they provide scenic beauty.

While scientist say that water bodies should constitute at least 10% of a city area, the vital water body, the only one of the few residual ones, which covers an area far lesser them 10%, is virtually on the verge of total extinction. It's aquatic lives are also at a stake. The problems generated extremely high level of biological

oxygen demand on low level of dissolved oxygen are on the rise. Increase in the number of microbes are causing proportionate rise in human miseries.

After the Water and Sewerage Authority (WASA) shut down half of the deep tubewells, the lake-provides bulk of the re-chargeable water. No doubt increased level of pollution shall result in serious health problems in the area. The lake, is enduring unintermitted pressure from those having greedful eye of the lake, a fact that has received recognition in in the Dhaka Metropolitan Development Plan, DMDP for short, prepared by the respondent No.2, the Rajdhani Unnayan Kartipakhya, RAJUK for short.

It is further averred by the petitioner that he has known from various news items that the respondent no.2 is about to allot certain portion of the lake, particularly those parts which are within Gulshan, Mohakhali area around Road no. 23.

The melanchonic tales of encroachment is not a new phenomenon. Continued encroachment for many years have infuriated dwellers of the area, yet their expression of concern fell on deaf ears of the authorities in the wake of intervention by this court, protest from the civil society, campaign by environmental pressure groups and of course directives from the Prime Minister's Office the respondents got alarmed but, it cannot be said that the games of encroachment and pollution is over.

However, judicial intervention yielded three significant breakthrough, namely amendment was brought about in the Environment Conservation Act 1995, Wetland Protection Act, 2000 was added in the statute book and Gulshan-Baridhara lake was declared ecologically critical area. In 2002, at the intervention of the Prime Minister, demarcation of the lake and the lake side area was through and the lake was designated as an Urban Natural Reserved Project. Unfortunately, however, these recommendations were not given effect to. No action had been taken even to demarcate the Gulshan-Baridhara-Banani Lake. Unlawful Construction, often with the direct connivance of RAJUK officials, has been in rampancy, an example of which is to be found around Road No. 23 of Gulshan-1 area, which is situated on one side of the bank of the Gulshan-Mohakhali Lake, on the opposite side of which stand Kuril slums. In clear violation of the provision of Wetland Act 2000, the lake is facing uninterrupted onslaught from both the sides. No walkway has been paved, which could have stood as demarcation line to protect the lake. Freestyle filling is going on in board daylight. A slum was deliberately and premeditatedly posited to expedite the filling up process. The slum dwellers have been filling up the lake for their principals, influencial vested quarters with strong financial muscle. Though RAJUK, on the application of the

petitionesr evicted the slum dwellers, encroachers with the complicity of such people are at large to fill up vast areas of the lake adjacent to Road No. 23. It is within the petitioners' know that some disoriented people have been trying to procure allotment over some illegally created plots at the edge of Road No. 23 by filling in the lake and are also trying to sell them, projecting the same as their own land, yet pitiably RAJUK is in hibernation.

The petitioners went to aver that RAJUK itself has been a party in encroaching upon the lake during the three preceding years, has created plots by filling in part of the lake, in the guise of developing the lake, pretending that walkways would be paved on such land. In some places the walkway is being planned 50 feet away from the bank. Encroachments in clandestine manner are commonly followed by setting up of bastis.

The petitioner, complain that the respondent no. 2 has been acting arbitrarily and unlawfully by defying the obligation the progeniting statute imposed upon it and also by creating plots by filling in part of the lake in breach of the provision contained in the Environ Conservation Act, 1995, and in Section 409 of the Penal Code 1860.

It has been further averred that the respondent no. 2's failure to prevent encroachers reflects on the incompetence and indolence of it's officials and that flagrant violation of the laws by the respondents are tantamount to undermining the rule of law as well as escalating the already existing alarming situation that exists in the area so far as environmental hazard is concerned.

By supplementary affidavit dated 7th January 2009, the petitioner stated that subsequent to our interlocutory order against lake filling and construction work, miscreants continued to construct and fill in the lake in violation of our said order and is presently busy in constructing a wall against the walk way passed by the respondent no. 2 demarcating the lake area.

By another affidavit dated 9th March, 2010 the petitioner stated that during the early hours on 12th February 2010 a gang of drunk and armed hoodlums tried to encroach upon the Gulshan lake and pulled down a number of trees grown on the bank of the lake, erected poles and corrugated tin sheds over the lake water and threatened RAJUK guards and the writ petitioners. RAJUK guards have already filed a GD with the Gulshan Police Station and so has the petitioner No. 1. They are still continuing with filling activities.

The respondent No.2 filed it's affidavit stating inter alia that it is equally concerned with the invasive acts of the grabbers, it is in the process of constructing walkways along the Gulshan Lake just parallel to Road no. 23, some squatters commenced construction of multistoried buildings on the lake, illegally occupying the pathway without having any allotment or approved plan, Gulshan-Baridhara-Banani Lake is one of the last surviving water bodies in the city.

Expressing agreement with the petitioner's averment, this respondent stated that interconnected cannels and lakes were once part of the city's natural drainage system and the survived lakes are still the hubs of the city's ecological life lines as they act as water retention basin during the monsoon and also as a source of bio-diversity in the area at all times, whose survival is essential for the sustenance of the eco-system of the area, it is a major source of ground water recharge. This respondent also echoed the petitioner's concerned by expressing that allotment of plots and encroachments on the lake have been going on for years together, sparking extensive disquiet in the vicinity, indifference by the statutory agencies, to the legal dictates are largely attributable to the damage the environment suffered, unplanned filing are adversely affecting everything irreparably. This respondent also expressed consensuality with the allegation that hazardous construction in the area has derogated fundamental rights of the local inhabitants and that it is the duty of the entire populace to protect environment to save it from degradation and eventual extinction.

When the Rule matured, Mr. Omar Sadat appearing for the petitioners, projected the bleak scenario, in line with the averments figured in the petition, that prevail around the precious lake, which, despite all the venomous bites, somehow managed to survived as a lose symbol of eco-diversity in the city.

Mr. Sadat proferred, with a voice of fright, unless drastic steps are taken to in sulate the lake from human shaped vultures, whatever trace of ecological equilibrium have remained, will vanish unleashing inexplicable plight to the Gulshan-Baridhara-Mahakhali-Baridhara dwellers in particular and the city inhabitants as a whole, as this is now one the very few mentionable water bodies that can supply some fresh air for breathing, for absorbing the hit during the summer, retaining water during the monsoon and re-charging ground water, even if the beautification aspect is kept apart.

He had no hesitation in putting the blame squarely on those, primarily upon whom the obligation lay to protect the inviobility of the lake and they are none other them the respondent no.2, ie RAJUK, the added respondent nos. 5 and 6, the

Bangladesh Police and Metropolitan Police, respectively the respondent no. 7, the Water and Swage Authority etc.

In his view the ways by which the lake can be spared from the acts of raving, is by paving walkways along the lake so that the said pavements can be seen as demarcations beyond which none would be allowed to lay their feet on. He also put on table several propositions.

At our request Ms. Rizwana Hasan, a staunch and an internationally acclaimed environment activist, and her colleague Mr. Iqbal Kabir, also made tirade submission, bringing to our notice the emergent need to act now before it is too late.

Expressing their deeply entrenched fury and discontent at the apparent impunity and connivance the authorities have been extending to economically affluent people with muscle power all over the country, Ms. Hasan stated that time is ripe to wake up to form invincible solidarity to repel the diabolic acts of the perpetrators whose lustful designs are poised to wreck the environmental equilibriums, essential for our survival or else irreversible catastrophe would ensue.

Ms. Hassan was also unequivocal in expressing that indolence and often conspicuous accomplicement on the part of the RAJUK functionaries, whose duty it is to insulate the sources of bio-diversity, are largely to blame for the predicament that has be fallen. According to her had RAJUK, Police, local administration been serious to their commitment the present precarious state would not have arisen. She lent her support to the proposition. Mr. Sadat out forward.

In reply Mr. Abdul Quader Talukdar, appearing for the respondent no. 2, the only respondent that came forward to signify it's presence, found very little weaponry under his disposal to dispel the aspersions the petitioner beamed against the authorities concerned. He was in wholesome consensus with what Mr. Sadat and Ms. Hassan had to say even to the extent of admitting the aspersions of ineptitude and difference of RAJUK personal, saying that the present functionaries of RAJUK have taken the challenge with deservant seriousness.

So far as we are concerned, the only issue that we are to address is weather the relief the petitioners contemplate can be granted.

Truth will face no casualty if it is put on record that a spree of land and water body grabbing all over the country is and has been in rampant progression, which we have no hesitation to take judicial notice of. Unfortunately ever, is the visible impunity that the easily identifiable grabbers, highly charged with their affluence and muscle power, have been receiving from those who are vested with the responsibility to contain the felonies, such high profile perpetrators have been indulging upon.

It is not that the authorities are not aware of the disastrous consequences grabbing activities will engender, what is lacking is the commitment. We cannot, in this respect, remain oblivious of the fact that the allegation of connivance by RAJUK officials cannot be bursched of. It has been a matter of common knowledge that RAJUK has been a veritime mine of corruption, an allegation the people at large find difficult to ignore. We have, however been assured of changes with the change in RAJUK's top brass and would look forward to see the result, for seeing is believing.

So far as the subject lakes are concerned, the respondent no. 2 has not deflected the allegation, aspersion and assertions contained therein. This respondent, has, through it's pleading on the contrary, tacitly admitted these. This respondent is in full concord with the allegation that Gulshan-Mohakahli-Banani, and Gulshan-Baridhara Lakes have been facing incogitant intrusion from grabbers and polluters without respite, as a result of which the garbage and waste deposition are dying up the lake. Plots are being created by filling parts of the lakes, something which are being done by the authorities themselves. They have failed to take steps to hold back those out there to fill in the lakes. The authorities have not demarcated the lakes, no walkways have been paved, no sewage system exists in the area.

In the back drop of these admissions, we need not wander around in quest of the truth.

Having discovered the truth and identified answer to the issue, we are in no qualm to arrive at inevitable conclusion that the petitioners have succeeded to substantiate their case with a visibly high preponderance, making the Rule absolute. The sane is, hence, made absolute, without, however, any order as to cost.

As mere absoluteness of the Rule will lead to nowhere, but to infinite obscurity, we are also clinched to pass the following directions to make our order proginitive and prolific. The respondents are, saddled with the following directions.

They will;

(1) take positive, infallible and pervasive steps to draw demarcation over the entire area, adjoining area, adjoining Gulshan-Banani lake, by paving walkways throughout the bank of the said lake.

(2) pave a link way to connect Road No. 23 with Road No. 23(c), Gulshan 1, so that no further earth filling can be occasioned to the lake in that area.

(3) declared the entire lake, flowing through Gulshan-banani-Mohakhali, as Environmentally Critical Area, as it has been in respect to the other lake namely, Gulshan-Baridhara Lake.

(4) must make alternative arrangement-by constructing waste disposal cities where all sewage and other environment polluting waste shall be discharged.

(5) shall take steps to ensure that a committee, comprising personnel from the Ministry of Public Works, RAJUK, WASA, DCC, DMP, Department of Environment, Gulshan Society some media personality and environment oriented activities to incessantly monitor the inviobility of the lake against encroachers, transgressors and polluters.

(6) accomplish the above tasks within 3 months from the date of the receipt of the order, which shall remain effective as a continuous mandamus sine die, and the respondents shall submit affidavit of compliance every six months, the first one being on 15 January 2011.

(7) The respondent no.2 must take all necessary steps to prevail over Dhaka Water and Sewerage Authority as well as other concerned statutory authorities, compelling them to stop discharging sewage and other types of environment polluting substances in the Gulshan-Baridhara and Gulshen-Banani-Mohakhali lake.

S. Choudhury.
Md. Delwar Hossain,J.-
I agree.
M.D. Hosain

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

WRIT PETITION NO. 12025 OF 2006

IN THE MATTER OF:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh

-AND-

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA) and others

...Petitioner

-VERSUS-

Bangladesh and others

...Respondents

Mr. Md. Iqbal Kabir, Advocate

...for the Petitioner

Mr. M. Wali-ul-Islam, Advocate

...for respondent No. 4

Mr. Md. Mokleshur Rahman, DAG

...for respondent No. 5

Mr. Delwar Hossain, Advocate with
Ms. Salma Begum, Advocate

...for respondent Nos. 10 & 11

Heard on: 23.11.2011, 29.11.2011, 11.12.2011 & 08.01.2012

Judgment on: 02.02.2012

Present:

Ms. Justice Naima Haider
And
Mr. Justice Farid Ahmed

Naima Haider, J.: In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule Nisi was issued calling upon the respondents to show cause as to why the allotment as plot No. 20 A/1, Road No. 26, Gulshan in the lakeside greenery in favour of respondent No. 10 and 11 and the continuance of earth filling on the Lake water by respondent Nos. 7 to 11 being violative of the Town Improvement Act, 1953 Act No. 36 of 2000, the Environment Conservation Act, 1995, the Rules of 1997 and the Gazette Notification dated 26 November, 2001 memo No. pa.ba.ma.4/87/2001/839 the Master Plan the Layout Plan shall not be declared to be illegal, against public interest and of no legal effect and as to why the respondents shall not be directed to remove the earth already dumped in the lake and restore the area to its original position and maintain the same as take or lake said walkway/greenery and/or why such other or further order or orders as this Court may deem fit and proper, should not be passed.

At the time of issuance of the Rule respondent Nos. 7 to 11 were restrained by an order of injunction from any further earth filling and/or development in the lake and lakeside greenery in plot Nos. 9, 15 and 20A/1 at Road Nos. 31, 32 and 26 respectively of Gulshan-1.

The facts necessary for disposal of the Rule, in brief are that:

The petitioner is Bangladesh Environmental Lawyers Association, hereinafter referred to as BELA, a society registered under the Societies Registration Act, 1860. BELA has been active since 1992 as one of the organizations with expertise in the regulatory field of environment and ecology. For the last fourteen years it studied policies, surveyed and examined legal issues relating to environment, undertook awareness programme and training to make people conscious of their legal rights and duties. Through its various efforts, BELA has developed into an independent legal institution with widespread respect and recognition as a dedicated, bona fide, sincere and public-spirited organization. Since its inception, BELA has undertaken a large number of public interest litigation wherein the beneficiaries have been the common people and their surrounding environment that effects people's material and spiritual well being. There are many evidences

of its efforts to promote a safe and sound environment and it has been involved in a number of cases that has resulted in landmark judgment to its credit.

The residential areas Gulshan, Banani, Baridhara and the Diplomatic Enclave of Dhaka area are located in the SPZ 6 according to the Dhaka Metropolitan Development Plan (1995-2015). The Master Plan of respondent No. 4 that is RAJUK has in clear terms stated that Gulshan Lake in under constant pressure of being filled up by respondent No. 4 for creating new residential plots. As per the Master Plan, if allotment of plots in the lake is allowed to be continued unhindered, it will not only destroy the wonderful open space but also the essential retention capacity for storm water from a vast area resulting in local flooding and water logging. Despite the fact that the Master Plan of respondent No. 4 has warned against allotment of plots in the Gulshan Lake, the said respondent in connivance with the other respondents is still continuing to allot plots to various vested interest quarters in the said Lake against which a series of cases were filed by the original allotees and the environmental groups before this Court. As a result of such legal interventions challenging allotment of new plots in the Lake and the lakeside greenery in deviation from the Master Plan, a final Map of part of Gulshan Lake has been drawn by respondent No. 4 in compliance with direction of the Hon'ble Supreme Court on 24th March 2003 in Civil Petition for Leave to Appeal No. 588 of 2000. The map shows clear boundary of the Gulshan Lake and the strip of land alongside the lake that to be developed as walkway. The Hon'ble Supreme Court has also directed the respondents not to make any deviation from the said map and not to encroach upon the lake or the lakeside greenery. The Honorable High Court Division on 14th February 2000 has also directed not to dump earth/soil in the Gulshan Lake in Writ Petition No. 751 of 2000. Similarly in a writ petition No. 4803 of 2006 filed by an original allottee of plot No. 13, road No. 32, Gulshan the honorable High Court Division issued a interim order directing respondent Nos. 1 and 4 to restrain the filling up of the Gulshan Lake including the west side of Plot No. 13, Road No. 32 of Gulshan-1 where the newly created plot No. 15 has been allotted once to respondent No. 9 and subsequently cancelled by respondent No. 4. This court while giving judgment in those cases against allotment of plots and encroachment over the Gulshan Lake and the lakeside greenery, the government on the fact of increased threats to the water bodies, enacted Act, 36 of 2000 that prohibited changing the nature of open spaces including the water bodies. Under Act No. 36 of 2000, the government authorities, including respondent Nos. 1 and 4, have been entrusted for taking necessary measures to carry out the objectives and to implement the provision of the said Act. As per those provisions of the said Act changing the nature and character of any water body is strictly prohibited. Any authorization by

respondent No. 1 to change nature of open space must be proceeded with a clear statement as to the public interest and the purpose of the same.

Considering the ever deteriorating state of the Gulshan Lake, respondent No. 2, under the Bangladesh Environment Conservation Act, 1995 and the Rules made thereunder in 1997 has declared the same as Ecologically Critical area (ECA), vide a Gazette Notification dated 26th November, 2001 and the said notification has prohibited certain activities in the ECA of Gulshan Lake including changing the nature of land.

While it was expected that the respondents in protecting the Gulshan Lake in greater public interest shall be respectful to the legal enactment and the judgments of the Apex Court of the country, but at the behest of few vested interest quarters respondent Nos. 1 and 4 still continues to allot plot on the lake water and lake side greenery clearly deviating from the applicable laws and relevant judicial pronouncements. It is the petitioner's grievance that RAJUK has allotted new plots in greenery numbers being 9 and 15 respectively in road No. 31 and 32 of the Gulshan-1. Both the plots are lake side greenery and lake water. Relying on the laws and judicial decisions the existing residents has applied to RAJUK against such unlawful encroachment of the lake in the name of plot allotment and finally RAJUK, vide a letter dated 24.08.2006 and 03.09.2006 cancelled the allotment. The petitioner is aggrieved by the fact that despite such cancellation of the allotment of plot No. 9 and 15 at road No. 31 and 32, the respondent Nos. 7 and 9 are still continuing to fill up the lake. The petitioner is further aggrieved by the fact that the respondent No. 4 has purportedly allotted the lake side greenery to respondent Nos. 10 and 11 as plot No. 20A/1 at road No. 26 in Gulshan-1 in clear violation of judgments and the provisions of Act No. 36 of 2000 and the Environment Conservation Act, 1995 and the Rules of 1997 made there under.

Being aggrieved by the unlawful acts of the respondents in allotting plots in the water or over the greenery of the Gulshan Lake and also their failure to protect the lake and its greenery from illegal encroachment and filling up, the petitioner issued two Notices demanding justice upon the respondents demanding immediate intervention to prevent any further filling up or encroachment of the Gulshan Lake in particular in road Nos. 26, 31 and 32 in Gulshan-1 but without any avail.

Respondent No. 4, the Chairman, Rajdhani Unnayan Kartipakkha (RAJUK) entered appearance by filling an affidavit in opposition. The case of respondent No. 4 is that a plot was allotted to one Md. Mosharraf Hossain but when it was found that the allotment was in deviation of the judgments and orders passed by

this Court, the said allotment was cancelled vide Annexure-G to the writ petition. Similarly, another allotment was made to Md. Mujibur Rahman and his wife Ms. Jalia Rahman and when it was found that the same was also in deviation of judgments and orders passed by this Court, the same was also cancelled vide letter of cancellation (Annexure-G1 to the writ petition). The further case of respondent No. 4 is that Ms. Mahmuda Karim wife of late M. Karim and her daughter Ms. Najma Karim were allotted a plot situated at Banani Model Town in pursuant to the direction given by this Court in writ petition No. 3274 of 2002 as this was not possible, Rajuk decided to allot plot No. 20A/1 at Road No. 26, at Gulshan, Dhaka. The said allotment to respondent Nos. 10 and 11 was done in a legal manner and without any deviation of the judgment and direction passed by this Court in writ petition No. 3247 of 2002 and the same Plot namely 20A/1 at Gulshan-1, Dhaka was allotted to them after leaving space boundary of the lake and keeping 6 (six) feet walkway.

Respondent No. 5, the Director General, Department of Environment, Paribesh Bhaban also entered appearance by filing an affidavit-in-opposition. Respondent No. 5 has stated in the affidavit in opposition that considering the ever deteriorating condition in the Gulshan Lake and upon receiving the complain, this respondent has served a notice dated 07.09.2006 to stop earth filling in Gulshan Lake and also to re-excavate the filled up portion of the lake immediately.

Respondent No. 10, Ms. Mahmuda Karim, wife of late M. karim and respondent No.11, Ms. Nazma Karim, wife of Md. Salim Ahmed entered appearance by filing an affidavit in opposition. The case of respondent Nos. 10 and 11 is that they are the owners-in-possession of the said plot. Respondent No. 4 vide a memo No.রাজউক/এস্টেট/২০৫৮-স্থা dated 09.04.2006 allotted the said plot to the respondents los. 10 and 11 instead of Plot No. 11 of Road No. 23 of Banani Model Town, Dhaka. The said plot was allotted to respondent Nos. 10 and 11 pursuant to a direction given by this Court in writ petition No. 3274 of 2002, wherein, a direction was given to RAJUK to execute the lease deed in respect of the Plot No. 11 of Road no. 23 of Banani Model Town, Dhaka in favour of respondent Nos. 10 and 11. Since RAJUK was not taking any steps, the respondent Nos. 10 and 11 filed Contempt Petition No. 170 of 2005 before this Court against RAJUK for not executing lease deed in respect of the said Plot No. 11 at Road No. 23 of Banani Model Town. Thereafter, RAJUK vide a memo dated 09.04.2005 decided to allot the Gulshan plot in favour of respondent Nos. 10 and 11 instead of the Banani Plot and requested them to withdraw the Contempt Petition. On 18.05.2006, the RAJUK conducted the final survey and handed over the said Plot No. 20A/1 at Road No. 26, at Gulshan, Dhaka to respondent Nos. 10 and 11. On 08.06.2006, RAJUK executed the lease deed in respect of the said plot in favour of respondent

Nos. 10 and 11. The said lease deed No. 12509 was registered with the Sub-Registrar's Office, Gulshan, Dhaka on 15.06.2006. The name of the respondent Nos. 10 and 11 were mutated in the Records of Rights maintained with the Lane Revenue Office, Gulshan, Dhaka under Mutation case No. 17392 of 2006. It is further stated in the affidavit in opposition filed by respondent Nos. 10 and 11 that the said plot in question is and was never a part of the Gulshan Lake. There is a walk way in between the said plot and the Gulshan Lake. RAJUK prepared Layout Plan which contains plot under reference. The said Layout Plan clearly shows that between the land and Plot 20A/1, there is a walk way. There is existence of the said plot in the layout Plan. Therefore, in no event the said plot forms part of the Gulshan Lake. In fact, the said plot was handed over to respondent Nos. 10 and 11 as a ready plot. So the question of earth filling does not arise.

Mr. Md. Iqbal Kabir, learned Advocate appearing on behalf of the petitioner at the outset submits that the legal requirements have been regardlessly flouted by respondent No. 4 which has been acting arbitrarily and unlawfully in dealing with the public property of the Gulshan Lake. Mr. Kabir points out that the allotment of plots by the said respondent in the lake water and greenery not only undermines the public interest but also disregards the provisions of the Master Plan and the layout plan and also the judgments of the Hon'ble Supreme Court. The learned Advocate argues that disregard by the statutory agencies in observing the legal requirements have in many instances caused enough damage to the environment of the city. Mr. Kabir lastly submits that the encroachment over the lake side greenery by the respondent by virtue of the unlawful allotment of respondent No. 4 is liable to be directed to cancel its allotment.

Mr. M. Wali-ul-Islam, learned Advocate for respondent No. 4 submits that the plot in question was allotted in a legal manner without any deviation of the judgment and direction passed by this Hon'ble Court in writ petition No. 3274 of 2002. The plot 20A/ 1 at Gulshan-1 was allotted to respondent Nos. 10 and 11 after leaving space boundary and keeping 6 (six) feet walkway. He lastly points out that although in the judgment, direction was given the Plot No. 11 of Road No. 23, Block-B, Banani Model Town but as that was not possible, the plot in Gulshan was allotted to Ms. Karim and Ms. Nazma Karim.

Mr. Delwar Hossain, learned Advocate on behalf of respondent Nos. 10 and 11 at the very outset submits that Plot No. 20A/1 of Road No. 26, Gulshan is and was never a part of Gulshan lake of which the Respondent Nos. 10 and 11 are the owners in possession. Mr. Hossain points out that the Respondent No. 4 vide memo dated 9.4.2006 allotted the said plot in place of plot No. 11 of Road no. 23,

Block-B, Banani Model Town. The learned Counsel draws our attention to the judgment given in writ petition No. 3274 of 2002 wherein RAJUK was directed to execute and register the lease deed in respect of Plot No. 11 of Road No. 23, Banani Model Town, Dhaka in favour of the Respondents Nos. 10 and 11. Mr Hossain contends that as Rajuk did not take steps with the directions, these respondents filed a Contempt Petition No. 170 of 2005 against the concerned officials of RAJUK. Thereafter, RAJUK decided to allow the Plot No. 20A/1 of Road No. 26, Gulshan Model Town, Dhaka in favour of the Respondent Nos. 10 and 11 instead Plot No. 11, Road No. 23, Banani Model Town, Dhaka. Mr. Hossain further submits that the Contempt Petition was later on withdrawn as the said ready plot No.20A/1, Road No. 26, Gulshan Model Town measuring 10 (ten) kathas of land was delivered by Rajuk and the handed over the physical possession of the said plot to these respondents on 18.5.2006. The learned Counsel lastly submits that these respondents have been in possession of the said plot by mutating their names in the Record of Rights and on payment of government rent and the same is not a part of Gulshan lake, so the question of earth filling in the lake does not arise.

We have considered the submissions of the learned Advocates of both the parties, pursued the writ petition, its annexures, affidavit in opposition filed by respondent Nos. 4, 5, 10 & 11 and the annexures thereto and other relevant materials on record.

It appears that Plot No.20A/1 was created by the approved Layout Plan No. TP/PLP/04/JAN-04/2006 dated 19.01.2006 annexed with the lease deed No. 12504 dated 14.06.2006 by arrangement of Plot Nos. 28 and 20A on the south and Plot Nos. 20B and 20C on the North of the Layout Plan No. TP/PLP/2321/FEB-25/94134 dated 28.02.1994. From the Layout Plan dated 26.06.2006 (Annexure-2 to the affidavit-in-opposition filed by respondent Nos. 10 and 11) it appears that the instant Plot No. 20A/1 is situated at the parallel line of Plot No. 28 on the south and Plot no. 20C on the north. Created vide a Layout Plan dated 19.01.2006, the was allotted by RAJUK in favour of respondent Nos. 10 and 11 pursuant to a resolution No. 16 of 2005 by RAJUK in their meetings. For clarity, the relevant portion of resolution No. 16 of 2005 relating allotment of the Plot No. 20A/1, Road No. 26, Gulshan infavour of respondent No. 10 and 11 is reproduced below:

> ৩৬। বিষয়ঃ বনানী আবাসিক এলাকার ২৩ নং রাস্তার বি ব্লকের ১১নং প্লটের পরিবর্তে বারিধারা আবাসিক এলাকার কে ব্লকে ১০ (দশ) কাঠা আয়তনের একটি প্লটের সংশোধনী বরাদ্দপত্র প্রদান প্রসঙ্গে।

৩৬.৩। সিদ্ধান্তঃ

বারিধারা কে ব্লকের জাতিসংঘ সড়কস্থ ১৫ নং প্লট সংলগ্ন উত্তর পার্শ্বের খালি জায়গায় মহামান্য আদালতের নিষেধাজ্ঞা থাকার কারণে উক্ত সুপারিশকৃত প্লটটি বরাদ্দ দেয়া যাবে না। বনানী আবাসিক এলাকার বি ব্লকস্থ ২৩নং রাস্তার ১১নং প-টের বরাদ্দ গ্রহিতা মরহুম এম.এ করিমের দায়েরকৃত ৩২৭৪/২০০২নং রীট পিটিশন মামলা এবং পরবর্তীতে তার উত্তরাধিকারীগণের Contempt পিটিশন ১৭০/২০০৫নং মামলা প্রত্যাহার করণের শর্তে নগর পরিকল্পনা শাখা কর্তৃক নূতন সৃজনকৃত গুলশান-১ আবাসিক এলাকার ২৬নং রাস্তার কমবেশী ১০ (দশ) কাঠা আয়তনের ২০এ/১ নং প্লটটি বরাদ্দের সিদ্ধান্ত গৃহীত হলো। মামলা প্রত্যাহারের পর (ক) মিসেস মাহমুদা করিম, স্বামী মৃত-এম.এ.করিম (খ) মিসেস নাজমা করিম, পিতা মৃত-এম.এ.করিম এর বরাবরে বরাদ্দপত্র জারী করার বিষয়ে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য বিষয় শাখাকে নির্দেশ দেয়া হলো।

(emphasis supplied)

The reasons of changing the venue from Banani to Gulshan is also reflected in the affidavit in opposition filed by respondent No. 4 (RAJUK) which runs as follows:

রাজধানী উন্নয়ন কর্তৃপক্ষ
রাজউক ভবন, ঢাকা।

২৮/০৭/২০০৬ তারিখ The Daily Star পত্রিকায় প্রকাশিত "Rajuk's secret Gulshan plot allocation" এবং ৩০/০৭/২০০৬ তারিখে দৈনিক জনকণ্ঠ পত্রিকায় প্রকাশিত গুলশান লেক দখল করে ভুমিদস্যুরা আবার ভবন নির্মাণের মহোৎসবে মেতেছে শীর্ষক সংবাদ দুটির বিষয়ে রাজউকের বক্তব্যঃ

২৮/০৭/২০০৬ তারিখ The Daily Star পত্রিকায় প্রকাশিত "Rajuk's secret Gulshan plot allocation" এবং ৩০/০৭/২০০৬ তারিখে দৈনিক জনকন্ঠ পত্রিকায় প্রকাশিত - গুলশান লেক দখল করে ভুমিদস্যুরা আবার ভবন নির্মানের মহোৎসবে মেতেছ শীর্ষক সংবাদ দুটির বিষয়ে রাজউক কর্তৃপক্ষের দৃষ্টি আকৃষ্ট হয়েছে। বর্ণিত সংবাদ বস্তুনিষ্ঠ নয়। উক্ত সংবাদের বিষয়ে রাজউক এর বক্তব্য নিম্নরূপ।

গুলশানস্থ ২৩ ও ২৬ নং রোড সংলগ্ন এলাকায় লেক সংরক্ষণ ও ওয়াকওয়ে নির্মাণের জন্য বরাদ্দকৃত প্লটসসূহ পুর্নবিন্যাস করার প্রয়োজন পড়ে। প্লটসমূহ পুর্নবিন্যাসের ফলে রোড নং- ২৬, প্লট নং-২০এ-এর পার্শ্বে একটি প্লট নং ২০এ/১ সৃষ্টি হয়। মহামান্য সুপ্রীম কোর্ট ডিভিশনের রায়ের প্রেক্ষিতে বেগম নাজমা করিম ও মাহমুদা করিম এর অনুকুলে কর্তৃপক্ষের ১৫/২০০৫ তম সাধারণ সভার সিদ্ধান্ত ক্রমে উক্ত প্লটটি বরাদ্দ দেয়া হয়।

উল্লেখ্য যে, উক্ত এলাকায় লেক সংলগ্ন ওয়াকওয়ে জমি অক্ষুন্ন রাখা হয় এবং লেকের কোন অংশে মাটি ভরাট করা হয়নি। বর্ণিত এলাকায় কোন ব্যক্তি বা প্রতিষ্ঠান লেক ভরাট করে কোন প্রকার অবৈধ নির্মাণ কাজ করেনি।

(emphasis supplied)

চেয়ারম্যান
রাজধানী উন্নয়ন কর্তৃপক্ষ

On consideration of the above this Court finds that the said Plot lo. 20A/1 was allotted in favour of the respondent los. 10 and 11 as ready plot and the said plot does not form any party of the Gulshan Lake. It further appears that the RAJUK has conducted the final survey on 18.05.2006, and handed over the said plot in question to respondent los. 10 and 11. Furthermore, RAJUK executed lease deed in respect of the said plot in question on 08.06.2006 in favour of respondent Nos. 10 and 11. The said lease deed No. 12509 was also registered with the Sub-Registrar Office, Gulshan, Dhaka on 15.06.2006. The name of respondent Nos. 10 and 11 were duly mutated in the Record of Rights maintained with the land Revenue Office in Gulshan, Dhaka under Mutation Case No. 17392 of 2006.

On the totality of circumstances narrated hereinabove and taking the facts in its entirety, we hold that the allotment of plot No. 20A/1, Road No. 26, Gulshan in the lakeside greenery in favour of respondent Nos. 10 and 11 is not in deviation of the Master Plan of the Dhaka Metropolitan Development Plan as the same was allotted to them after leaving space for the walkway/greenery boundary of the lake keeping 6 (six) feet walkway.

Faced with these facts, we are constrained to hold that the Rule is devoid of any merit and is liable to be discharged.

Accordingly, the Rule is discharged.

The order of injunction granted earlier by this Court is hereby vacated.

There is no order as to costs.

Naima Haider, J
Farid Ahmed, J
I agree
Farid Ahmed

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

Writ Petition No. 4958 of 2009

IN THE MATTER OF
An application under Article 102(2) (a) (ii) of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF
Bangladesh Environmental Lawyers Association (BELA)

.... the petitioner

VERSUS

Government of Bangladesh and others

.... the Respondents

Mr. Probir Neogi with Mr. M. Iqbal Kabir

... for the petitioner.

Mr. Subrata Chowdhury

... for respondent No. 12

Dr. A. K. M. Ali

... for respondent No. 13

Mr. Jamal Uddin Ahmed

... for respondent No. 5

Present:

Mr. Justice Syed Mahmud Hossain
And
Mr. Justice Quamrul Islam Siddiqui

Heard on 5.11.09 and 12.11.09 and 19.11.2009 Judgment on 14.1.2010

Syed Mahmud Hossain J.: In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed in line with the applicable laws and rules as mentioned in the cause title to protect the rivers Piain, Dawki and Dhala flowing through Goainghat and Companygonj Upazilas of Sylhet district from the use of mechanized excavators (Annexure-f) and why further directions should not be given upon them to initiate legal measures against such unauthorized and illegal operation of excavators by the unscrupulous traders and also to realize compensation from them for causing damages to those rivers and the people living in the surrounding areas.

The facts leading to the issuance of the Rule, in brief, are:

> The petitioner is Bangladesh Environment Lawyers Association (hereinafter referred to as BELA), a society registered under the Societies Registration Act, 1860 bearing registration No. 1457(17) dated 18.2.1992 being represented by its Chief Executive. BELA has been active since 1992 as one of the organizations with expertise in the regulatory field of environment and ecology through its various sincere and devoted endeavours. It has protected public interest against environmental anarchies and significantly contributed to promoting environmental justice through a serious of persistent and well-designed activities. Since its inception, BELA has undertaken a large number of public interest litigations. The environment and ecology of the country are being continuously endangered and threatened by various activities originating from both public and private affairs. The primary causes and sources of environmental degradation are the unregulated operations of commercial activities by a few unscrupulous persons/entities at the cost of our precious and irreplaceable ecosystems and natural resources. In the absence of proper monitoring and implementation of relevant laws by the concerned regulatory agencies, such unregulated operations start and continue in gross defiance of even the minimum environmental standards that laws and regulations prescribe.

Traditionally stones were always collected manually from the stone quarries of both Jaflong (within the rivers Plain and Dawki) and Bholaganj (within the river Dhala) under Goainghat and Companyganj Upazilas of Sylhet district. It was in 1998 that respondent No. 8 under respondent No. 4 permitted the use of hydrolic excavators in the stone quarry of Jaflong.

The authorization from respondent No. 8 came without any assessment of the Environmental impact of the same although the area of Jaflong remains exposed to the risks of earthquake because of the presence of the Dawki fault. Such authorization given by respondent No. 8 to use excavators without any assessment of environmental impact in the stone quarry of Jaflong without taking into consideration that the area is within the Dawki fault is beyond the mandate and scope of that respondent as per the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968. A recent report of respondent No. 9 reveals that no environmental clearance was ever accorded in favour of the 50 excavator machines that are presently operating in the Jaflong stone quarry creating horrific noise and air pollution with loud noise, black smoke and dusts. The report of respondent No. 9 further reveals that the operation of similar heavy machines has been continuing unabated and totally unauthorized in the Bholaganj stone quarry of the river Dhaka in the Companyganj upazila of Sylhet. The excavator machine that is used in this area for the extraction of stones from 70-80 feet depth of the river is locally known as Boma machine (owing to the extreme noise that it creates) which is basically locally manufactured engine driven heavy excavator. None of the 250 Boma machines presently engaged in extraction of stones from the Bholaganj stone quarry has any clearance from any concerned agencies and therefore, the use of Boma machines are totally unauthoirzed and illegal. The destructive and extremely exploitative mode of collection of stones is damaging the layers of the soil, changing the flows of the rivers and affecting adversely their navigability, increasing the risks of floods and eroding river banks and adjacent agricultural lands. Such havoc of pollution as created by the use of the mechanized excavators is not only causing irreparable damage to the beautiful hilly rivers that are fast loosing their natural appeal to the tourists but also affecting the local people who bear the direct curses of such unregulated and unconscionable activities.

The local people have time and again protested against the mechanized extraction of stones that severely affect their lives, properties and livelihoods but to no avail. Reportedly the tensions around the villagers and the stone collectors took a serious turn in 2006 when an agreement was signed on 6 October, 2006 at the behest of the local Union Chairman imposing a ban on use of excavators. The ban could not be implemented owning to the influence and power games played by the mighty collectors and the local people kept on approaching the concerned agencies for intervention to protect them against the onslaughts of the unlawful and unauthorized operation of mechanized excavators. Both the local and the national media also brought to public attention the destructions that the unauthorized and unlawful operation of the mechanized excavators and has been causing to the once pristine area of Jaflong. One the face of such public protects

and media coverage, respondent No. 5 at a meeting held on 1.2.2009 prohibited till further order, the use of excavator machines in areas adjacent to the above rivers flowing through Bholaganj and Jaflong areas of Companyganj and Goainghat upazilas of Sylhet. At that meeting it is reiterated about the legal requirement under the Environment Conservation Act, 1995 for obtaining environmental clearance prior to any mining operation as is evident in Annexure-'F' to the Writ Petition.

Subsequently a meeting was held on 8.3.2009 at the office of respondent No. 4 duly emphasized on the environmental hazards associated with the use of excavators in extracting stones from the stone quarries of those areas. In furtherance of the decision of the meeting, a 9-member technical committee representatives of the offices of the respondents was formed by respondent No. 4.

On the flimsy plea of implementing the Annual Development Plan (ADP) for the year 2009 and completely ignoring the clear statements of respondents Nos. 1 and 9 to the contrary an inter-ministerials meeting held on 24.3.2009 at the Ministry of Communication decided to request respondent Nos. 1 and 6 to revoke the earlier ban of February 1, 2009 as evidenced by Annexure-'F' to the Writ Petition.

Following the above stated meeting held at the Ministry of Communication on 24.3.2009, the Bangladesh Business Association of Stone started creating undue pressure on all concerned to act in consonance with the decision of that meeting. In the absence of support from the other concerned agencies, respondent No. 1 has made futile attempts to enforce its earlier decision dated 1.2.2009. Meanwhile, by a letter dated 2.5.2009 the member of the Parliament of the concerned area requested the State Minister in charge of Ministry of Environment and Forest to permanently ban the use of excavators.

Having failed to get any effective intervention from the respondents in halting the operation of the excavators in the stone quarries of Jaflong and Bholaganj, the local people subsequently approached the petitioner organization for legal assistance. Following which the petitioner filed the instant Writ Petition and obtained the Rule Nisi.

Added respondent No. 12 filed an affidavit-in-opposition controverting all the material allegations made in the Writ Petition. The case of this respondent, in short, is that by acquiring long experience and technical know how in the course of extractions of stones chips manually from the rivers stated in the Writ Petition, respondent No. 12 has developed technology and manufactured small machine

equipped with ancillaries by way of transformation of Hino Engine used in truck/coaster imported from Japan, Singapore, South Korea. The machine is set up in a bamboo framed 'macha' extending pipe into the water of those rivers and extracting stones of various sizes from 2 to 12. The stones are used in the construction of building, bridge, culvert and the machine is popularly known as Boma Machine which cannot be treated as excavators. This Rule Nisi does not affect the Boma Machine used by this respondent. Boma Machine is manufactured locally at a cost of Tk. 5,00,000/- and affordable by the poor members of the respondent society. The incumbent Government elected by the people of the country at large is aware and conscious of its responsibility to take care of degradation of ecological balance. In the Inter Ministerial Meeting held on 24.3.2009 under the chairmanship of Mr. Syed Abul Hossain, Minister for Communication, a decision was taken to request respondent No. 1 to reconsider its ban putting restriction of extraction of stones by machine.

Added respondent No. 13 did not file any affidavit but filed a written argument in support of his contention.

Mr. Probir Neogi, learned Advocate appearing on behalf of the petitioner, submits that use of Boma machine and excavators for extracting stones from the rivers Piain, Dawki and Dhala has been creating serious ecological imbalance and as such the operation of such machines should be stopped for good. He further submits that the decision taken by memo dated 1.2.2009 under the signature of respondent No. 6 prohibiting use of all kinds of excavators for extraction of stones was made in accordance with the provision of section 12 of the Environment Conservation Act, 1995 and Rules made thereunder in 1997. He also submits that at the behest of a vested quarter an inter-ministerial meeting was held on 30.3.2009 under the chairmanship of the Minister for Communication in which the Department of Environment was requested to withdraw its ban in the collection of stones by excavator machine and that such decision was made without taking into consideration the impact of use of excavator on the ecology.

Mr. Rokanuddin Mahmud, learned Advocate appearing on behalf of added respondent No. 12, on the other hand, submits that for implementation of ADP, extraction of stones by excavators machine is of paramount important and that the development of the country will be seriously hampered if the stones are not collected in mechanized method. He also submits that respondent No. 12 should be allowed to use its excavators immediately considering the livelihood of the members of the samity.

We have considered the Writ Petition, the affidavit-in-opposition of respondent No. 12, the affidavit-in-reply and the annexure thereto in extenso. Admittedly, respondent No. 8 under respondent No. 9 permitted use of hydraulic excavators in the stone quarry of Jaflong. It is apparent from the report of respondent No. 9 that operation of similar heavy machine has been continuing unabated and totally unauthorized in Bholaganj stone quarry within the river Dhala, Companygonj upazila of Sylhet district. The excavator machine that is used in this area for extraction of stones from 70 feet to 80 feet depth of the river is locally known as Boma machine which is locally manufactured engine driven heavy excavator. It is asserted in the Writ Petition that 150 Boma machines presently engaged in extraction of stones from the Bholaganj stone quarry do not have any clearance from any concerned agencies. This assertion has not been denied in the affidavit-in-opposition of added respondent No. 12. The affidavit-in-opposition of respondent No. 12 does not reveal that the Boma machines and excavator machines are not creating any unnatural hazard in the concerned area.

In the Writ Petition it is asserted that the local people have time and again protested against the mechanized extraction of stones that severely affected their lives, properties and livelihoods. It is also asserted that mechanized mode of extraction has provide efficient only for the commercial stone collections and that the same has proved devastating for the people of the adjoining villages who have lost jobs, properties, crops and livestock and constantly remain exposed to the risks of flood and erosion of the rivers. Both the local and the national media also brought to public attention the destructions caused by unauthorized operation of the mechanized used of excavators which are causing serious threat to ecology. On 1.2.2009, respondent No. 5 at a meeting prohibited till further direction the use of excavator machines to the areas adjacent to the rivers flowing through Bholaganj and Jaflong areas of Companyganj and Goainghat upazilas of Sylhet. On 24.3.2009, an inter-ministerial meeting was held at the Ministry of Communication and the meeting resolved to request respondent Nos. 1-6 to revoke the earlier ban of 1 February, 2009.

At the time to issuance of the Rule this Court directed the respondents to prevent any further use of excavators in the stone quarries of Jaflong and Bholaganj in the rivers of Piain, Dawki and Dhala flowing through the Goaingaht and Companygonj Upazila of Sylhet district for a period of three months. The order of direction was subsequently extended.

Added respondent Nos. 12 and 13 filed two applications for vacating the order of direction of the ground that this direction has caused a serious prejudice to them. Admittedly, the ban on collection of mechanized method imposed by the

Directorate Environment under the signature of respondent No. 6 dated 1.2.2009 is still in force.

After hearing the parties and on consideration of the submissions of the learned advocates from both the sides, we find that taking advantage of the decision of the inter-ministerial meeting dated 30.3.2009 added respondent Nos. 12 and 13 have been using the excavators machines unabated, though the ban imposed by Annexure-'F' is yet to be revised.

Before addressing the questions raised in this Writ Petitioner, it is to be seen whether Bangladesh Environment Lawyers Association (in short, BELA) has the *locus standi* to file this Writ Petition. BELA is a society registered under the Societies Registration Act, 1860 being represented by its Chief Executive Syeda Rizwana Hasan authorized by its Executive Committee to represent in all legal proceedings. The petitioner (BELA) has been active since 1992 as one of the organizations with expertise in regulatory field of environment and ecology. Through its various sincere and devoted endeavour, it has protected public interest against environmental anarchies and significantly contributed to promoting environmental justice though serious and persistent and well-designed activities.

The object of public interest litigation is to ensure observance of the provisions of the Constitution or law. Such object can be achieved to advance the cause of community of disadvantaged groups and individuals or public interest by permitting any person, acting *bona fide* and having sufficient interest in maintaining and action for judicial redress for public injury to put the judicial machinery in motion.

Sub-article (1) of article 21 of the Constitution provides that it is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.

It may be mentioned here that the Supreme Court of India has enlarged the scope of public interest litigation (PIL) by relaxing and liberalizing the rule of standing by treating letters or petitioners sent by any person or association complaining violation of any fundamental rights and also by entertaining the Writ Petition filed under Article 32 of the Indian Constitution.

In this connection reliance may be made on the case of Dr. Mohiuddin Farooque Vs. Bangladesh (1997) 49 DLR (AD) 1 in which the question of *locus standi* of BELA itself was considered in detail. Mustafa Kamal, J held as under:

> It is obvious that the association-appellant as an environmental association of lawyers is a person aggrieved, because the cause it espouses, both in respect of fundamental rights and constitutional remedies, is a cause of an indeterminate number of people in respect of a subject matter of public concern and it appears, on the face of the writ-petition itself, that it has deviated (devoted) its time, energy and resource to the alleged ill-effects of FAP-20, it is acting *bona fide* and that it does not seek to serve an oblique purpose. It has taken great pains to establish that it is not a busybody. Subject to what emerges after the respondents state their case at the hearing of the writ petition the appellant cannot be denied entry at the threshold stage on the averments made in the writ petition" (Para-52)

In this case in hand, protection the ecology of the stone quarries of both Jaflong (within rivers Piain and Dawki) and Blolaganj (within river Dhala) is of paramount importance. The local people time and again protested against the mechanized extraction of stones that severely affect their lives, properties and livelihoods. BELA has come in aid of protection of the ecology and of the local people of the concerned area. In the light of the findings made before and decision referred to above, we hold that the Writ Petition filed by BELA is maintainable.

Ecology is the study of relationship among living organisms and between living organisms and their environment. Ecology is also the study of ecosystems. Ecosystems describe the web or network of relations among organisms at different scales of organization. Since ecology refers to any form of biodiversity, ecologists research everything from tiny bacteria's role in nutrient recycling to the effects of tropical rain forest in the Earth's atmosphere. A recent research under the aieges of World Bank reveals that five sectors have been identified as most relevant to Bangladesh in relation to climate change impact: Costal resources, fresh water resources, agriculture, ecosystem and biodiversity and human health. From these sectors coastal resources are most impacted by climate change, whereas **ecosystem may be most endanger.** The area of Jaflong remains exposed to earthquake because of the presence of Dawki fault. No environmental clearance was ever accorded to 50 excavator machines operating in Jaflong stone quarry

creating horrific noise and air pollution with loud noise, black smoke and dust. Indiscrimate extraction of stones from below the rivers beds by mechanized method not only destroys organisms living there but also destroys the environment. Protection of environment is linked to our survival. In an international conference held in December, 2009 in Copenhagen, capital of Denmark, attended by almost all the heads of the States across the world underscored the need for protection of environment. In that international conference Bangladesh was designated as the most venerable country on account of environmental pollution. In such a situation protection of ecology and environment is of paramount importance.

Section 7 of the Act contemplates the remedial measures if the ecosystem is threatened. This provision stipulates that if it appears to the Director General that certain activity is causing damage to the ecosystem, whether directly or indirectly, he may, after assessing the extent of damage, direct the person responsible for taking appropriate corrective measures and such person shall be bound to comply with such directions.

At the inter ministerial meeting dated 30-3-2009 (Annexure-H) it was resolved that in order to implement the Annual Development Programme (ADP) the embargo imposed in the extraction of stones by mechanized method should be withdrawn by the Ministry of Environment and Department of Environment.

It is important to note that development and protection of the environment are not enemies. If without degrading the environment by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development. A balance has to be struck. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irrepaerable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest.

The inter-ministerial meeting has nothing to do in this regard to request the Department of Environment to revise the decision dated 1.2.2009 as evidenced by Annexure-‘F’ to the Writ Petition. The Ministry of Environment and the

Department of Environment are alone responsible for protection of environment and ecology of the country.

If the Ministry of Environment and the Department of Environment feel the necessity of formulating guidelines for mechanized extraction of stones from the concerned area keeping the ecological balance intact, such guidelines can only be framed by them alone. The other Ministries cannot dictate or impose their decision of respondent No. 1 and the Department of Environment.

Mr. Probir Neogi cites the case of Rural Litigation and Entitlement Kendra, Dehradun and Others Vs. State of Uttar Pradesh, AIR 1985 SC 652.

In the above case, a letter received from Rural Litigation and Entitlement Kendra, Dehradun was treated as a Writ Petition and considering imbalance to ecology and hazard to healthy environment owing to working of lime-stone quarries, the Supreme Court of India ordered closing down of mining operation. In paragraph 6 of the judgment it is held as under:

> "This environmental disturbance has however to be weighed in the balance against the need of limestone quarrying for industrial purposes in the country and we have taken this aspect into account while making this order."

The learned Advocate also relies on the case of Rural Litigation and Entitlement Kendra and Others. Vs. State of Uttar Pradesh and Others, AIR 1987(SC) 359. In the above case in has been held:

> "Consciousness for environmental protection is of recent origin. The United Nations Conference on World Environment held in Stockholm in June 1972 and the follow-up action thereafter is spreading the awareness. Over thousands of years men had been successfully exploiting the ecological system for his sustenance but with the growth of population the demand for land has increased and forest growth has been and is being cut down and man has started encroaching upon nature and its assets. Scientific developments have made it possible and convenient for man to approach the places which were hitherto beyond his ken."

It has further been held:

> "We are not oblivious of the fact that natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way there may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation."

The principle expounded in the cases referred to above applies to the facts and circumstances of the case.

The ban on mechanized extraction of stones imposed by the Department of Environment as evidenced by Annexure-F shall remain in force until guidelines, if possible, are framed by the Ministry of Environment and the Department of Environment by strictly keeping the environment of the concerned area intact.

In the light of the findings made before, we find substance in this Rule.

Accordingly, the Rule is made absolute except the portion relating to the payment of compensation subject to the condition that the Ministry of Environment may frame any guidelines for mechanized extraction of stones strictly keeping the ecological system of the concerned area intact and that no other Ministry shall have any say in this regard.

There is no order as to costs.

Syed Mahmud Hossain
Quamrul Islam Siddiqui, J:
I agree.
Quamrul Islam Siddiqui

বাংলাদেশ সুপ্রীমকোর্ট
হাইকোর্ট বিভাগ
(স্পেশাল অরিজিন্যাল জুরিসডিকশান)

রীট পিটিশন নং ৩৫০৩/২০০৯

ইন দি ম্যাটার অফঃ
ইহা বাংলাদেশ সংবিধানের ১০২ অনুচ্ছেদ অনুসারে একটি আবেদনপত্র;

এবং

ইন দি ম্যাটার অফঃ
হিউম্যান রাইট্স এ্যান্ড পিস ফর বাংলাদেশ গং

দরখাস্তকারীগণ

বনাম

বাংলাদেশ গং

প্রতিবাদীগণ

জনাব মনজিল মোরসেদ, এ্যাডভোকেট

দরখাস্তকারীগণ পক্ষে

জনাব মুস্তাফা জামান ইসলাম, ডি,এ,জি

প্রতিবাদীপক্ষে

জনাব মুশফিকুর রহমান, এ্যাডভোকেট

৯নং প্রতিবাদীপক্ষে

সৈয়দা রিজওয়ানা হাসান সঙ্গে
জনাব এম, ইকবাল কবীর এ্যাডভোকেটদ্বয়

১৬ নং প্রতিবাদীপক্ষে

শুনানী ঃ ৩, ৪, ৮, ২২, ২৩ ও ২৪ জুন ২০০৯ ইং
রায় প্রদান ঃ জুন ২৪ ও ২৫, ২০০৯ইং

উপস্থিতঃ

বিচারপতি জনাব এ,বি,এম, খায়রুল হক
এবং
বিচারপতি জনাব মোঃ মমতাজ উদ্দিন আহমেদ

বিচারপতি এ,বি,এম, খায়রুল হকঃ

ঢাকা মহানগরীর চতুপার্শ্বস্থ নদী, যথা বুড়িগঙ্গা, তুরাগ, বালু ও শীতলক্ষ্যা এই চারটি নদীর দূষণ, অবৈধ দখল এবং নদী অভ্যন্তরে বিভিন্ন স্থানে স্থাপনা নির্মাণ কার্য চ্যালেঞ্জ করিয়া অত্র রীট মোকাদ্দমাটি দায়ের করা হইয়াছে।

ইহা একটি জনস্বার্থমূলক রীট মোকাদ্দমা। হিউম্যান রাইটস্ এ্যান্ড পিস ফর বাংলাদেশ নামক একটি সংগঠন এবং সুপ্রীম কোর্টের ৪ জন এ্যাডভোকেট এই জনস্বার্থমূলক রীট মোকাদ্দমাটি দায়ের করিয়াছেন। তাহারা বিভিন্ন পত্র পত্রিকায় প্রকাশিত উপরোক্ত ৪টি নদীর দুরবস্থা অবলোকন করিয়া মর্মাহত হন এবং এই নদীগুলি দূষণ এবং দখলে মৃতপ্রায় হওয়ায় তাহারা তাহাদের বিজ্ঞ এ্যাডভোকেট মহোদয় মারফৎ প্রতিবাদীগণের বরাবরে ১৯-৫-২০০৯ তারিখে একটি Demand For Justice Notice (এ্যানেকচার-ডি) জারী করতঃ ইহার প্রতিবাদ করেন কিন্তু ইহাতে কোন ফলোদয় না হওয়ায় দরখাস্তকারীগণ অত্র রীট মোকাদ্দমাটি আদালতে দায়ের করিলে অত্র আদালত বাংলাদেশ সংবিধানের ১০২ অনুচ্ছেদ অনুসারে প্রতিবাদীগণ বরাবরে ২৪-৫-২০০৯ তারিখে নিম্নলিখিত Rule NISI জারী করেনঃ

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why a direction should not be given upon the respondent nos. 9,10,12-14 to demarcate the original territories of the River Buriganga, Turag, Balu and Shitalakkha, through survey by a special team and restoring the said rivers to their original condition and why all the respondents should not be directed to protect rivers namely, Buriganga, Turag, Balu and Shitalakkha from illegal encroachments and earth fillings and/or such other or further order or orders passed as to this Court may seem fit and proper.
>
> The Rule is made returnable on 1.6.2009.

Let the respondents be directed to take immediate appropriate steps to stop further illegal earth filling encroachments by different means and construction of temporary and permanent structures/buildings in the rivers, namely, Buriganga, Turag, Balu and Shitalakkha, till disposal of the Rule.

Let a copy of this Rule be served upon the learned Attorney General of Bangladesh for his information and necessary steps in this regard.

Since the matter is of great public interest let the notices be served through special messenger at the cost of the office of Registrar.

Requisites be put in at once."

পরবর্তীতে বাংলাদেশ পরিবেশ আইনজীবী সমিতি (বেলা) স্বউদ্যোগে এই মোকাদ্দমাটিতে পক্ষভুক্ত হইতে চাহিলে অত্র আদালতের ৩-৬-২০০৯ তারিখের আদেশ বলে বেলা-কে ১৬ নং প্রতিবাদী হিসাবে পক্ষভুক্ত করা হয়। ইহার পক্ষ হইতে ৩-৬-২০০৯ তারিখে হলফকৃত ২টি এফিডেভিট এবং ২৪-৬-২০০৯ তারিখে হলফকৃত আরও একটি এফিডেভিট দাখিল করা হয়। ৯ নং প্রতিবাদীপক্ষে ৩-৬-২০০৯ তারিখে হলফকৃত একটি সম্পুরক এফিডেভিট দাখিল করা হয়। তাছাড়া, দরখাস্তকারীর পক্ষ হইতে ৩-৬-২০০৯ তারিখে হলফকৃত একটি সমপূরক এফিডেভিট দাখিল করা হয়।

দরখাস্তকারীপক্ষে জনাব মনজিল মোরসেদ, এ্যাডভোকেট, বক্তব্য উপস্থাপন করেন। ১নং প্রতিবাদী পক্ষে জনাব মোস্তফা জামান ইসলাম, ডেপুটি এ্যাটর্নী জেনারেল এবং ৯নং প্রতিবাদী পক্ষে মোঃ মুশফিকুর রহমান খান, এ্যাডভোকেট, বক্তব্য উপস্থাপন করেন। ১৬নং প্রতিবাদী বেলা পক্ষে সৈয়দা রিজওয়ানা হাসান এবং জনাব এম, ইকবাল কবীর, এ্যাডভোকেটবৃন্দ, বক্তব্য উপস্থাপন করেন।

দরখাস্তকারীপক্ষে জনাব মনজিল মোরসেদ, এ্যাডভোকেট, তাহার দরখাস্তের সহিত সংযুক্ত বাংলাদেশের বিভিন্ন সংবাদপত্রের ক্লিপিংস এর প্রতি আমাদের দৃষ্টি আকর্ষণপূর্বক নিবেদন করেন যে এই নদীমাতৃক বাংলাদেশ শতশত নদী সমৃদ্ধ, কিন্তু বর্তমানে দেশের নদীগুলিতে চর পড়িয়া এবং বিভিন্ন স্থানে ব্যাপকভাবে নদী দখল, ভরাট ও দূষণ করা ছাড়াও স্থাপনা গড়িয়া তোলা হইতেছে যাহার ফলশ্রুতিতে বিশেষ করিয়া ঢাকা মহানগরীর চতুর্পার্শ্বের চারটি নদী এখন মৃতপ্রায়। শিল্প এলাকা হইতে নির্গত বর্জ্য পদার্থে একদিকে নদীগুলি বড় ধরণের নর্দমায় পরিণত হইয়াছে, নদীগুলিতে সর্ব প্রকার মৎস্য সম্পূর্ণ বিনাশ হইয়াছে, জলজ প্রাণী ও শুশুক সম্পূর্ণভাবে বিলুপ্ত হইয়াছে, বিভিন্ন ধরণের উদ্ভিদ, শ্যাওলা, শৈবাল বহু পূর্বেই অপসৃত হইয়াছে। অন্যদিকে

সকলেই যে যাহার খুশিমত নদী দখলে মহাব্যস্ত। কেহ নদীর মধ্যখানে বেড়া দিয়া রাখিয়াছে। কেহ মাটি ভরাট করিয়া ভবন বা স্থাপনা নির্মাণ করিয়াছে। কেহবা নদীর পাড়ে মাটি ভরাট করিয়া শিল্প কলকারখানা ভবনাদী স্থাপন করিয়াছে। আবার অনেকে নদীর পাড় দখল করিয়া সম্প্রসারণ করতঃ তথায় শত শত ট্রলার যোগে বালু ও ইট জড় করিয়া রাখিয়া মহানন্দে ব্যবসা করিতেছে। এযেন নদী দখলের এক অবাধ (free for all) মহোৎসব লাগিয়া গিয়াছে। অথচ নদীর মালিক সরকার নির্বিকার। সরকারের এইরূপ নির্লিপ্ত ঔদাসিন্যে নদী দখলকারীগণ দ্বিগুন উৎসাহে তাহাদের বিভিন্ন প্রকার দখল কার্য ক্রমাগত বৃদ্ধি করিয়াই চলিয়াছে। দেশে নদী সংরক্ষণকরণ সম্পর্কে কত বিভিন্ন রকমের আইন রহিয়াছে, কিন্তু অত্যন্ত দুঃখজনক হইলেও সত্য যে উক্ত আইনগুলি আইনের বহিতেই রহিয়া গেল। অথচ এ সম্পর্কে যাহারা দায়িত্ব প্রাপ্ত তাহারা তাহাদের কর্তব্য পালন সম্পর্কে সম্পূর্ণভাবে উদাসীন থাকিলেন। তাহাদের এইরূপ নির্লিপ্ত আচরণ আইন ভঙ্গকারী, অবৈধ দখলকারীদের প্রকারান্তে শুধু সহায়তাই প্রদান করিতেছে না বরং তাহাদের এই উদাসীনতাই অবৈধ দখলদারীদের আরও দখল করিতে উৎসাহিত করিতেছে।

পরিবেশবাদী ১৬ নং প্রতিবাদীপক্ষে সৈয়দা রিজওয়ানা হাসান এবং জনাব এম, ইকবাল কবীর, এ্যাডভোকেটদ্বয়, দরখাস্তকারীর বক্তব্য সমর্থন করেন। সৈয়দা রিজওয়ানা হাসান, এ্যাডভোকেট, বলেন যে, শুধু ঢাকায় নয় নদীমাতৃক বাংলাদেশের সকল জায়গায় নদীগুলো বর্জ্যভূমিতে পরিণত হইতেছে। যদি এ সম্পর্কে অতিসত্বর কোন ব্যবস্থা গ্রহণ করা না হয় তাহা হইলে এ ৪টি নদীসহ দেশের অন্যান্য সকল নদীগুলিও বিলুপ্ত হইবার আশংকা রহিয়াছে। ইহার ফলশ্রুতিতে নদীমাতৃক বাংলাদেশ অচিরেই নদীহীন মরুভূমিতে পরিণত হইবে।

তিনিও বিভিন্ন সংবাদ পত্রের প্রতিবেদনগুলির প্রতি আমাদের দৃষ্টি আকর্ষণপূর্বক নিবেদন করেন যে নদী দখলের ফলে একদিকে যেমন নদীগুলিতে পানি প্রবাহ একেবারেই কমিয়া গিয়াছে অন্যদিকে শিল্প প্রতিষ্ঠানগুলি হইতে নির্গত বর্জ্যের কারণে ঢাকার নদীগুলি মারাত্মকভাবে দূষিত হইয়া পড়িয়াছে। নদীর উপর এইরূপ দুই ধরনের আক্রমনের ফলে বুড়িগঙ্গা ও তুরাগ নদীতে আর পানিই দেখা যায় না। পানির উপর ভাসমান বর্জ্যই শুধু চোখে পড়ে। দূষণে পানির স্বাভাবিক রং বিকৃত হইয়া কালচে আলকাত্‌রার রং ধারণ করিয়াছে।

এই পর্যায়ে বিজ্ঞ এ্যাডভোকেট মহোদয় Daily Star এ প্রকাশিত সচিত্র প্রতিবেদন ও ছবিগুলির প্রতি আমাদের দৃষ্টি আকর্ষণপূর্বক নিবেদন করেন যে, সংবাদপত্রের চিত্র হইতে ইহা স্পষ্টতই প্রতীয়মান হয় যে নদীতে আর পানি নাই, আলকাত্‌রার রং সদৃশ্য তরল পদার্থ রহিয়াছে।

তিনি বলেন যে, পচা পানি হইতে এমন বোঁটকা বিশ্রি দুর্গন্ধ নির্গত হয় যে লঞ্চ বা নৌকা দ্বারা যাহারা নদীতে ভ্রমন করিতে বাধ্য হয়েন তাহারা রীতিমত অসুস্থ হইয়া পড়েন। এ পর্যায়ে তিনি নিজের ব্যক্তিগত অভিজ্ঞতার কথাও বর্ণনা করেন।

তিনি আর একটি সংবাদপত্রের প্রতিবেদনের প্রতি দৃষ্টি আকর্ষণপূর্বক নিবেদন করেন যে শিল্প প্রতিষ্ঠানসমূহ বিশেষ করিয়া হাজারীবাগস্থ ট্যানারী ও ডাইং শিল্পগুলি হইতে নিক্ষেপিত বর্জ্যের কারণে নদীর পানি বিষাক্ত হইয়া উঠিয়াছে। ক্লোরিন, ব্লিচিং পাউডার ও অন্যান্য বিষাক্ত রাসায়নিক দ্রব্যাদি মিশ্রিত পানি ব্যবহারের ফলে মানুষের যকৃত, ফুস্‌ফুস, কিড্‌নি, পাকস্থলী ইত্যাদি শরীরের বিভিন্ন বিশেষ অপরিহার্য অঙ্গসমূহ বিশেষভাবে ক্ষতিগ্রস্ত হইতেছে এবং রোগ প্রতিরোধ ক্ষমতা লোপ পাইতেছে এবং ক্যান্সারসহ বিভিন্ন দুরারোগ্য ব্যাধিতে মানুষ আক্রান্ত হইতেছে।

বিজ্ঞ এ্যাডভোকেট মহোদয় Daily Star, জনকণ্ঠ, প্রথম আলো প্রভৃতি সংবাদপত্রে প্রকাশিত সচিত্র প্রতিবেদনগুলির প্রতি আমাদের দৃষ্টি আকর্ষণপূর্বক কিভাবে দিনের পর দিন নদীগুলি দখল হইয়া যাইতেছে তাহা বর্ণনা করেন। তিনি বলেন যে, নদী দূষণ ও নদী দখলের ফলে ঢাকা মহানগরীতে সুপেয় পানির চরম সংকট দেখা দিয়াছে এবং সোয়া এক কোটি মানুষের প্রতিনিয়ত স্বাস্থ্য ঝুঁকি হইতেছে। মানুষ অসুস্থ হইয়া পড়িতেছে। বিভিন্ন রোগে আক্রান্ত হইতেছে এবং অদূর ভবিষ্যতে ঢাকা মহানগরী একটি পরিত্যাক্ত নগরীতে পরিণত হইবে। ফলশ্রুতিতে বাংলাদেশ অস্তিত্ব সংকটে পড়িবে। অতএব, তিনি বলেন, ঢাকা মহানগরী তথা বাংলাদেশকে রক্ষার্থে অবিলম্বে অগ্রাধিকার ভিত্তিতে এ বিষয়ে জরুরি কর্মসূচি গ্রহণ করিতে হইবে অন্যথায়, এই পর্যায়ে তিনি সাবধান বাণী উচ্চারণ করেন যে দেশের জন্য এক ভয়াবহ অবস্থা অপেক্ষা করিতেছে।

জনাব মুস্তাফা জামান ইসলাম, ডেপুটি এ্যাটর্নী জেনারেল, দরখাস্তকারীর এই বক্তব্য অস্বীকার করিতে পারেন নাই। তিনি স্বীকার করেন যে, এ ব্যাপারে ইতোপূর্বে কোন কার্যকরী পদক্ষেপ লওয়া হয় নাই তবে বর্তমানে এ সম্বন্ধে বিভিন্ন পদক্ষেপ লওয়া হইতেছে।

জনাব মোঃ মুশফিকুর রহমান, বিজ্ঞ এ্যাডভোকেট ৯ নং প্রতিবাদীপক্ষে নিবেদন করেন যে, তাহারা মহানগরীর চতুর্পার্শ্বের প্রত্যেকটি নদী হইতে অবৈধ দখলদার উচ্ছেদ করিতে স্বক্রিয় কার্যক্রম গ্রহণ করিয়াছেন। পূর্বে এ ধরনের কোন কার্যকরী পদক্ষেপ লওয়া না হইলেও বর্তমানে তাহারা জরুরী পদক্ষেপ ও বেআইনী দখলদার উচ্ছেদ করিতে ব্যস্ত।

দরখাস্তকারীপক্ষসহ সকল পক্ষে উত্থাপিত বক্তব্য শ্রবণ করা হইল এবং দরখাস্তের সহিত সংযুক্ত সংবাদপত্রের ক্লিপিংস এবং বেলা পক্ষে দাখিলকৃত কাগজাদি পর্যবেক্ষণ করা হইল।

স্পষ্টতই প্রতীয়মান হইতেছে যে নদীগুলি নিশ্চিতভাবে বেদখল হইয়া যাইতেছে।

এ সম্পর্কে সংশ্লিষ্ট কর্তৃপক্ষের বক্তব্য সরাসরি শ্রবণ করিবার জন্য ১-৬-২০০৯ তারিখের এক মৌখিক নির্দেশ মারফৎ বাংলাদেশ সরকারের অতিরিক্ত অ্যাটর্নী জেনারেলকে বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষের চেয়ারম্যান, ভূমি **জরীপ** অধিদপ্তরের মহাপরিচালক এবং পরিবেশ অধিদপ্তরের মহাপরিচালককে ৪-৬-২০০৯ তারিখে আদালতের চেম্বারে উপস্থিত হইবার জন্য নির্দেশ প্রদান করা হইয়াছিল। তাহারা নির্ধারিত তারিখে উপস্থিত হইলে নদী দখল সম্পর্কিত সমস্যা সম্বন্ধে তাহাদের খোলা মেলা বক্তব্য শ্রবণ করা হয়।

৪-৬-২০০৯ তারিখের আদেশ বলে ঢাকা ওয়াসা এর ব্যবস্থাপনা পরিচালক, ঢাকা সিটি কর্পোরেশনের নির্বাহী কর্মকর্তা এবং ঢাকা, নারায়নগঞ্জ, গাজীপুর ও মুন্সীগঞ্জ জেলার জেলা প্রশাসকগণকে ৮-৬-২০০৯ তারিখে উপস্থিত হইবার নির্দেশ প্রদান করা হয়। উক্ত তারিখে উপরোক্ত কর্মকর্তাগণ যথারীতি উপস্থিত হইলে নদী দখল ও দুষণ সম্পর্কিত বিভিন্ন প্রশ্নের উত্তর তাহারা প্রদান করেন এবং তাহাদের নিজস্ব মতামতও তুলিয়া ধরেন।

দরখাস্তকারীগণসহ সকল পক্ষগণকে শ্রবণ এবং দাখিলকৃত এফিডেভিটগুলির সহিত সংযুক্ত কাগজাদি পর্যবেক্ষণ করা হইল। পক্ষগণের উত্থাপিত বক্তব্যের সহিত দ্বিমত পোষন করিবার কোন অবকাশ নাই বলিয়াই প্রতীয়মান হইতেছে।

নিম্নলিখিত ঘটনাবলী স্বীকৃত ঃ

ক) ঢাকা মহানগরীর চতুর্পার্শ্বে ৪টি নদী, যথা বুড়িগঙ্গা, তুরাগ, বালু এবং শীতলক্ষ্যা, প্রতিটি নদীরই সাধারণ পানি প্রবাহ আশংকাজনক পরিমানে হ্রাস পাইয়াছে। বিশেষ করিয়া বুড়িগঙ্গা, বালু ও তুরাগ নদী ইহার পূর্বতন অবস্থা হইতে বর্তমানে অতিশয় শীর্ণকায় অবস্থায় পতিত হইয়াছে। দখল ও দূষণ ছাড়াও এর অন্যতম প্রধান কারণ হইতেছে নদীগুলোর উৎসসমূহ রক্ষা না করা।

খ) সংশ্লিষ্ট সবগুলি নদী যথেষ্ট পরিমানে ভরাট (Silted) হইয়া গিয়াছে।

গ) তদুপরি প্রতিটি নদীর অভ্যন্তরে অবৈধ দখলদারগণ বিভিন্ন প্রকারে নদী দখল করতঃ ভরাট, কাঁচাপাকা স্থাপনা, ভবনাদি নির্মাণ, আবাসন প্রকল্প, বালু ও ইটের ব্যবসা সমানে করিতেছে।

ঘ) নদীগুলির সীমানা কোন কর্তৃপক্ষ সঠিকভাবে বলিতে পারেন না। তবে তাহারা সকলেই স্বীকার করিয়া লইয়াছেন যে, সিএস ম্যাপ ও খতিয়ানে মূল নদীর পরিমাপ ও সীমানা দেখানো আছে।

এই পরিস্থিতিতে বর্তমান মোকাদ্দমাটিতে উত্থাপিত সমস্যার সমাধান হইতে হইবে।

এখানে স্মর্তব্য যে বাংলাদেশ নদীমাতৃক দেশ। নদীই ইহার প্রাণ। এই নদীরাজি অনেকাংশে এই দেশকে বর্হিশত্রুর হাত হইতে এক সময়ে রক্ষা করিয়াছে। নদী দেশের অমূল্য সম্পদ। এই নদীর কারণেই বাংলাদেশ শস্য-শ্যামলা, সুজলা-সুফলা। এই নদীর পলিতেই বাংলার মাটি সৃষ্টি। সেই পলি সমৃদ্ধ মাটিতেই সামান্য পরিশ্রমেই প্রকৃতি অকৃপণ হস্তে অন্ন-শস্য দান করিয়াছে। এই নদী একসময় আমাদের জীবন ধারণের অন্যতম বাহন ছিল। জেলেরা সুপ্রচুর মৎস্য আহরণ করিত। সেই কারণেই মৎস্য বাঙালীর অন্যতম প্রধান খাদ্য। এই নদীই ছিল যাহায়াতের প্রধান উপায়। সাহিত্যের অন্যতম উপজিব্য ছিল নদী। এই প্রকারে আবহমান কাল ধরিয়া এদেশের নদীসমূহ জনগণের প্রাণ-রস যোগাইয়া আসিতেছে।

এখানে উল্লেখ্য যে মহান সৃষ্টি কর্তা পবিত্র কুরআনে করিমে ঘোষণা করিয়াছেন। "তিনিই আল্লাহ যিনি আকাশমন্ডলী ও পৃথিবী সৃষ্টি করেছেন, যিনি আকাশ হতে পানি বর্ষণ করে এর দ্বারা তোমাদের জীবিকার জন্য ফলমূল উৎপাদন করেন, যিনি তোমাদের কল্যাণে নিয়োজিত করেছেন নদীসমূহকে" (সূরা-ইব্রাহিম: ৩২)

এই বুড়িগঙ্গা নদীর বর্ণনা ড: এ এইচ দানী, প্রফেসর এমিরিপটাস, এর লিখিত পুস্তকে পাওয়া যায়। তিনি লিখিয়াছেন যে বুড়িগঙ্গা নদী যথেষ্ট গভীর ছিল ও প্রায় ২শ গজ প্রশস্ত ছিল। এই নদীতে ৫ শত টন বোঝাই জাহাজ অহরহ চলাচল করিত। নদীটি স্রোতস্বিনি ছিল এবং ইহার পানি ছিল স্ফটিক স্বচ্ছ। তিনি বিভিন্ন বৈদেশিক লেখককে উদ্ধৃত করিয়া বলে যে বুড়িগঙ্গা পাড়ের ঢাকা শহর এক সময় প্রাচ্যের ভেনিস শহরের ন্যায় ছিল।

অথচ কালের প্রবাহে সেই বুড়িগঙ্গা নদী এখন মৃত প্রায় সেখানে কোন জলজ উদ্ভিদ ও প্রাণির অস্তিত্ব নাই। মানুষের অত্যাচারে সৃষ্টি কর্তার মহান দান এইভাবে ধ্বংস-প্রাপ্ত। এইরূপ পরিণতি সম্বন্ধেই সৃষ্টিকর্তা সাবধান বানী উচ্ছারণ করিয়াছিলেন:

"মানুষের কৃত কর্মের দরুণ সমুদ্রে (জলে) ও স্থলে বিপর্যয় ছড়িয়ে পড়বে।" (সূরা আর রুম: ৪১)

স্রষ্টার এই সকর্তবাণী আমরা বর্তমানে চাক্ষুস অবলোকন করিতেছি।

ইহা অনস্বীকার্য যে, বাংলাদেশের সকল নদীর মালিকানা জনগণের। জনগণের পক্ষে ইহার দায় ও দায়িত্ব সরকারের উপরেই বর্তায়। সরকারই সাধারণভাবে সকল নদীর মালিক।

এ প্রসঙ্গে নদী বা নদীর এলাকা বলিতে কি বুঝায় তাহা সর্ব প্রথম আইনগতভাবে ধারণা লওয়া প্রয়োজন ।

তদানিন্তন Inland Water Transport Authority Rules, 1959, এ Inland Water এর সংজ্ঞা নিম্নরুপঃ

> "Inland Water" means any canal, river, lake or any other navigable Water in Bangladesh."

এ প্রসঙ্গে The Port Rules, 1966, এ ব্যক্ত নিম্নলিখিত বিধিগুলি প্রণিধানযোগ্য ঃ

> "bed of a navigable waterway" is that portion of the soil and sub-soil which is habitually covered by the waters of a navigable waterway and extends to the high water-mark on both banks of a navigable waterway. It includes any area defined hereinafter as foreshore;
>
> > "foreshore" means that sub-soil which lies between the high-water-mark and low-water-mark.
> >
> > "high-water-mark" means a line drawn through the highest points reached by ordinary spring tides at any season of the year.
> >
> > "low-water-mark" means a line drawn through the lowest points reached by ordinary spring tides at any season of the year.
> >
> > "bank" means land which confines the waters of a water-way in its channel or bed in its whole width and extends above high-water-mark.

প্রাথমিকভাবে নদী বলিতে উপরের সংজ্ঞা অনুসারে নদীগর্ভ ও নদীর তীর (bank) পর্যন্ত স্থানকে বুঝাইবে।

দ্বিতীয়তঃ বাংলাদেশের প্রেক্ষাপটে নদী ও নদীগুলির অবস্থান বিশেষ বিবেচনায় আনিতে হইবে। কারণ বাংলাদেশের প্রতিটি নদী ইহার গতিপথ বিভিন্ন সময়ে পরিবর্তন করিয়া থাকে। বাংলাদেশের নদীগুলির ইহাই একটি বিশেষ বৈশিষ্ট্য। কাজেই অত্র রীট মোকাদ্দমাটিতে উত্থাপিত সমস্যা সমাধানে সর্ব প্রথম আমাদের নদীগুলির সীমানা নির্ধারণ করা প্রয়োজন। নদীর সীমানা নির্ধারণ করিতে কোন পদ্ধতি আইন সম্মত হইবে সে সম্পর্কেও সিদ্ধান্ত লইতে হইবে।

উল্লেখ্য যে, বিভাগ পূর্ব সমগ্র বৃহত্তর বঙ্গদেশে বিংশ শতাব্দীর প্রথম ভাগে Cadastral Survey অনুষ্ঠিত হয় এবং উক্ত জরীপের ভিত্তিতে ম্যাপ ও খতিয়ান প্রস্তুত হয়। উক্ত সিএস ম্যাপ ও খতিয়ান এখনও সর্বাপেক্ষা নির্ভরযোগ্য। আইনের দৃষ্টিতেও এই সিএস ম্যাপ এবং সিএস খতিয়ান এর একটি presumptive value রহিয়াছে। এই কারণে সিএস ম্যাপকেই আমরা নদীর সীমানা নির্ধারণের প্রাথমিক মাপকাঠি হিসাবে ধরিয়া লইতে পারি। অতএব, নদী বলিতে সিএস ম্যাপে যে স্থানে নদী প্রদর্শন করা হইয়াছে সেই স্থানটিকেই নদী বলিয়া আপাত স্বীকৃতি প্রদান করিতে হইবে।

৪-১১-১৯৭২ তারিখের পূর্বে আইনগতভাবে মূল মালিক নদীর পয়স্তি অংশের দখল বুঝিয়া লইতে পারিত কিন্তু উক্ত তারিখের পরে মূল মালিক উক্ত অংশ আর ফিরিয়া পাইবেন না, উহা সরকারী খাস খতিয়ানভুক্ত হইবে।

তাহাছাড়া, নদীর তীরভূমির সহিত যদি চর পড়ে, তাহা হইলে মূল আইন অনুসারে নদী তীরস্থ জমির মালিক উক্ত চরের মালিকানা পাইতে পারেন। কিন্তু এই অধিকারও ২৮-৬-১৯৭২ তারিখের পূর্বে আইনগতভাবে নিশ্চিত করিতে হইবে, অন্যথায় উক্ত তারিখ হইতে ঐ বৃদ্ধিপ্রাপ্ত চর জমি খাস খতিয়ানভুক্ত হইবে।

নদী তীরভূমিস্থ জমি নদী ভাঙনে বিলুপ্ত বা সিকস্তি (Diluvion) হইলে নদীর ঐ বর্ধিতাংশের মালিকানা সরকারের উপরই বর্তাইবে। কিন্তু ২০ বৎসরের মধ্যে উহা পয়স্তি হইলে উক্ত জমির মূল মালিক তাহা ফেরৎ পাইবে। কিন্তু ৪-১১-১৯৭২ (P.O. 135/1972) তারিখ হইতে আইন পরিবর্তন হয় এবং মূল জমির মালিক সিকস্তিকৃত জমির মালিকানা হারাইবেন এবং পয়স্তি হইলে তাহা সরকারেই বর্তাইবে। তবে উক্ত জমি পয়স্তি হইলে, মূল মালিক অগ্রাধিকার ভিত্তিতে লীজ পাইবেন।

১৯৯৪ সনের ১৫নং আইনে এই অবস্থান পুনরায় পরিবর্তন করা হয়।

পরবর্তী প্রশ্ন উঠিতে পারে যে, নদী ইহার গতিপথ পরিবর্তন করিলে আইনগত অবস্থান কি হইবে। পূর্বেই উল্লেখ করা হইয়াছে যে বাংলাদেশের নদীর গতিপথ অহরহ পরিবর্তন হইয়া থাকে। এক্ষেত্রে আইনগত অবস্থান হইতেছে যে সিএস ম্যাপে প্রদর্শিত স্থান হইতে নদী যদি গতিপথ পরিবর্তন করিয়া থাকে এবং এইরূপ গতি পরিবর্তনের ফলে সিএস ম্যাপ অন্তর্ভুক্ত নদীর এক পার্শ্বে যদি চর জাগিয়া ওঠে সেই চর এলাকাটিও সরকারের মালিকানাধীন থাকিবে। দিক পরিবর্তনকালে যদি নদীর অপর পার্শ্বের এলাকা বর্ধিত/প্রসারিত হয় অর্থাৎ নদীর অন্য পাড়ে ভাঙনের ফলে যদি নদীর এলাকা বর্ধিত হয় তাহা হইলে ঐ সিকস্তি Diluvion এলাকাটিও সরকারের মালিকানাধীন থাকিবে। এক্ষেত্রে নদীর সীমানা নির্ধারণ করিতে নদীর বর্ধিত অংশেও নদীর Foreshore সহ তীরভূমি পর্যন্ত সীমানা বর্ধিত হইয়া যাইবে। এমতাবস্থায় সিএস ম্যাপে প্রদর্শিত নদী হইতে ইহার এলাকা বৃদ্ধি পাইবে। ইহার আইনগত অবস্থান হইল এই যে, ভাঙনের ফলে নদীর বর্ধিত স্থানের সঙ্গে Foreshore সহ বর্ধিত তীর ভূমি পর্যন্ত এলাকাসহ সম্পূর্ণ জায়গাটিই সরকারের মালিকানাধীন থাকিবে।

নদীর ভাঙনের স্থানে যদি পরবর্তী কোন সময় চর জাগিয়া ওঠে অর্থাৎ পয়স্তি (Alluvion) হয় তাহা হইলে State Acquisition and Tenancy Actএর ৮৬ ধারার বিধান সাপেক্ষে প্রাথমিকভাবে সরকারেরই মালিকানাধীন থাকিবে। তবে ভাঙনের ফলে যে স্থানে নদীর এলাকা বর্ধিত হইয়াছে সেই স্থানে যদি সিকস্তি হইবার বিগত ৩০ বৎসর কাল সময়ের মধ্যে নতুন ভূমি জাগিয়া উঠে বা পয়স্তি হয় (Alluvion) সেই জমির মালিকানা প্রাথমিকভাবে State Acquisition and Tenancy Act এর ৮৬ ধারা সাপেক্ষে প্রাথমিকভাবে সরকারেই মালিকানাধীন থাকিবে। যদি মূল মালিক ৮৬ ধারার ১ উপধারা অনুসারে জমিটি সিকস্তি হইবার সময় তাহার জমি সম্পর্কে তথ্যাদি সংশ্লিষ্ট সরকারী কর্মকর্তার নিকট প্রয়োজনীয় Form মারফৎ জ্ঞাপন করে তাহা হইলে উক্ত ভাঙনের জমি যথারীতি জরীপপূর্বক সিকস্তিকৃত জমির পরিমাণ নির্ধারণ করতঃ উক্ত সিকস্তিকৃত জমির খাজনার পরিমাণ ন্যায়নীতি অনুসারে নির্ধারণ করিতে হইবে। সেই ভাঙনকৃত ভূমিটি যদি পরবর্তী ৩০ বৎসরের মধ্যে পয়স্তি হয় তাহা হইলে ৮৬ ধারার ৪ উপধারা অনুসারে জরিপপূর্বক ম্যাপ প্রস্তুত করিবে এবং ৫ উপধারা অনুসারে জমিটির প্রকৃত মালিক বা তাহার উত্তরসূরি কোন সেলামী প্রদান ব্যাতিরেকে উক্ত জমি লীজ প্রাপ্ত হইবেন। তবে ইতোমধ্যে উক্ত স্থানে যদি সরকার উন্নয়নমূলক কোন কার্যক্রম গ্রহণ করেন সক্ষেত্রে ৭ উপধারা অনুসারে মালিকানা সরকারেই অর্পিত থাকিবে। কিন্তু সিকস্তি হইবার পরে ৩০ বৎসর অতিক্রান্ত হইলে সেই বর্ধিত অংশের মালিকানা সরকারের উপরই বর্তাইবে। উল্লেখ্য যে, বহুপূর্বে প্রস্তুতকৃত সিএস ম্যাপের প্রদর্শিত নদীর স্থানে নদীর অনেকাংশেই চর পড়িয়া যাওয়ায় সংশ্লিষ্ট কর্তৃপক্ষ সেই সকল নূতন চরভূমি বিলিবন্দোবস্ত করিয়া থাকিতে পারেন। যদি আইনানুগভাবে সেই সকল ভূমি বন্দোবস্ত প্রদান করা হইয়া থাকে তাহা হইলে সেই সকল ভূমি

স্বচ্ছতার স্বার্থে ভূমির পরিচয় ও পরিমাণ, বন্দোবস্ত প্রদানকৃত কর্তৃপক্ষ ও গ্রহীতা, বন্দোবস্তের মূল্য এবং মেয়াদ ইত্যাদি বিস্তারিত বিবরণী সর্বসাধরণের জ্ঞাতার্থে প্রকাশ করা প্রয়োজন যাহাতে সকলে সন্তোষজনকভাবে উপলব্ধি করিতে পারে যে উক্ত বিলিবন্দোবস্তগুলি আইনানুগভাবেই করা হইয়াছে। এই পদক্ষেপ গ্রহণ এই কারণে প্রয়োজন যে, সংশ্লিষ্ট ভূমি খাস খতিয়াভুক্ত ও সরকারী তথা জনগণের সম্পত্তি এবং সরকার উক্ত ভূমির ট্রাষ্টি।

যদি সংশ্লিষ্ট কর্তৃপক্ষ কর্তৃক আইনানুগভাবে বিলিবন্দোবস্তকরণ ব্যতিরেকেই কেহ দখলদার থাকেন তাহা হইলে সরকার তাহাকে উচ্ছেদ করিবার জন্য যথাযথ আইনানুগ পদক্ষেপ গ্রহণ করতঃ উক্ত ভূমির দখল অবিলম্বে পুনরুদ্ধার করিবেন।

উপরোক্ত আইনগত অবস্থানের সহিত বাংলাদেশ উত্তর প্রস্তুতকৃত আর এস খতিয়ান ও ম্যাপের সহিত মিল রাখিয়া নদী জরিপের পরবর্তী পদক্ষেপ লইতে হইবে।

দুইভাবে জরিপ কাজ সম্পন্ন করিতে হইবে। প্রথমতঃ সিএস ম্যাপ অনুসারে জরিপ, দ্বিতীয়তঃ আর এস ম্যাপ অনুসারে জরিপ। তৎপর, আইনানুগভাবে প্রদত্ত বিলিবন্দোবস্ত সাপেক্ষে অবশিষ্ট সকল ভূমি সুচিহ্নিতকরণপূর্বক ৩০-১১-২০১০ তারিখের মধ্যে সরকারী পিলার স্থাপন করিতে হইবে এবং উক্ত ভূমি সরকারী নিরঙ্কুশ দখল ও নিয়ন্ত্রণে আনিতে হইবে।

উপরে বর্ণিত মাপকাঠি অনুসারে নদী জরিপের কাজ সংশ্লিষ্ট ৪টি জেলার জেলা প্রশাসকগণের নিয়ন্ত্রনাধীনে করিতে হইবে এবং ভূমি জরিপ অধিদপ্তর সক্রিয়ভাবে তাহাদিগকে সহায়তা ও সহযোগিতা প্রদান করিবেন। উপরোক্তভাবে সংশ্লিষ্ট জেলা প্রশাসকগণকে তাহাদের নিজস্ব কর্মকর্তাগণসহ ভূমি জরিপ অধিদপ্তরের কর্মকর্তাগণের সহায়তায় আগামী ৩০শে নভেম্বর, ২০০৯ তারিখের মধ্যে ৪টি নদী জরিপ কার্য সম্পন্ন করিতে নির্দেশ দেওয়া গেল।

ইহা বলার অপেক্ষা রাখেনা যে নদী দখলমুক্তকরণ অতিশয় জরুরি। এ ব্যাপারে প্রয়োজনীয় পদক্ষেপ বহু পূর্বেই গ্রহণ করা উচিৎ ছিল। বর্তমানে জাতীয় স্বার্থে সংশ্লিষ্ট সকলকেই তড়িৎ পদক্ষেপ গ্রহণ করিতে হইবে। অন্যথায় ৪টি নদীরই অপমৃত্যুরোধ করা যাইবে না। সেই সঙ্গে অপমৃত্যু ঘটিবে ঢাকা মহানগরীর, বিরান হইবে এই জনপদের। অতএব, অবহেলার কোন সুযোগ নাই।

নদী অবৈধ দখল মুক্ত করিবার প্রথম পদক্ষেপ নদী সীমানা চিহ্নিত করণ প্রক্রিয়া এবং সীমানা পিলার স্থাপন কার্য সম্পাদন করিতে কেহ অবহেলা করিলে সংশ্লিষ্ট জেলা প্রশাসকগণ ব্যক্তিগতভাবে দায়ী থাকিবেন।

এই কার্য যথাযথ ও ধারাবাহিকতার সহিত সুসম্পন্ন করিবার স্বার্থে ৪(চার)টি জেলার জরীপ কাজে নিয়োজিত সংশ্লিষ্ট কর্মকর্তাগণকে অন্তত ৫(পাঁচ) মাসের মধ্যে অন্যকোন স্থানে আপাততঃ বদলী না করিবার জন্য সংস্থাপন মন্ত্রণালয়ের সচিবকে নির্দেশ প্রদান করা হইল।

উপরোক্ত সময় সীমার মধ্যে জরিপ কার্য সুচারুভাবে সুসম্পন্ন করিতে হইবে। তাহাছাড়া, এই কার্য উপলক্ষে প্রয়োজনীয় অতিরিক্ত অর্থ সরবরাহ করিবার জন্য অর্থ সচিবকে নির্দেশ প্রদান করা হইল।

এই জরিপ কাজ করিবার সময় সংশ্লিষ্ট কর্মকর্তাগণের ব্যক্তিগত নিরাপত্তা প্রদান ও সর্ব প্রকার সহায়তা প্রদান নিশ্চিত করিবার জন্য স্বরাষ্ট্র মন্ত্রণালয়ের সচিব, বাংলাদেশ পুলিশ বিভাগের মহা-পরিদর্শক ও ঢাকা মহানগরীর পুলিশ কমিশনারকে নির্দেশ প্রদান করা হইল।

উপরোক্তভাবে জরিপ কার্য সুসম্পন্নকরণ এবং সীমানা পিলার স্থাপন করিবার পর সংশ্লিষ্ট নদীর সীমানা দৃশ্যতভাবে চিহ্নিত করিতে হইবে। কর্তৃপক্ষের বিবেচনা অনুসারে Walk way/Pavement বা সারিবদ্ধভাবে বৃক্ষ রোপন করিতে হইবে। উদ্দেশ্য হইল যে, সংশ্লিষ্ট জেলা প্রশাসকগণ কর্তৃক নির্ধারিত নদী সীমানা যেন কোনভাবেই স্থানান্তরিত না হয়। সেইদিকে সংশ্লিষ্ট কর্তৃপক্ষ এবং আইন প্রয়োগকারী কর্মকর্তাগণ যত্নবান হইবেন।

সংশ্লিষ্ট এলাকার জন্য নিয়োজিত কর্তৃপক্ষ Walk-way/Pavement বা বৃক্ষরোপণ কার্যগুলি সুসম্পন্ন করিবেন। ঢাকা মহানগরী এলাকার ক্ষেত্রে ঢাকা সিটি কর্পোরেশন উপরে বর্ণিত এই পদক্ষেপগুলি গ্রহণ করিবেন। নারায়নগঞ্জ বা টঙ্গী পৌরসভা এলাকাভুক্ত হইলে সংশ্লিষ্ট পৌরসভা উক্ত কাজ সম্পন্ন করিবেন। পৌরসভা বহির্ভূত অন্য কোন স্থানে walk-way বা বৃক্ষরোপণ করিবার প্রয়োজন হইলে সরকারের গণপূর্ত বিভাগ ও স্থানীয় সরকার প্রতিষ্ঠান উক্ত কার্যগুলি সম্পন্ন করিবেন। এই Walk-way নির্মাণ বা বৃক্ষরোপণের কাজ পরবর্তী ১ (এক) বৎসরের মধ্যে সম্পন্ন করিতে হইবে। একই সঙ্গে নদীগুলির চিহ্নিত সীমানা অভ্যন্তরে অবস্থিত সকল স্থাপনাগুলি ব্যতিক্রমহীনভাবে ভাঙিতে হইবে ও অপসারণ করিতে হইবে। নদীর অভ্যন্তরে অবৈধ মাটি, বালু বা স্থাপনা থাকিলে তাহাও অপসারণ করিতে হইবে। ইহার সম্পূর্ণ খরচ সরকার পিডিআর আইন এর মাধ্যমে অবৈধ দখলদারগণের নিকট হইতে আদায় করিতে পারিবেন। অবৈধ দখল সংক্রান্ত অপরাধের জন্য তাহাদের বিরুদ্ধে সরকার ফৌজদারী দণ্ডবিধি অনুসারে প্রয়োজনীয় পদক্ষেপও গ্রহণ করিতে পরিবেন।

অতএব, নির্ধারিত সময়ের মধ্যে বুড়িগঙ্গা, তুরাগ, বালু এবং শীতলক্ষ্যা নদীগুলির সীমানা নির্ধারণ পূর্বক এই সম্বন্ধে প্রতিবেদন ১৫-১২-২০০৯ এর মধ্যে অত্র আদালতে দাখিল করিতে হইবে। ৩০-১১-২০১০ তারিখের মধ্যে সীমানা পিলার স্থাপন, নদীগুলি হইতে সকল প্রকার

দখল ও স্থাপনা অপসারণ এবং Walk-way বা বৃক্ষরোপণ সম্পন্ন করতঃ প্রতিবাদীগণকে ১৫-১২-২০১০ তারিখের মধ্যে অত্র আদালতে প্রতিবেদন দাখিল করিতে হইবে।

এখানে উল্লেখ্য যে, বর্তমানে ৪টি জেলায় সংশ্লিষ্ট নদীগুলির অভ্যন্তরে অবৈধ দখলদার কর্তৃক নির্মিত ও নির্মানাধীন সকল স্থাপনা অপসারণের যে কার্যক্রম চলিতেছে তাহা অব্যাহতভাবে চলিতে থাকিবে। আরও উল্লখ্য যে, নদী অভ্যন্তরে অবৈধ স্থাপনা অপসারণের ব্যাপারে কোনরূপ ব্যতিক্রম চলিবে না। অবৈধ স্থাপনা তাহা যাহারই হউক না কেন এবং তিনি যত বড় শক্তিশালীই হউন না কেন বা তিনি যে গোষ্ঠীরই হউন না কেন, বৈষম্যহীন এবং ব্যতিক্রম ছাড়া তাহা অপসারণ করিতে হইবে।

এইখানে আরও উল্লেখ্য যে, এই রীট্ মোকাদ্দমায় বর্ণিত ৪টি নদীর প্রতিটিরই প্রতিবেশ ব্যবস্থা মনুষ্য সৃষ্টি স্থাপনা নির্মাণ, দখল এবং বিভিন্ন শিল্প কলগুকারখানা হইতে নিক্ষেপিত বর্জ্য দ্বারা এই চরম জঘন্যতম অবস্থায় পতিত হইয়াছে।

বিজ্ঞ এ্যাডভোকেটবৃন্দগণের বক্তব্য, আদালতে উপস্থাপিত সংবাদপত্রসমূহে প্রকাশিত সচিত্র প্রতিবেদনদৃষ্টে প্রতীয়মান হইতেছে যে, সংশ্লিষ্ট নদীসমূহের পানি, প্রাণীকূল, উদ্ভিদসহ তীরভূমিতে বসবাসকারী নাগরিকগোষ্ঠী ভয়াবহ পরিবেশ দূষণগ্রস্ত অবস্থায় দুঃসহ জীবন যাপন করিতেছে। তাহাদের স্বাস্থ্য ও জীবন মারাত্মক সংকটাপন্ন অবস্থায় রহিয়াছে। এই প্রেক্ষাপটে বাংলাদেশ পরিবেশ সংরক্ষণ আইন ১৯৯৫ এর ৫ ধারা অনুসারে উপরে বর্ণিত ৪(চার) টি নদী ও সংলগ্ন এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষনা করিবার সকল উপায় বিদ্যমান রহিয়াছে।

তাহাছাড়া, নদীর পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমন এবং সংরক্ষণ ও উন্নয়ন সম্পর্কে উপরোক্ত আইনের ১৩ ধারা অনুসারে নির্দেশিকা প্রণয়ন ও বাংলাদেশ গেজেটে সরকারী প্রজ্ঞাপন হিসাবে জারী করাও অবশ্য কর্তব্য।

এমতাবস্থায় সংশ্লিষ্ট নদীগুলির এলাকায় প্রতিবেশ ব্যবস্থা চরম সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বিধায় উক্ত ৪টি নদী এলাকাকে অবিলম্বে প্রতিবেশ সংকটাপন্ন এলাকা বা ecologically critical area ঘোষণা করিবার জন্য পরিবেশ মন্ত্রনালয়ের সচিবকে নির্দেশ প্রদান করা হইল। একই সাথে নদীর সংরক্ষণ বিষয়ে পরিবেশ সংরক্ষণ আইনের ১৩ ধারা অনুসারে নির্দেশিকা প্রণয়নের নির্দেশ প্রদান করা হইল।

এই মোকাদ্দমাটির যুক্তিতর্ক শ্রবন করিবার সময় প্রতীয়মান হয় যে, Port Act অনুসারে ঢাকা, নারায়নগঞ্জ ও টঙ্গী বন্দর এলাকার তীর ভূমি ও তৎসংলগ্ন ৫০ গজ সহ তফসীল বর্ণিত এলাকা

বাংলাদেশ আভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষের নিকট হস্তান্তর করিবার বিধান থাকিলেও সরকারের সংশ্লিষ্ট মন্ত্রণালয় সকল ক্ষেত্রে উক্ত ভূমি বাংলাদেশ আভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ এর নিকট এখনও হস্তান্তর করেন নাই।

উল্লেখ্য যে, ১৯ অক্টোবর, ২০০৪ তারিখে বাংলদেশ গেজেটে প্রকাশিত The Ports Act, 1908 (Act No. XV of 1908) এর বিধান অনুসারে নারায়নগঞ্জ, ঢাকা ও টঙ্গী বন্দরের পূনঃ নির্ধারিত সীমানা নিম্নরূপঃ

NARAYANGONJ RIVER PORT

1. To the North: A line is drawn East and West near Rupgonj/Murapara across the Shitalakhya river at latitude 23-40'-00" N.

2. To the South: A line is drawn to the North and South near Gopchar across the Shitalakhaya river at longitude 90-32'-16"E.

3. To the East: Upto 50 yards beyond the high water mark at ordinary spring tides from the East bank of the Shitalakhaya river as it runs between the above descrived North and South limits.

4. To the West: Upto 50 yards beyond the high water mark at ordinary spring tides from the West bank of the Shitalakhaya river a line is drawn across the Balu river at latitude 23-43'-20" N as it runs between the above descrived North and South limit.";

"DHAKA RIVER PORT"

(i) To the North–A line drawn to the East and West near Ashulia across the Turag river at latitude 23-52'-30" N.

(ii) To the South- A line drawn to the North and South across the river Buriganga near B.G. Mouth at longitude 90-27'-26".

And

Upto to 50 yards beyond the high water mark at oridnary spring tides from the both bank of the Buriganga and Turag river as it runs between the above described North and South limits ; Ges

TONGI RIVER PORT

(1) To the North West: A line is drawn to the East and West near Ashulia across the Turag river at latitude 23-52-30”N.

(2) To the South: A line is drawn to the East and West near Demra across the Balu river at latitude 23-43-20” N.

And

Upto 50 yards beyond the high water mark at ordinary spring tides from the both of Turag river & Tongi Khal and both bank of Balu river as it runs between the above descrived North West and South limits.”

এমতাবস্থায় তীর ভূমি (bank) ও তৎসংলগ্ন যে সকল স্থান Port Act (As amended) এর সংশোধিত বিধান অনুসারে বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ বরাবরে এখনও হস্তান্তরিত হয় নাই সেই সকল এলাকা, ৩ নং প্রতিবাদী বাংলাদেশ আভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষের নিকট, ভূমি মন্ত্রণালয় হস্তান্তর করিতে যথাযথ পদক্ষেপ করিবেন যাহাতে উক্ত প্রতিবাদী নদী দখল সম্পর্কে প্রয়োজনীয় ব্যবস্থা লইতে পারেন।

দরখাস্তকারী ও ১৬ নং প্রতিবাদী পক্ষে অত্যন্ত জোরালোভাবে নিবেদন করা হইয়াছে যে নিশ্চিতভাবে বুড়িগঙ্গা, তুরাগ এবং বালু নদীর উৎসমুখগুলি শুষ্ক হইয়া গিয়াছে। ইহার ফলশ্রুতিতে এই নদীগুলি বাস্তাবে মৃতপ্রায় অবস্থায় উপনীত হইয়াছে।

জনাব মনজিল মোরসেদ, এ্যাডভোকেট, বলেন যে বিশেষত বুড়িগঙ্গা নদীর পানিকে আর পানি বলা যায় না। তিনি নিবেদন করেন যে ইহা বর্জ্য মিশ্রিত রাসায়নিক তরল পদার্থে পরিণত হইয়াছে।

এমতাবস্থায় সংশ্লিষ্ট নদীগুলির উৎসমুখ সঠিকভাবে ব্যবস্থাপনা ও খনন করিয়া পানি সরবরাহ বৃদ্ধির চেষ্টা করিলে পূর্বের ন্যায় না হইলেও অন্তত পর্যাপ্ত পরিমাণ প্রবাহ বৃদ্ধি হইতে পারে এবং জরুরি ভিত্তিতে এই পদক্ষেপ গ্রহণের উপরেই ঢাকা শহরের ১ কোটি ২০ লক্ষ মানব সন্তানের ভবিষ্যত নির্ভর করিতেছে।

জনাব মনজিল মোরসেদ, এ্যাডভোকেট মহোদয়ের বক্তব্যকে ১৬ নং প্রতিবাদী বেলা পক্ষে সৈয়দা রিজওয়ানা হাসান, এ্যাডভোকেট, সর্বোতভাবে সমর্থন দান করেন। তিনি ইহার সহিত সংযোজন করেন যে, যেভাবেই হোউক নদী গুলিতে পানি সরবরাহ বৃদ্ধির ব্যবস্থা করিতে হইবে

কারণ বর্তমানে নদীগুলি Biologically dead বা মৃত হইয়া পড়িয়াছে। এ ব্যাপারে সরকার যদি তড়িৎ ব্যবস্থা গ্রহণ করিতে ব্যর্থ হন তবে আগামী ১০ বৎসরের মধ্যে ঢাকা মহানগরী সুপেয় পানির চরম সংকটে নিপতিত হইবে। ঢাকা মহানগরীর পানির স্তর শনৈ শনৈ প্রতি বৎসর ৯ ফুট নিচে নামিয়া যাইতেছে, ফলে শুধু পানির সঙ্কট নহে মহানগরীর বিপুল অংশ দাবিয়া গিয়া ধ্বংস লীলা সৃষ্টি হইতে পারে। তাহার এই বক্তব্য পানি উন্নয়ন বোর্ডের চেয়ারম্যান, পরিবেশ অধিদপ্তরের মহাপরিচালক এবং ওয়াসা এর ব্যবস্হাপনা পরিচালক অস্বীকার করিতে পারেন নাই। বরঞ্চ তাহারা আমাদের সম্মুখে এই মহা দুর্যোগের কথা স্বীকারই করিয়া লইয়াছেন।

জনাব মুস্তাফা জামান ইসলাম, ডিএজি, দরখাস্তকারীর বক্তব্য এবং বেলা'র এ্যাডভোকেট মহোদয়গণের বক্তব্য মোটেই অস্বীকার করিতে পারেন নাই।

এই মহাদুর্যোগের সমস্যার পটভূমিকায় বিষয়টি বাংলাদেশ সরকারকে বিশেষ জরুরিভাবে বিবেচনা করতঃ তড়িৎ ব্যবস্থা গ্রহণ করা ব্যাতিরেকে আর কোন উপায় নাই। এই সমস্যা সমাধানে কোন ভাবেই বিলম্ব করিবার কোন সুযোগ আর নাই। এ প্রসঙ্গে বাংলাদেশ পানি উন্নয়ন বোর্ড আইন ২০০০ (২০০০ সনের ২৬ নং আইন) এর প্রতি আমাদের দৃষ্টি ফেরান প্রয়োজন।

উক্ত আইনের ৬ ধারায় বোর্ডের কার্যাবলী বর্ণনা করা হইয়াছে।

ইহা নিম্নরূপ ঃ

> **৬। বোর্ডের কার্যাবলী**। (১) সরকার কর্তৃক গৃহীত জাতীয় পানি নীতি ও জাতীয় পানি মহাপরিকল্পনার আলোকে এবং এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, বোর্ড নিম্নবর্ণিত কার্যাবলী সম্পাদন এবং তদুদ্দেশ্যে প্রয়োজনীয় প্রকল্প প্রণয়ন, বাস্তবায়ন, পরিচালনা, রক্ষণাবেক্ষণ ও মূল্যায়ন সংক্রান্ত যাবতীয় কার্যক্রম গ্রহণ করিতে পারিবে, যথাঃ

কাঠামোগত কার্যাবলী ঃ

> (ক) নদী ও নদী অববাহিকায় নিয়ন্ত্রণ ও উন্নয়ন এবং বন্যা নিয়ন্ত্রণ, পানি নিষ্কাশণ, সেচ ও খরা প্রতিরোধের লক্ষ্যে জলাধার, ব্যারেজ, বাঁধ, রেগুলেটর বা অন্য যে কোন অবকাঠামো নির্মাণ;

(খ) সেচ, মৎস্য চাষ, নৌ-পরিবহন, বনায়ন, বন্যপ্রাণী সংরক্ষণ ও পরিবেশের সার্বিক উন্নয়নে সহায়তা প্রদানের লক্ষ্যে পানি প্রবাহের উন্নয়ন কিংবা পানি প্রবাহের গতিপথ পরিবর্তনের জন্য জলপথ, খালবিল ইত্যাদি পুনঃখনন;

(গ) ভূমি সংরক্ষণ, ভূমি পরিবৃদ্ধি ও পুনরুদ্ধার এবং নদীর মোহনা নিয়ন্ত্রণ;

(ঘ) নদীর তীর সংরক্ষণ এবং নদী ভাঙন হইতে সম্ভাব্য ক্ষেত্রে শহর, বাজার, হাট এবং ঐতিহাসিক ও জাতীয় জনগুরুত্বপূর্ণ স্থানসমূহ সংরক্ষণ;

(ঙ) উপকূলীয় বাঁধ নির্মাণ ও সংরক্ষণ;

(চ) লবনাক্ততার অনুপ্রবেশরোধ এবং মরুকরণ প্রশমন;

(ছ) সেচ, পরিবেশ সংরক্ষণ ও পানীয় জল আহরনের লক্ষ্যে বৃষ্টির পানি ধারণ।

অবকাঠামোগত ও সহায়ক কার্যাবলী ঃ

(জ) বন্যা ও খরা পূর্বাভাষ ও সতর্কীকরণ;

(ঝ) পানিবিজ্ঞান সম্পর্কিত অনুসন্ধান কার্য পরিচালনা এবং এতদসম্পর্কিত তথ্য ও উপাত্ত গ্রহণ, সংরক্ষণ ও বিতরণ;

(ঞ) পরিবেশ সংরক্ষণ এবং উন্নয়নের লক্ষ্যে সরকারের সংশ্লিষ্ট সংস্থার সহযোগিতায় এবং সম্ভাব্য ক্ষেত্রে বোর্ডের সৃষ্ট অবকাঠামোভুক্ত নিজস্ব জমিতে বনায়ন মৎস্য চাষ কর্মসূচী বাস্তবায়ন এবং বাঁধের উপর রাস্তা নির্মাণ;

(ট) বোর্ডের কার্যাবলীর উপর মৌলিক ও প্রায়োগিক গবেষণা;

(ঠ) বোর্ড কর্তৃক বাস্তবায়িত প্রকল্পের সুফল সংশ্লিষ্ট সুবিধাভোগীদের মধ্যে অব্যাহত রাখার লক্ষ্যে সুবিধাভোগীদের সংগঠিতকরণ, প্রকল্পে তাহাদের অংশগ্রহণ নিশ্চিতকরণ, প্রকল্প রক্ষণাবেক্ষণ ও পরিচালন এবং প্রকল্প ব্যয় পুনরুদ্ধার সংক্রান্ত বিভিন্ন কলাকৌশল ও প্রাতিষ্ঠানিক কাঠামো উদ্ভাবন, বাস্তবায়ন ও পরিচালন।

(২) বোর্ড উপ-ধারা (১) এ বর্ণিত কার্যাবলী নিম্নবর্ণিত শর্তাদি পালন সাপেক্ষে সম্পাদন করিবে, যথা ঃ-

(ক) প্রকল্প গ্রহণের জন্য সরকার কর্তৃক নির্দেশিত মানদণ্ড অনুসরণপূর্বক প্রকল্প প্রস্তাবনা পেশকরণ;

(খ) কারিগরী সম্ভাব্যতা যাচাইয়ের ক্ষেত্রে নূতন উপাত্ত সংগ্রহ কিংবা ভৌত ও গাণিতিক মডেল সমীক্ষার প্রয়োজন থাকিলে উহা সম্পাদন;

(গ) প্রকল্পের পূর্ণ সফলতার জন্য যে সকল মন্ত্রণালয় ও সংস্থার অংশগ্রহণ প্রয়োজন, প্রকল্প প্রক্রিয়াকরণের শুরু হইতেই উহাদের সম্পৃক্তকরণ এবং প্রকল্পে উহাদের জন্য সুনির্দিষ্ট কার্যক্রম সন্নিবেশকরণ;

(ঘ) প্রকল্প প্রণয়ণ, বাস্তবায়ন ও রক্ষণাবেক্ষণে প্রকল্প এলাকার জনগণের অংশগ্রহণ সম্পর্কিত প্রতিবেদন প্রণয়ন এবং প্রকল্প দলিলে উহার প্রতিষ্ঠানিক বিন্যাস লিপিবদ্ধকরণ;

(ঘ) ভূমি অধিগ্রহণের ক্ষেত্রে ক্ষতিপূরণ ও পুনর্বাসন সংক্রান্ত স্বয়ংসম্পূর্ণ প্রস্তাব পেশকরণ;

(ঙ) প্রকল্প বাস্তবায়নের ফলে কৃষিকাজ, পরিবেশ, নৌচলাচল, পানি প্রবাহ, মৎস্য সম্পদ, জনজীবন ও পারিপার্শ্বিক এলাকায় উহার প্রভাব ও বিরূপ প্রতিক্রিয়া (যদি থাকে) এবং উহার সম্ভাব্য প্রতিকার সম্পর্কে প্রতিবেদন প্রণয়ন।

৫ ধারায় বোর্ডের নিম্নরূপ দায়িত্বের কথা বলা হইয়াছে।

‘‘৫। বোর্ডের ক্ষমতা ও দায়িত্ব। (১) এই আইনের বিধানাবলী সাপেক্ষে, পানি সম্পদের উন্নয়ন ও দক্ষ ব্যবস্থাপনা এবং ধারা ৬-এ বর্ণিত কার্যাবলী সম্পাদনের লক্ষ্যে বোর্ড সমগ্র বাংলাদেশ অথবা উহার যে কোন অংশে কার্যক্রম গ্রহণ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন ক্ষমতা ও দায়িত্বের সামগ্রিকতাকে ক্ষুন্ন না করিয়া, বোর্ডের নিম্নবর্ণিত ক্ষমতা ও দায়িত্ব থাকিবে, যথা ঃ

(ক) কোন ব্যক্তির আইনসংগত অধিকার ক্ষুন্ন না করিয়া, সরকারের পূর্বানুমোদনক্রমে, সকল নদী, জলপথ ও ভূ-গর্ভস্থ পানিস্তরের পানি প্রবাহ নিয়ন্ত্রণ;

(খ) ধারা ৬ এর বিধানাবলী অনুসারে নির্মিত সকল পানি নিয়ন্ত্রণ অবকাঠামো পরিচালনা ও রক্ষণাবেক্ষণের জন্য যথাযথ মান ও নির্দেশিকা উদ্ভাবন ও প্রয়োগ;

(ঘ) সরকার কর্তৃক অনুমোদিত প্রকল্প দলিলের ভিত্তিতে প্রকল্প প্রণয়ন, বাস্তবায়ন ও অন্যান্য সংশ্লিষ্ট বিষয়ে পরামর্শ ও সহায়তা লাভের জন্য কোন স্থানীয় সরকারী সংস্থা, স্থানীয় বা আন্তর্জাতিক পরামর্শক বা পরামর্শক প্রতিষ্ঠান এর সহিত চুক্তি স্বাক্ষর;

(ঙ) সরকারের পূর্বানুমোদনক্রমে, বন্যা নিয়ন্ত্রণ, পানি নিস্কাশন ও সেচ প্রকল্পসমূহের পরিচালনা ও রক্ষণাবেক্ষণের জন্য সার্ভিস চার্জ ধার্যকরণ ও আদায়;

(চ) যে কোন সরকারী সংস্থার পক্ষে পানি সংশ্লিষ্ট যে কোন প্রকল্প, উহার সম্পূর্ণ কারিগরী, প্রশাসনিক ও আর্থিক নিয়ন্ত্রণ বজায় রাখিয়া ডিপোজিট ওয়ার্ক হিসাবে বাস্তবায়ন।"

এই মোকাদ্দমায় পানি সম্পদ মন্ত্রণালয়ের সচিব, ৭ নং প্রতিবাদী এ ব্যাপারে তড়িৎ পদক্ষেপ লইবেন।

সৈয়দা রিজওয়ানা হাসান, ১৬ নং প্রতিবাদী কর্তৃক ২৪-৬-২০০৯ তারিখে হলফকৃত এফিডেভিট এর সঙ্গে সংযুক্ত satellite image এবং অন্যান্য ম্যাপ এর প্রতি আমাদের দৃষ্টি আকর্ষণ করিয়া নিবেদন করেন যে, বুড়িগঙ্গা নদীর উৎস ধলেশ্বরী নদী হইতে কিন্তু ইহার উৎসমুখ শুষ্ক হইয়া যাওয়ার ফলে উক্ত নদী হইতে আর পানি সরবরাহ হয় না। এমতাবস্থায় উৎস মুখ খনন করা ব্যতিরেকে বুড়িগঙ্গা নদীকে রক্ষা করা যাইবে না। উৎস মুখে খনন করিলে ধলেশ্বরী নদী বাহিত পানি বুড়িগঙ্গায় পড়িবে। তাহা ছাড়া, তিনি আরও বলেন যে উত্তরে বংশী নদীর উৎসমুখ হইল পুরাতন ব্রহ্মপুত্র নদী কিন্তু তাহাও শুষ্ক হইয়া যাওয়ার ফলে উক্ত নদী হইতেও পানি আর বংশী নদীতে প্রবাহিত হয় না। ফলে তুরাগ নদীর প্রবাহও কমিয়া গিয়াছে। যদি উক্ত উৎসমুখ খনন করিয়া দেওয়া হয় তাহা হইলে পুরাতন ব্রহ্মপুত্র নদী হইতেও বংশী নদীতে যথারীতি পানি প্রবেশ করিতে পারিবে। তাহা হইলেও ঢাকার চতুর্পার্শ্বের নদীগুলিতে পানি প্রবাহ বৃদ্ধি পাইবে

এবং প্রতিবেশগত অবস্থার উন্নতি হইবে। তিনি আরও বলেন যে যদি ইহার সহিত তিনটি খাল, যেমন পুংলী, কর্ণপাড়া ও টংগী খাল এই তিনটি খাল খনন ও যথাযথ ব্যবস্থাপনা করা হয় তাহা হইলে বর্তমান তীব্র সঙ্কটাময় অবস্হার স্হায়ী সমাধান হইবে।

বিজ্ঞ এ্যাডভোকেট মহোদয়গণকে শ্রবণ এবং দাখিলকৃত কাগজাদী পর্যবেক্ষণ করা হইল। ইহা বলার আর অপেক্ষা রাখে না যে যথাযথ পদক্ষেপ তড়িৎ গ্রহণ করিতে ব্যর্থ হইলে এক ভয়াবহ ভবিষ্যত আমাদের জন্য অপেক্ষা করিতেছে। অতএব, আগামী ৫ বৎসরের মধ্যে যমুনা নদী হইতে ধলেশ্বরীর উৎসমুখ, তৎপর ধলেশ্বরী নদী হইতে বুড়ীগঙ্গার উৎসমুখ এবং পুরাতন ব্রহ্মপুত্র নদী হইতে বংশী নদীর উৎসমুখ যথাবিহিতভাবে খনন করতঃ নাব্যতা বৃদ্ধি করিয়া নদীগুলিতে পানি সরবরাহ বৃদ্ধি করিতে প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবার জন্য সরকারের প্রতি আহ্বান জানান হইল। অন্যথায় এই সমগ্র এলাকা এক ভয়াবহ পরিবেশগত বিপর্যয়ের সম্মুখীন হইবে। আরও প্রতীয়মান হয় যে, বাংলাদেশের প্রতিটি নদী পলিযুক্ত (Silted) হইয়া গিয়াছে। ইহাতে বাংলাদেশের প্রতিটি নদীই অস্তিত্বের সংকটে পতিত হইয়াছে।

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-পরিবহনযোগ্য 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(পাঁচ) 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 রক্ষণার্থে 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) ঘোষনা এবং পরবর্তী ৬(ছয়) মাসের মধ্যে নদীগুলো রক্ষায় প্রয়োজনীয় নির্দেশিকা প্রণয়ন;

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

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

ঙ) আগামী ৩(তিন) মাসের মধ্যে একটি 'জাতীয় নদী রক্ষা কমিশন' গঠন;

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

ছ) সংশ্লিষ্ট কর্তৃপক্ষ অনতিবিলম্বে সংশ্লিষ্ট আদালতে পরিবেশ সংক্রান্ত বিচারাধীন মোকাদ্দমা নিষ্পত্তির জন্য প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবেন;

জ) আগামী ১(এক) বৎসরের মধ্যে ঢাকাস্থ বাক্‌ল্যান্ড বাঁধসহ নদী তীরস্থ সকল সরকারী ভূমি হইতে দোকানপাট ও অন্যান্য স্থাপনা অপসারণ করিতে হইবে;

ঝ) আগামী ৫(পাঁচ) বৎসর সময়কালের মধ্যে যমুনা-ধলেশ্বরী, ধলেশ্বরী-বুড়িগঙ্গা, পুরাতন ব্রহ্মপুত্র-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 রীট্ মোকাদ্দমাটি continuing mandamus হিসাবে অব্যাহত থাকিবে।

আরও উল্লেখ্য যে, এই রীট্ মোকাদ্দমায় প্রদত্ত বিভিন্ন নির্দেশনা সম্পর্কে কোন সংশয়ের উদ্রেক হইলে দরখাস্তকারী বা অন্য পক্ষ বা অন্য যেকোন প্রতিবাদী হাইকোর্ট বিভাগের সংশ্লিষ্ট বেঞ্চের নিকট নির্দেশনা প্রার্থনা করিতে পারিবেন।

বর্তমান মোকাদ্দমায় প্রতিবাদীগণের নিকট হইতে প্রতিবেদন গ্রহণ করিবার জন্য প্রথম পর্বে ১৫-১২-২০০৯ তারিখে রিপোর্ট গ্রহণ ও পরবর্তী আদেশের জন্য নির্ধারণ করা হইল।

দরখাস্তকারীপক্ষের এ্যাডভোকেট মহোদয় এবং বেলাসহ প্রতিবাদীপক্ষের বিজ্ঞ এ্যাডভোকেট মহোদয়গণ সকলেই এই মোকাদ্দমায় সর্বান্তকরণে সহায়তা করিবার জন্য ধন্যবাদযোগ্য।

তাহাছাড়া নদীগুলির ভয়াবহ অবস্থা সম্বন্ধে জনগণকে সময়পযোগীভাবে ওয়াকিবহাল করিবার জন্য The Daily Star, Channel i ঃ এবং অন্যান্য পত্র পত্রিকাগুলির নিরলস প্রচেষ্টা বিশেষভাবে ধন্যবাদযোগ্য।

এই রায়ের একটি কপি সরাসরি মাননীয় প্রধান মন্ত্রীর নিকট প্রেরণ করা হউক, যাহাতে তিনি তাঁহার ব্যক্তিগত উদ্যোগে নদীগুলি, বিশেষ করিয়া ঢাকা মহানগরীর চতুর্পার্শ্বস্থ নদীগুলি সম্পর্কে জরুরি ভিত্তিতে পদক্ষেপ লইতে পারেন। অন্যথায় ভবিষ্যতে ঢাকা মহানগরী বিরান হইয়া যাইবার সম্ভাবনা রহিয়াছে।

A. B. M. Khairul Haque

বিচারপতি মোঃ মমতাজ উদ্দিন আহমেদ ঃ

আমি একমত।

Md. Mamtaz Uddin Ahmed

বাংলাদেশ সুপ্রীম কোর্ট
হাইকোর্ট বিভাগ
(স্পেশাল অরিজিন্যাল জুরিসডিকশান)

রীট পিটিশন নং ২৯৯৯/২০০৯

ইন দি ম্যাটার অফঃ
ইহা বাংলাদেশ সংবিধানের ১০২/ অনুচ্ছেদ অনুসারে একটি আবেদনপত্র:

এবং

ইন দি ম্যাটার অফঃ
গুলশান সোসাইটি

... দরখাস্তকারী

বনাম

বাংলাদেশ গং

...প্রতিবাদীগণ

জনাব আমমালুল হোসেন কিউসি সঙ্গে
জনাব এ.বি.এম. ছিদ্দিকুর রহমান খান,
এ্যাডভোকেটবৃন্দ

... দরখাস্তকারীপক্ষে

জনাব মোস্তফা জামান ইসলাম, ডি, এ, জি
জনাব ইকবালুল হক এবং
বেগম মাহফুজা, এ, এ,জি,

... **প্রতিবাদী সরকার পক্ষে**

জনাব এম, এইচ, সরদার, এ্যাডভোকেট

...৪ নং প্রতিবাদীপক্ষে

শুনানীঃ ১৪ জুলাই, ২০০৯ ইং
রায় প্রদানঃ জুলাই ১৪, ২০০৯ইং

উপস্থিতঃ
বিচারপতি জনাব এ, বি, এম, খায়রুল হক
এবং
বিচারপতি জনাব মোঃ মমতাজ উদ্দিন আহম্মেদ

বিচারপতি এ, বি, এম, খায়রুল হকঃ ঢাকা মহানগরীর শুলশান বনানী-গুলশান বারিধারা লেকের দুষণ, অবৈধ দখল এবং লেকের অভ্যন্তরে বিভিন্ন স্থাপনা নির্মাণ কার্য চ্যালেঞ্জ অত্র রীট মোকাদ্দমাটি দায়ের করা হইয়াছে।

ইহা একটি জনস্বার্থমূলক রীট মোকাদ্দমা। গুলশান সোসাইটি এই মোকাদ্দমাটি দায়ের করিয়াছে। ইহা Societies Registration Act, 1860 এর আওতায় নিবন্ধনকৃত একটি সংস্থা। গুলশান এলাকার পরিবেশ ও অন্যান্য সর্বাঙ্গীন কল্যাণ সাধনের উদ্দেশ্যে এই সংস্থাটি স্থাপন করা হইয়াছে। এই সংস্থার সদস্যগণ উক্ত আবাসিক এলাকার বিভিন্ন সমস্যা চিহ্নিত পূর্বক এলাকার সার্বিক উন্নয়নের প্রচেষ্টা করেন। তাহারা গুলশান এলাকার আবাসিক চরিত্র বজায় রখিবার জন্য চেষ্টা চালাইয়া যাইতেছেন।

গুলশান-বনানী-বারিধারা আবাসিক এলাকাগুলি কয়েকটি প্রশস্ত বিশাল লেকের দুই পার্শ্বে অবস্থিত। ৪নং প্রতিবাদী রাজধানী উন্নয়ন কর্তৃপক্ষ (রাজউক) সুবিশাল আধুনিক আবাসিক এলাকা হিসাবে পড়িয়া তুলিয়াছে। এই লেকগুলিই ছিল উক্ত আবাসিক এলাকার প্রধান আকর্ষন। কিন্তু গত কয়েক বৎসর ধরিয়া উক্ত লেকের পাড় অবৈধ ভাবে ভরিয়া লেক দখল চরিতে থাকায় সোসাইটির সদস্যগণ এ বিষয়ে বিভিন্ন কর্তৃপক্ষের দৃষ্টি আকর্ষণ করিবার প্রচেষ্টা চালান কিন্তু তাহাতে কোন ফলোদয় না হওয়ায় দরখাস্তকারী সোসাইটি ইহার বিজ্ঞ এ্যাডভোকেট মহোদয় মারফৎ প্রতিবাদীগণ বরাবরে ৩০-৪-২০০৯ তারিখে একটি Notice of Demand For Justice প্রেরণ পুর্বক লেকগুলি অবৈধ দখলদার মুক্ত করিবার জন্য অনুরোধ জানান কিন্তু তাহাতে কোন ফলোদয় না হওয়ায় দরখাস্তকারী অত্র রীট মোকাদ্দমাটি দায়ের করিলে অত্র আদালত বাংলাদেশ সংবিধানের ১০২ অনুচ্চেদ অনুসারে প্রতিবাদীগণ বরাবরে ৪-৫-২০০৯ তারিখে নিম্নলিখিত Rule Nisi জারী করেন ঃ

> "Let a Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to protect the Gulshan-Banani-Gulshan Baridhara Lakes firstly, by conducting a survey with a view to demarcate the said lakes in accordance with Dhaka Metropolitan Development Plan (DMDP), secondly, to remove all illegal encroachments earth filling and temporary and permanent buildings or structures with a view to restoring the said lakes to its original condition and thirdly, thereafter and for all time in future to maintain the nature and character of the said lakes in accordance with law and/or such other or further order or orders as to this Court may seem fit and proper.
>
> The Rule is made returnable within 4 (four) weeks from date.
>
> In the meantime, let the respondents be directed to take all necessary and appropriate measures forthwith so that no further illegal encroachments, earth fillings and buildings of temporary and permanent structures are made in any part of the original Gulshan-Banani-Gulshan-Baridhara lakes in accordance with DMDP until further orders or till disposal of the Rule.

Requisites be put in at once.

৪নং প্রতিবাদী রাজউক ১২-৭-২০০৯ তারিখে হলফকৃত একটি এফিডেভিট দাখিল করিয়া রীট মোকাদ্দমাটি প্রতিদ্বন্দিতা করে। অবশ্য উক্ত এফিডেভিটে লেক দখলের অভিযোগ অস্বীকার করা হয় নাই।

জনাব এ,বি, এম ছিদ্দিকুর রহমান খান, এ্যাডভোকেট, দরখাস্তকারী পক্ষে বক্তব্য উপস্থাপন করেন। অন্যদিকে ৪নং প্রতিবাদী পক্ষে জনাব এম, এইচ, সরদার, এ্যাডভোকেট, বক্তব্য রাখেন। ১ নং প্রতিবাদী সরকার পক্ষে জনাব মোস্তফা জামান ইসলাম, ডেপুটি অ্যাটর্নী জেনারেল উপস্থিত ছিলেন।

জনাব এ,বি,এম ছিদ্দিকুর রহমান খান, এ্যাডভোকেট, দরখাস্তকারী পক্ষে নিবেদন করেন যে ঢাকা শহরের উত্তর-পূর্ব এলাকায় প্রাকৃতিক ভাবে কয়েকটি বিশাল লেক আবহমানকাল ধরিয়া অবস্থিত। প্রাক্তন পাকিস্তান আমলেই তদানিন্তন Dacca Improvement Trust উক্ত লেকগুলিকে কেন্দ্র করিয়া কয়েকটি আধুনিক আবাসিক এলাকা গড়িয়া তুলিবার পরিকল্পনা করে। যাহা পরবর্তীতে ঢাকা মেট্রোপলিটান ডেভেলপমেন্ট প্ল্যান (অতঃপর 'মাষ্টার প্ল্যান' নামে অভিহিত) এর আওতাভুক্ত হয়। উল্লেখ্য যে, মাষ্টার প্ল্যান ৫ এপ্রিল ১৯৯৭ সালে গেজেটে প্রকাশিত হয়। উক্ত পরিকল্পনা অনুসারে ক্রমান্বয়ে গুলশান, বনানী ও বারিধারা আবাসিক আধুনিক উপশহর স্থাপিত হয়। উক্ত আবাসিক এলাকাগুলি লেকগুলিতে পেঁচিয়ে ইহাদের চতুর্পাশে অবস্থিত। লেকগুলির অবস্থান উক্ত আবাসিক এলাকা গুলির প্রাকৃতিক নৈস্বর্গিক সৌন্দর্য বহুগুনে বর্ধিত করিয়াছে। কিন্তু, বিজ্ঞ এ্যাডভোকেট মহোদয় নিবেদন করেন, গত কয়েক বৎসর যাবৎ বিভিন্ন ভাবে লেকগুলির পাড় দখল হইয়া যাইতেছে। শুধু পাড় দখলই নহে, লেকের পাড় দিয়া মাটি ভরাট করিয়া অবৈধভাবে লেকের এলাকা সংকুচিত করা হইতেছে। এমনকি লেকের অভ্যন্তরেও মাটি ভরাট করিয়া লেক দখর করিবার প্রচেষ্টা চলিতেছে। তিনি আরও নিবেদন করেন যে এমনকি ৪ নং প্রতিবাদী ইহার মূল নকসা বহির্ভুতবাবে অনেক স্থানে বর্জ্য ও মাটি দ্বারা লেকের পাড় ভরাট করিয়া নুতন ভাবে প্লট বরাদ্দ প্রদান করিয়াছে। নূতন বরাদ্দ প্রাপ্ত প্লট মালিকগণ নিজেরাও অনেক স্থানে লেকের অভ্যন্তরে প্রবেশ করতঃ কাঁচা ঘর নির্মাণ করিয়া দখল পাকা-পোক্ত করিতেছেন। এইভাবে সংশ্লিষ্ট এলাকার পরিবেশ নষ্ট হইতেছে। এই পর্যায়ে বিজ্ঞ এ্যাডভোকেট মহোদয় দরখাস্তের সহিত সংযুক্ত এ্যানেকচার-ই সিরিজের প্রতিবেদন ও ছবিগুলির প্রতি আমাদের দৃষ্টি আকর্ষন করেন। তাহাছাড়া, তিনি তাহার দরখাস্তের ১৪ প্যারা এবং এ্যানেকচার-এফ সিরিজে প্রদর্শিত অসংখ্য ছবির প্রতি দৃষ্টি আকর্ষনপূর্বক নিবেদন করেন যে প্রকাশ্য দিবালোকে এইভাবে ক্রমান্বযে লেক দখলের মহোৎসব হইয়া যাইতেছে অথচ সংশ্লিষ্ট কর্তৃপক্ষ নির্বাক, নিশ্চুপ।

বিজ্ঞ এ্যাডভোকেট মহোদয় নিবেদন করেন যে এইরূপ অবৈধ লেক দখলের ঘটনায় প্রথমতঃ Town Improvement Act. 1953 এর বিধান ভঙ্গ হইতেছে, দ্বিতীয়তঃ উপরোক্ত আইনের আওতায় প্রস্তুতকৃত Master Plan লঙ্ঘিত হইতেছে, তৃতীয়তঃ প্রাকৃতিক জলাধার সংরক্ষণের জন্য প্রণীত ২০০০ সনের ৩৬ নং আইনের বিধান ভঙ্গ হইয়াছে।

৪ নং প্রতিবাদী-রাজউক পক্ষে জনাব এম এইচ সরদার, বিজ্ঞ এ্যাডভোকেট মহোদয় দরখাস্তকারী পক্ষের বিজ্ঞ এ্যাডভোকেট মহোদয় কর্তৃক উত্থাপিত লেকের অবৈধ দখল করিবার অভিযোগ অস্বীকার করেন নাই। এমনকি এ্যানেকচার-ই সিরিজ ও এ্যানেকচার-এফ-সিরিজে লেক দখলের ছবিগুলিও অস্বীকার করেন নাই। তাহার একমাত্র বক্তব্য ঐসকল দখলের ঘটনার সহিত রাজউক জড়িত নয় বরং তাহারা এই ব্যাপারে অত্যন্ত সজাগ এবং অবৈধ দখলদারদের বিরুদ্ধে অনেক মামলা-মোকাদ্দমা করা হইয়াছে বলিয়া তিনি জানান। তবে রাজউক সজাগ থাকিলে ছবিগুলিতে প্রদর্শিত দখলের ঘটনা কিভাবে ঘটিল এ সম্পর্কে প্রশ্ন করিলে তিনি নিশ্চুপ থাকেন। তাহাছাড়া, কথিত মামলা কয়টি এবং সেইগুলির বর্তমান অবস্থা সম্বন্ধে জিজ্ঞাসা করিলেও তিনি কোন সদুত্তর প্রদান করিতে ব্যর্থ হন। তবে তিনি দরখাস্তকারীর প্রার্থীত লেক জরীপে একমত প্রকাশ করেন।

দরখাস্ত ও তৎসঙ্গে সংযোজিত নকসা, ছবি ইত্যাদি, এফিডেভিট ইন অপজিশান তৎসংযুক্ত নকসা এবং উভয় পক্ষের বক্তব্য শ্রবণ করা হইল।

ঢাকা ও নারায়নগঞ্জ শহরের উন্নয়ন, উৎকর্য বিধান এবং প্রসারণ কল্পে The Town Improvement Act, 1953 (EB Act XIII of 1953) প্রণীত হয়। প্রতীয়মান হয় যে, The Dacca Improvement Trust (DIT) নামে একটি সংস্থা The Town Improvement Act, 1953 (EB Act XIII of 1953) এর ৩ ধারা অনুসারে স্থাপিত হয়। পরবর্তীতে ১৯৮৭ সনের একটি সংশোধণী আইন মারফৎ উক্ত সংস্থার নতুন নামকরণ হয় 'রাজধানী উন্নয়ন কর্তৃপক্ষ' (সংক্ষেপে 'রাজউক')।

ইহা স্বীকৃত যে প্রাক্তন DIT বা বর্তমান 'রাজউক' উপরোক্ত আইনের ৪০ ধারার আওতায় ঢাকা মহানগরীর বিভিন্ন স্থানে আধুনিক আবাসিক এলাকা স্থাপন করিয়াছে। একই ধারাবাহিকতায় প্রাক্তন DIT পাকিস্তান আমল হইতে আরম্ভ করিয়া রাজউক বিভিন্ন সময়ে গুলশান, বনানী ও বারিধারা আবাসিক এলাকা উক্ত এলাকায় প্রাকৃতিকভাবে অবস্থিত নয়নাভিরাম লেকগুলির চতুর্পার্শ্বে গড়িয়া তুলিয়াছে।

বর্তমান মোকাদ্দমার দরখাস্তের বর্ণনা, সংযুক্ত ও সংবাদ পত্রের সচিত্র প্রতিবেদন (এ্যানেকচার-ই সিরিজ) এবং সংযুক্ত অসংখ্য ছবি (এ্যানেকচার-এফ সিরিজ) দৃষ্টে প্রতীয়মান হয় যে লেক এলাকার বিভিন্ন স্থানে অবাধ ও অবৈধ দখল চলিয়াছে। লেকের পাড় হইতে লেকের অংশ ভরাট করত: নূতনপ্লট সৃষ্টি করা হইয়াছে। ফলশ্রুতিতে লেক ক্রমান্বয়ে সংকুচিত হইতেছে। এই সকল অভিযোগ সরকার বা রাজউক পক্ষে অস্বীকার করা হয় নাই। অথচ রাজউক হইতেছে সংশ্লিষ্ট আবাসিক এলাকাগুলির মালিক ও রক্ষণাবেক্ষণকারী। অন্যান্য বিভিন্ন দায়িত্ব ও কর্তব্যের সহিত নকসা অনুসারে আবাসিক এলাকাগুলি সংরক্ষণকরণও ইহার অন্যতম প্রধান দায়িত্ব ও কর্তব্য। কিন্তু নকসা বহির্ভূতভাবে বিভিন্ন প্লট পরিবর্ধন এবং লেকের অভ্যন্তরে অবৈধ দখল রোধ বা লেক রক্ষণাবেক্ষণ সম্পর্কে রাজউকের কোন কর্ম তৎপরতা আমাদের নিকট পরিরক্ষিত হয় নাই।

অথচ এ সম্বন্ধে প্রাথমিক দায়িত্ব ও কর্তব্য ছিল রাজউকেরই, প্রথমতঃ The Town Improvement Act. 1953 এর আওতায়, দ্বিতীয়তঃ মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ

দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ (২০০০ সনের ৩৬ নং আইন) (সংক্ষেপে 'জলাধার আইন') এর আওতায়। কারণ উভয় আইনেই কর্তৃপক্ষ বলিতে রাজউককেই বুঝাইযাছে।

উপরোক্ত জলাধার আইনে "প্রাকৃতিক জলাধার" কে নিম্নলিখিতভাবে সংজ্ঞায়িত করা হইয়াছে ঃ

> "(চ) "প্রাকৃতিক জলাধার" অর্থ অর্থ নদী, খাল, বিল, দীঘি, ঝর্ণা বা জলাশয় হিসাবে মাষ্টার প্লানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্যা প্রবাহ এলাকা হিসাবে ঘোষিত কোন জায়গা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমিও ইহার অন্তর্ভূক্ত হইবে।"

উল্লেখ্য যে রাজউকের সকল মাষ্টার প্লানেই লেকগুলির বিস্তার নকসা আকারে প্রতিফলিত হইয়াছে। বর্তমানে লেকগুলির যে অবৈধ দখল পরিলক্ষিত হইতেছে তাহা উপরোক্ত আইনের "শ্রেণী পরিবর্তন" সংজ্ঞাভুক্ত। সেইহেতু অবৈধ দখল বা অন্য কোন প্রকারে ইহার শ্রেণী পরিবর্তন করণ ৫ ধারা অনুসারে নিষিদ্ধ এবং ৮ ধারা অনুসারে শাস্তিযোগ্য অপরাধ অথচ এই অবৈধ দখল সম্বন্ধে উল্লেখযোগ্য কোন পদক্ষেপ রাজউক গ্রহণ করিয়াছে বলিয়া প্রতিয়মান হয় না।

তাহাছাড়া, অবৈধভাবে প্লট বহির্ভূত স্থান, লেকের পাড় ও লেকের অভ্যন্তর দখল Criminal tresspass অপরাধের আওতায় আসে।

উপরোক্ত আলোচনার আলোকে নিম্নলিখিত নির্দেশাবলী প্রদান করা হইল:

(ক) ঢাকা মেট্রোপলিটাল ডেভেলমেন্ট প্ল্যান এর নকসা অনুসারে লেকগুলির সীমানা জরীপ-কার্যকরণ। উক্ত জরীপ আগামী ৩১-১-২০১০ তারিখের মধ্যে সমাপ্ত করিতে হইবে।

(খ) উক্ত জরীপ কার্যে ভূমি জরীপ অধিদপ্তর (Directorate of Land Records) এর মহাপরিচালক রাজউক-কে প্রয়োজনীয় সহায়তা প্রদান করিবেন। তাহাছাড়া, ঢাকা জেলা প্রশাসনও এ ব্যাপারে রাজউক-কে সহায়তা প্রদান করিবেন।

(গ) ঢাকা মেট্রোপলিটস পুলিশ কর্তৃপক্ষ জরীপ কার্য পরিচালনা ও অবৈধ দখল মুক্ত করিবার সময় আইন শৃঙ্খলা পরিস্থিতি রক্ষা করিবার জন্য যথাযথ ব্যবস্থা গ্রহণ করিবেন।

(ঘ) জরীপ কার্য সম্পন্ন করিবার পর প্রতিটি অবৈধ দখলকারের নাম ও ঠিকানা প্রকাশ করিতে হইবে।

(ঙ) অতঃপর ৩১-৮-২০১০ তারিখের মধ্যে সকল ভূমি ও লেক দখলমুক্ত করিতে হইবে এ সম্পর্কে প্রতিবেদন ১৫-৯-২০১০ তারিখের মধ্যে হাইকোর্ট বিভাগের সংশ্লিষ্ট বেঞ্চে দাখিল করিতে হইবে।

(চ) মাষ্টার প্ল্যান বহির্ভূতভাবে যদি কোন প্লট বরাদ্দ প্রদান করা হইয়া থাকে তবে বরাদ্দ গ্রহীতাকে অন্য কোন বিকল্প প্লট প্রদান করিতে রাজউক বাধ্য থাকিবে এবং সেইক্ষেত্রে তাহার কোন ক্ষতি হইলে তাহাকে পর্যাপ্ত ক্ষতিপুরণ প্রদান করিতে হইবে। তবে যেক্ষেত্রে বরাদ্দকৃত প্লট এর মূল্য রাজউক গ্রহণ করতঃ প্লট গ্রহীতা বরাবরে প্লট রেজিষ্টার্ড করিয়াছে এবং দখল বুঝাইয়া দিয়াছে, সেক্ষেত্রে সম্ভব হইলে বরাদ্দ গ্রহীতাকে বরাদ্দকৃত প্লটে রাখিতে পারিবে।

(ছ) মাষ্টার প্ল্যান বহির্ভূত প্লট বরাদ্দ প্রদানকারী কর্মকর্তাগণের বিরুদ্ধে আইনগত ব্যবস্থা গ্রহণ করিতে হইবে।

এমতাবস্থায়, সকল প্রতিবাদীর উপরে নির্দেশিত বিভিন্ন পদক্ষেপ অত্র রায়ের কপি পাইবার পরপরই যথাযথ পদক্ষেপ ও কার্যক্রম আরম্ভ করিবার জন্য নির্দেশ প্রদান করা হইল।

অত্র রুলটি খরচা ব্যতিরেকে এবসলিউট করা হইল।

এই রীট মোকাদ্দমাটি continuing mandamus হিসাবে অব্যাহত থাকিবে।

আরও উল্লেখ্য যে, এই রীট মোকাদ্দমায় প্রদত্ত বিভিন্ন নির্দেশনা সম্পর্কে কোন সংশয়ের উদ্রেক হইলে কিংবা এই রায় কার্যকরী করিবার লক্ষ্যে দরখাস্তকারী বা যেকোন প্রতিবাদী বা পক্ষ হাইকোর্ট বিভাগের সংশ্লিষ্ট বেঞ্চের নিকট নির্দেশনা প্রার্থনা করিতে পারিবেন।

৪নং প্রতিবাদীর নিকট হইতে প্রতিবেদন গ্রহণ ও পরবর্তী নির্দেশ প্রদান করিবার জন্য প্রথম পর্বে ২৫-২-২০১০ তারিখ নির্ধারণ করা হইল।

৪ নং প্রতিবাদী রাজউক, ভূমি জরীপ অধিদপ্তরের মহা পরিচালক ঢাকা জেলার ডেপুটি কমিশনার ও ঢাকা মেট্রোপলিটান পুলিশ এর কমিশনার মহোদয়গণের নিকট জরুরি ভিত্তিতে এই রায়ের কপি প্রেরণ করা হউক।

A.B.M. Khairul Haque
বিচারপতি মোঃ মমতাজ উদ্দিন আহম্মেদ ঃ
আমি একমত।
Md. Mamtaz Uddin Ahmed

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

Present:

Mr. Justice A. H. M Shamsuddin Choudhury

AND

Mr. Justice Gobinda Chandra Tagore

Writ Petition No. 4039 of 2010

IN THE MATTER OF:
An application under Article 102 (2) (a) (i) of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:
Bangladesh Environmental Lawyers Association (BELA)

...Petitioner

- VERSUS –

The Chittagong City Corporation, represented by its Mayor, Andorkilla, Chittagong and others.

...Respondents

Mr. Md. Iqbal Kabir, Advocate

...For the Petitioner.

Mr. A.B.M. Altaf Hossain, D.A.G

...For the Respondents

Heard and Judgment on: 21st August, 2011.

H. M Shamsuddin Choudhury, J:. The Rule under adjudication, issued on 18.05.2010, was in following terms:

> "Let Rule Nisi be issued, calling upon the Respondent to show cause as to why they should not be directed to protect the historic Lal Dighi, a public water body, situated under ward 32, Mouja Andorkilla, Police Station.-Kotowali, Chittagong in daag No. 3165, JL No.11 of B.S. Khatian No. 7 (as of Annexures "A" and "A-1"), from alleged unlawful earth filling by respondent No. 1 for construction of a swimming pool therein, allegedly disregarding the laws of the country, and completely denying the public use of the same, and also, to restore the said Dighi to its original position and, ensure it's preservation and proper maintenance."

Averments figured in the petition are summarized below-

The Petitioner is Bangladesh Environment Lawyers Association, hereinafter referred to as BELA, a society registered under the Societies Registration Act, 1860.

The respondent No. 1 is is engaged in unlawful filling up and conversion of part of the Lal Dighi, a public water body, situated under ward 32 of Mouja Andorkilla, P.S.-Kotowali, Chittagong for construction a swimming pool therein.

In recent times, violation of environment related laws and consequent deterioration of the environment of the greater Chittagong division has been reported in the national and local dailies with due importance. Amongst the major reasons for such environmental degradation in Chittagong Division remains the indiscriminate filling up of and encroachment over the water bodies and defacing of open space. Harming the environment, the existing water bodies, including ponds, in and around the port city of Chittagong, are decreasing fast as those are being filled up mainly for commercial and residential uses.

Water bodies are considered important to keep the hydrological circle of a particular region at satisfactory level. Although a city requires 25 percent open space, for vegetation and to keep it geographically and environmentally fit, the government agencies are reluctant to prevent destruction of water bodies and ponds in the port City. As a result, the port City is loosing its water bodies at a

dangerous rate creating definite threats to the well being and safety of the city dwellers.

The Lal Dighi area situated under ward 32 of Mouja Andorkilla, P.S.-Kotowali, consists of a water reservoir known as Lal Dighi (hereinafter referred to as the said Dighi), a small park and an adjacent open ground known as the Lal Dighi Maath. Historically, Lal Dighi Maath has been the focal point of all political activities in the City of Chittagong. The Lal Dighi bears testimony of the anti-British movement, historical language movement and the liberation war. Culturally, it is the venue for the famous annual wrestling competition, locally known as Boli Khela and is the centre of local fairs. During the Eid, the Lal Dighi Maath is used for Eid Jamaat.

The Dighi is approximately 360 feet long and 132 feet wide and is commonly used by the local community for their source of water supply for daily uses. Visitors rest on the bank of the Dighi while the mosque going people perform their ablutions using the water of the said Dighi. Recorded in the name of Chittagong Paurashava (presently Chittagong City Corporation), the Lal Dighi has for a long time been maintained by respondent No. 1 for public purposes.

Considering the historical importance of Lal Dighi, the Detailed Area Plan for Chittagong Metropolitan Master Plan has recommended the preservation and proper maintenance of the same.

Recently local and national dailies have reported on the unlawful filling up of the said Dighi by respondent No. 1 for constructing a 113 feet long and 48 feet wide swimming pool at it’s southern part. The newspaper reports have also recorded the grievances of the mass people on such inconsiderate and illegal act of respondent No. 1 which undermines the significance of the historic open space and associated public interest.

Following the newspaper reports, the Petitioner organization undertook necessary field visits, collected documents and found that the allegations regarding filling up of the said Dighi for construction of a swimming pool is true and that the same is being done by respondent No. 1 in total violation of the applicable laws, completely denying public utility and service and ignoring the ecological, historical and cultural significance of the said Dighi. A retention wall separating

the part of the Dighi for swimming pool is being built and the construction of pillars for the swimming pool is about to start.

The plan to use substantial part of the Dighi as swimming pool will surely convert the nature of the Dighi and shall bar the access of the general people to the same. Most importantly it shall render a historic place into a closed amenity that is directly in contravention of the Detailed Area Plan of the Chittgaong City and the existing laws and rules and hence the same is arbitrary, against public interest and without lawful authority.

Water bodies and open spaces form integral part of City planning and environment and hence such water bodies and open spaces must be protected and conserved to ensure a healthy environment for the City dwellers and urban residents. It is the duty of the respondents to protect such civic amenities as part of their statutory obligation to save environment and protect public property for the best interest of the present and future generation.

The regulatory regime and the legitimate interest of the City dwellers demand that the historic Lal Dighi is protected for public use and is not converted for any contrary use and for the benefit of a few. It is unfortunate that a public water body like Lal Dighi with which the people of this country has a historic relation is being replaced by a modern swimming pool by respondent No. 1 in total violation of the applicable laws and the Detailed Area Plan prepared under the Master Plan of the Chittagong City.

The filling up and conversion of the part of the historic Lal Dighi by respondent No. 1 is violative of the provisions of the State Acquisition and Tenancy Act, 1950; the Chittagong Development Authority Ordinance, 1959; the Chittagong City Corporation Ordinance, 1982; the Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995) and the rules made thereunder and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০, the same expressly violates the provisions of the Detailed Area Plan prepared under the Master Plan of the Chittagong City.

Section 5 of the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ prohibits

change of the nature of any land that has been earmarked in the master plan as a খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার without due approval of the government for justifiable public interest. Pursuant to Section 8 of the Act 2000 any person who acts in contravention of the act is liable to imprisonment not exceeding taka 50,000 or both. Section 8 (2) further provides that the relevant authority may prevent changes of nature of open space and may destroy unauthorised construction.
The filling up of the *Lal Dighi* being unlawful and against public interest the same must be prevented to uphold the rights of the city dwellers as guaranteed under Articles 31 and 32 of the Constitution of the People's Republic of Bangladesh.

None filed any affidavit-in-opposition.

As the Rule matured to hearing, Mr. M. Iqbal Kabir argued for the petitioner that the respondents are poised to destroy the natural character of Lal Dighi, a place of historic importance and to construct a swimming pool for the pleasure and benefit of a few fortunate wealthy people at the cost of the overall benefit of the general mass.

According to him, the respondents' proposed swimming pool project shall be in violation of a number of statutory provisions.

Mr. ABM Altaf Hussain, the learned DAG found very little to oppose the Rule.

Issues and indeed the cautionary signal the petitioner has raised through this petition is indeed a flabbergasting one. It is also dreadful and harrowing.

The scenario as displayed is by no means confined to Chittagong but pervades to the whole country.

Open space is already in dire scarcity in Bangladesh. Presence of forest area, parks, water bodies, hills, play grounds are devastatingly inadequate. Unfortunately some benighted people fail to appreciate the havoc that their misfeasance shall invariably entail if they proceed to make things worse by further reducing the open spaces and other civic amenities listed in the petition.

Lal Dighi is, as well know, a historic place which stands as a silent spectator of a plentitude of historic events. It is a precious relic of our history. We can not allow anyone to do away with this symbol of pride.

The **waterbody** situate on this land is also a similar witness of the history. It provides recreation and uncontaminated air not only to those who go there to spend pass times but also to all the dwellers of the port city.

A swimming pool can not be the alter ego of a water body because while the present dighi has catered for everybody, the proposed swimming pool shall meet the snazzy desire of a small section of the people: the affluent one. That simply is not on.

That apart, as rightly uttered by the learned advocate for the petitioner, the proposed move will invariably be in breach of numerous legislative provisions as enumerated in the petition, as well as of the Master plan.

The proposed scheme, anti people in our view, shall also be in defiance of the people's legitimate exception that the dighi shall remain inviolable.

For the reasons stated above the Rule is made absolute, without any order as to cost.

The respondents are directed to refrain from the proposed swimming pool scheme.

S. Choudhury.

Gobinda Chandra Tagore, J.
I agree.

Gobinda Chandra Tagore

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:
Mr. Justice Md. Muzammel Hossain.
-Chief Justice.
Mr. Justice Surendra Kumar Sinha
Ms. Justice Nazmun Ara Sultana.
Mr. Justice Syed Mahmud Hossain.
Mr. Justice Muhammad Imman Ali.
Mr. Justice Md. Shamsul Huda.

CIVIL APPEAL NO.256 OF 2009

with

CIVIL APPEAL NOS.253-255 OF 2009.

and

CIVIL PETITION FOR LEAVE TO APPEAL NO.1689 OF 2006.

(From the judgment and order dated 27.07.2005 passed by the High Court Division in Writ Petition No.4604 of 2004 with Writ Petition No.5103 of 2003)

Metro Makers and Developers Limited.	**:**	**Appellant.** (In C.A. No.256/09)
Bangladesh Environmental Lawyers' Association (BELA).	:	**Appellant.** (In C.A. No.253/09)
Anser Uddin Ahmed and others	**:**	**Appellant.** (In C.A. No.254/09)

Managing Director, Metro Makers and Developers Limited.	**:**	**Appellant.** (In C. A. No.255/09)
Rajdhani Unnyan Kartipakka (RAJUK).	**:**	**Petitioner.** (In C. A. No. 1689/06)

- Versus-

Bangladesh Environmental Lawyers' Association (BELA).	**:**	**Respondents** (In C. A Nos.256-254/09)
Managing Director, Metro Makers and Developers Limited and others.	**:**	**Respondents** (In C. A Nos.253/09)
The Chairman, Rajdhani Unnyan Kartipakka (RAJUK) and others.	**:**	**Respondents** (In C. A Nos. 255/09)
Bangladesh Environmental Lawyers Association, represented by its Director, Syeda Rizwana Hasan and others.	:	**Respondents** (In C. A Nos. 1689/06)

For the Appellant (In C.A. No. 256/09)	**:**	Mr. Ajmalul Hussain, Q.C. Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record
For the Appellant (In C.A. No. 253/09)	:	Mr. Mahmudul Islam, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record
For the Appellant (In C.A. No. 254/09)	:	Mr. Rafique-ul-Huq, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate and Mr. Abdul Matin Kashru, Senior Advocate, instructed by Mr. Md. Aftab Hossain, Advocate-on-Record
For the Appellant (In C.A. No. 255/09)	**:**	Mr. Ajmalul Hussain, Q.C. Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record

For the Respondent No. 1 (In C.A. No. 256/09)	**:**	Mr. Mahmudul Islam, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record
For the Respondent No. 5 (In C.A. No. 256/09)	**:**	Mr. A. F. M. Mesbahuddin, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record
For the Respondent No. 8-52 (Added Respondents)	**:**	Mr. Mr. Rafique-ul-Huq, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate and Mr. Abdul Matin Kashru, Senior Advocate, instructed by Mr. Md. Aftab Hossain, Advocate-on-Record
For the Respondent No. 2-4 & 6-7) (In C.A. No. 256/09)	**:**	Not represented
For the Respondent No. 1 (In C.A. No. 253/09)	**:**	Mr. Ajmalul Hussain, Q.C. Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record
For the Respondent Nos. 2-46 (In C.A. No. 253/09)	**:**	Mr. Mr. Rafique-ul-Huq, Senior Advocate, Mr. Rokanuddin Mahmud, Senior Advocate and Mr. Abdul Matin Kashru, Senior Advocate, instructed by Mr. Md. Aftab Hossain, Advocate-on-Record
For the Respondent No. 47-52 (In C.A. No. 253/09)	**:**	Not represented
For the Respondent No. 8 (In C.A. No. 254/09)	**:**	Mr. Ajmalul Hussain, Q.C. Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record
For the Respondent No. 1-7 (In C.A. No. 254/09)	**:**	Not represented

For the Respondent No. 1-3 (In C.A. No. 255/09)	**:**	Mr. A. F. M. Mesbahuddin, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record
Respondent Nos. 4-18 (In C.A. No. 255/09)	**:**	Not represented
For the Respondent (In C.A. No. 1689/06)	**:**	Not represented
Date of Hearing.	**:**	**24.01.2012, 31.01.2012 01.02.2012, 07.02.2012 08.02.2012, 14.02.2012 15.02.2012, 29.02.2012 07.03.2012 and 07.08.2012**

JUDGEMENT

Md. Muzammel Hossain, C. J. : I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Syed Mahmud Hossain, J. I agree with the reasoning and findings given by Syed Mahmud Hossain, J.

CJ.

Surendra Kumar Sinha, J. : These appeals and civil petition involve public importance on the environment and human rights, protection and preservation of environment, and the construction of certain provisions of the tenancy laws applicable in the country, the Town Improvement Act, 1953, the Paribesh Sangrakhan Ain, 1995 and Jaladhar Sangrakhan Ain, 2000 and as the disposal of these matters would have impact on the implementation of various housing projects by individuals and private companies, I would like to express my opinion on the questions separately.

Short facts relevant for determination of the points in these matters are that Bangladesh Environment Lawyers Association (BELA) filed Writ Petition No.4604 of 2004 out of which Civil Appeal No.256 of 2009 stating inter alia that the environment of Dhaka city is being continuously endangered and threatened

by various unplanned and illegal activities originating both from private and public sectors causing irreparable harm to human beings. In 1997 RAJUK prepared a fresh Master Plan known as Dhaka Metropolitan Development Plan (DMDP) for the Dhaka city and its surrounding area, which was published in Gazette notification on 3rd August, 1997 identifying few areas of flood plains, rivers, water bodies, Sub- Flood Flow Zone (SFFZ) etc. to protect the safety, health and welfare of the common people from negative environmental impact and to protect and preserve natural drainage system to ensure their continual and proper functioning. Any interference with the same as earmarked in the said Master Plan will have devastating environmental effect for which the Master Plan in clear terms prohibited residential, commercial and industrial developments in those Zones, including raising the level of land plain through earth filling in Flood Flow/Sub- Flood Flow Zones. The said Master Plan in categorizing the land use pattern for the city, identified 19 Spatial Planning Zone (SPZ) out of which 17 comprising area between Savar and Dhansona in the west and present Dhaka established area at the east which is low lying area across Torag river and its canals and is designated as Flood Flow/Sub- Flood Flow Zone area within which Ameen Bazar area under Savar Police station has fallen as part of Sub- Flood Flow Zone. The DMDP has identified that there have been many private development schemes approved by RAJUK specially in the Ameen Bazar area on the south of Dhaka-Aricha Road which will have considerable negative impact on environment and DMDP recommends that all such development permits issued by RAJUK for the development of housing within this area should be withdrawn and that no new ones be allowed. Moreover, conditions and restrictions have been imposed in DMDP and also by section 5 of Ain of 2000 prohibiting change of nature of any land that has been earmarked as natural reservoir including Flood-Flow zone.

Despite clear prohibition, Metro Makers and Developers limited (MMDL), appellant in Civil Appeal Nos.255 and 256 of 2009, a private limited company has undertaken a development project near Ameen Bazar within mouza Bilamalia and Baliarpur which are situated within SPZ 17(3)(SPZ173) and earmarked as Sub- Flood Flow Zone and has started filling earth in the substantial part of the zone with an object to implement an unauthorized non-permitted satellite township under the name “Modhumati Model Town”(MMT) and also started through regular media advertisement offering to sell housing plots in the said projects. RAJUK did not prevent the said development project of the MMT although it has categorically rejected its prayer by its letter dated 29th July, 2003 to approve the project on the ground that the said project is situated within the Sub- Flood Flow Zone. RAJUK also warned it to refrain from illegal earth filling in the said project site. Thereafter BELA undertook field survey and investigation

and found that MMDL has been continuing with its illegal activities of earth filling in the project area and also found that the writ respondents have taken no step to stop such illegal activities.

MMDL also filed writ petition No.5103 of 2003 against RAJUK and others claiming that its project area comprised of 360 acres of land consisting of 2526 residential plots of different sizes with various public utilities and facilities which have been purchased by it from different land owners in those mouzas with a view to develop the area into a satellite town. They conducted a survey through the Institute of Water and Flood Management and Bureau of Research Testing and Consultation which reported that the project does not lie in the flood flow zone. MMDL purchases lands which are 'chala and bhiti' nature and they are above the flood plain and do not come under the purview of Ain 2000. There is no play ground or open ground or natural water reservoir owned by the Government within the project area and the said project would cause no hindrance to flood flow of any kind. MMT has obtained licence and permit to execute its project and has prepared a project plan and also sold most of the plots to the buyers, the appellants in Civil Appeal No.254 of 2009. The project of MMDL has not fallen within the main Flood-Flow Zone and RAJUK arbitrarily started obstruction against the development work at the instance of interested quarters which is illegal and unauthorized.

The High Court Division while allowing the petition of BELA in part observed that in the first Master Plan Savar Upazila was not included; that the operative area of RAJUK is extended to Savar under a separate Master Plan since 28th December, 1996 and therefore, question of derogatory use of Master Plan earmarked area does not require permission from RAJUK; that MMT being an ongoing project when Savar Master Plan (SMP) came into effect, it was incumbent upon it to obtain permission under the provisions of SMP if the area is being used in derogation to the purposes earmarked in the Master Plan, that part of those two Mouzas has been shown as housing, the development of MMT for converting it to a housing was compatible to SMP; that no permission for such housing is necessary; that in view of the provisions containing conditional use of lands in Sub- Flood Flow Zone, such as, dwelling, single/multi family, MMT is entitled to continue with its housing project on procuring necessary approval from RAJUK; that the development of lands in Sub- Flood Flow Zone is not barred; that only permission that will be required if the structures are built on land raised above the flood water level; that MMT is entitled to apply for plan review application as contained in paragraph 2.5.3 of the Interim Planning Rules; that MMT is an unauthorized project as it has been continuing its project in violation of section 75 of Act, 1953.

The High Court Division further observed that the purchasers from MMT are bona fide purchasers with aim to build structures for housing which could not be dislodged on the ground that the lands have been earmarked in DMDP as Sub-Flood-Flow area; that MMT is implementing its project in Mouzas Bilamalia and Baliarpur which is an unauthorized project; that RAJUK legally obstructed MMT in the development of the housing project; that RAJUK is required to protect Sub-Flood-flow Zone area near Ameen Bazar from any further earth filling; that it is not required to direct RAJUK to restore the original position of the lands to the extent of taking step under section 8(2) of Ain, 2000 and that MMT having nearly been completed the project by arranging money from financial institutions, it is necessary for keeping an avenue open for it to procure necessary permission from the relevant authorities in accordance with section 75 of the Town Improvement Act, 1953 and section 6 of Ain of 2000 for housing development project.

It is against these contradictory observations BELA preferred Civil Appeal No.253 of 2009 and MMDL and the purchasers from MMDL preferred the other three appeals against allowing BELA's writ petition in part. Before embarking on exploration of the points raised at the Bar, I would like to discuss laws which are relevant for the disposal of the points agitated at the time of the leave granting order.

The State Acquisition and Tenancy Act, 1950

The aim and object of promulgating this Act is mainly in liquidation of rent receiving interests of land-lords. The main principle on which this statute was promulgated from a socialist point of view, and egalitarian outlook. Section 3(1) empowers the Government to acquire all rent-receivers' rent-receiving interests by notifications. Rent-receiver has been defined in section 2(23) of the Act, i.e. the rent-receiving interest of (i) proprietor, (ii) tenure-holder, (iii) raiyats, (iv) an under-raiyat, (v) a non-agricultural tenant, whose land has been let out but does not include a person in respect of such of his lands, as has been let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity and landlords in respect of service tenures. When the Gazette notifications were passed acquiring the rent receiving interests, lands held in khas possession by ex-rent receivers, cultivating raiyats, cultivating under-raiyats and non-agricultural tenants in excess of the retainable area of 375 standard bighas or an area determined by calculating at the rate of 10 standard bighas for each member of his family which ever is greater all non retainable lands vest in the Government. It includes any land or building in a hat or bazaar; any fishery other

than a tank dug solely by process of excavation; any land consisting of a forest; and any land actually in use for a ferry.

The following are the lands which cannot be acquired under the Act:

> (*1) Rent-receiving interests in respect of non-agricultural lands with building standing thereon together with necessary adjuncts held under a lease not being a lease in perpetuity; the town property however extensive be the area which a landlord may possess;*
>
> *(2) portion in hats and bazars which do not fall within the definition of hat or bazar and having structure and held under lease, khas lands to the extent of 375 standard bighas or an area determined by calculating at the rate of 10 standard bighas for each member of the family, whichever is greater.*
>
> *(3) Khas lands in excess of the above limit may be retained in following cases;*
>
> > *(i) where a rent-receiver, cultivating raiyat or cultivating under-raiyat or a group of them has or have undertaken large-scale farming by use of power-driven mechanical appliance or have undertaken large-scale dairy farming, certificates from the prescribed Revenue Authority as to such actual undertaking will be necessary*."

It should be noted that a large-scale farming minus power-driven mechanical appliances will not attract the provision of the above exception clause. Farming has not been defined-it can be extended to agricultural, horticultural or any mode of farming.

> (ii) Lands held for the purpose of cultivation and manufacture of tea or coffee or for the cultivation of rubber, whatever be the area, if certified by the prescribed Revenue Authority. If there is cultivation of tea or coffee without manufacture of tea or coffee, the sub-section will not apply. A company holding land for the cultivation of sugarcane for the purpose of manufacture of sugar by that company, if certified by the prescribed Revenue Officer. (s.20(4A)).

It may be noted that the word "company" has been used in case of sugarcane while in case of tea, coffee and rubber the words used are "*where a person or persons holding land for the purpose of cultivation and manufacture of tea, coffee or rubber*".

> (4) Land covered by buildings or structures and necessary adjuncts thereto in case of any large-scale industry with such other lands used for growing raw materials thereof. [Section 20(5)(i)(b)].
>
> (5) Land held under Waqf or Debutter, when the incomes from such property are wholly applied to religious or charitable purposes (Section 20(5)(i)(c) and (ii)).

On and from the date of publication of notification under sub-section (1) of section 3 the consequences that ensue from the date of publication are enumerated in clauses (a), (b), (c), (d), (dd), (e), (f), (ff), (g) and (h) under sub-section (4) of Section 3. Clause (a) states that all interest of rent receivers in the estates, taluks, tenures, holdings or tenancies shall vest absolutely in the Government free from all encumbrances. The elimination of this sort of interests in relation to land in khas possession was felt necessary to avoid all controversy and place all people holding lands on an equal footing. Proviso to clause (a) says "nothing in this clause shall apply to any building within the homestead of rent-receiver concerned" and the relevant words in clause (a) of section 20(2) are identical with clause (a) of rule 29A of the State Acquisition Rules. Provisions embodied in clauses (b), (c), (d) and (dd) of section 3(4) deal with the realization of such revenue, rent and cesses with interest as were in arrear and also the outstanding dues under Bengal Embankment Act.

Clause (e) of section 3(4) says that tenants holding lands directly under rent-receivers with effect from the date on which the notification under section 3(1) have been served shall become tenants directly under the Government and shall pay rent at the existing rate to the Government. Clause (f) speaks of rent-receivers themselves who shall be liable to pay rent to the Government with regard to lands not acquired by the Government under section 3(2). Clause (ff) provides that where final publication of record-of-rights under section 19(3) or determination of rent under section 53 was yet to be made or, in other words, pending the same, the tenants referred to in proviso in clause (e) and in clause (ff) shall pay rent to the Government at the rates shown in the preliminary record of rights.

Proviso to clause (ff) speaks about tenant's liability to pay higher rent or their entitlement to get adjusted if enhanced or determined under sections 19(3) or (5)

or 53 of the Act. Clause (g) says that arrear rents shall be recoverable under the Public Demand Recovery Act, 1913 and clause (h) provides that a tenure or a part of it coming directly under the Government shall be deemed to be a tenure as defined in section 1 of the Bengal Land Revenue Sales Act, 1968.

Section 20 of the Act deals with khas land which a rent-receiver is entitled to retain in his khas possession after acquisition of rent receiving interest under Chapter-V of the Act. Sub-section (2) puts the maximum limit of the area of khas lands retainable by rent-receiver in his possession as well as the class of lands which he is entitled to retain under two clauses namely, clauses (a) and (b) have been reduced to 100 standard bighas by the Bangladesh Land Holding (Limitation) Order, 1972 (P.O. 98 of 1972). Clause (a) deals with lands comprised in the homestead of the rent-receiver with necessary adjuncts and clause (b) with lands which are outside homestead area and can be utilized for agricultural and horticultural purposes. It has 3 sub-clauses (i), (ii) and (iii) which read as follows:

> (i) lands used for agricultural or horticultural purposes including tanks,
>
> (ii) lands which are cultivable or which are capable of cultivation on reclamation, and
>
> (iii) vacant non-agricultural lands.

Sub-section (2a) of section 20 is a sort of rider to sub-section (2) which says that the lands mentioned in sub-clauses (i),(ii),(iii),(iv) shall remain outside the retainable area, that is, outside the area which a rent-receiver may keep for himself under sub-section (2). Sub-section (3) is concerned with allotment of lands when the question of choice of a rent-receiver becomes relevant but where no such right of choice is exercised, retainable area shall be decided by the Revenue Officer. Sub-sections (4), (4A) and (5) make provisions for exclusion of certain classes of lands held in khas from being acquired by the Government, even though the total area held in these cases exceeded the maximum retainable limit under sub-section (2) such as: (a) lands held for large-scale farming through use of machineries or for large-scale dairy farming; (b) lands held for cultivation and manufacture of tea or coffee or rubber; (c) land held for cultivation of sugarcane for the purpose of manufacturing sugar.

In all cases referred to above certificates from the Revenue Officer about genuineness of the undertaking will be necessary in order to obtain the benefits provided in sub-sections (4) and (4A) to a rent-receiver or a group of them on a

co-operative basis or otherwise for large-scale dairy farming. “Revenue Officer” within the meaning of the Act includes “*any officer whom the Government may appoint to discharge all or any of the functions of a Revenue Officer under the Act or any rules made there under (section 2(24))*”. Sub-section (5) relaxed certain lands held by certain classes of rent-receivers allowing them to retain lands in their khas and sub-sections (1), (2) and (3) of section 20 will not be applicable to them and are excluded from acquisition by the Government. Conditions set in order to ascribe to them the declared privileges are ‘so much of the lands as are exclusively dedicated and income from which is applied to religious and charitable purposes without reservation of any benefit to any individual’. They are included in clause-(I) of sub-clause (c), such as, lands held under Debutter, Waqf, Waqf-al-aulad or any other trust, as is exclusively dedicated and the income from which is exclusively applied to religious or charitable purposes. Sub-section (6) laid down that lands on which hats or bazar are held or which consists of forest or fisheries or ferries shall not be retainable on the ground that they are Debutter, Waqf, Waqf-al-aulad.

The Bangladesh Land Holding (Limitation) Order, 1972

By Presidents Order No.98 of 1972, total quantity of land which may be held by a family in Bangladesh under the proviso to clause (b) of sub-section (2) of section 20 of the Act has been reduced to 100 standard bighas and all lands in excess of that quantity shall be surrendered to the Government; and no family shall be entitled to acquire any land by purchase, inheritance, hiba or otherwise which added to the land already held by it exceeds 100 standard bighas in aggregate. The limitation imposed by clause (a) has been relaxed in case of lands held under Debuttor, waqf or any other religious or charitable trust under certain conditions. The Government reserves the right to relax the limitation imposed by Article 3 of P.O.98 of 1972 in cases of: (a) a co-operative society of farmers where the members thereof surrendered their ownership in the lands unconditionally to the society; (b) lands used for cultivation of tea, rubber or coffee; (c) an industrial concern holding land for the production of raw materials for manufacture of commodities in its own factories; (d) any other case where such relaxation is considered necessary in the public interest.

It is provided in Article 3 of P.O.98 of 1972 that no family shall be entitled to retain any land held by it in excess of 100 standard bighas in the aggregate and all lands held by it in excess of that quantity shall be surrendered to the Government and no family shall be entitled to acquire any land by purchase, inheritance, gift, hiba or otherwise which added to the land already held by it exceeds 100 standard bighas in the aggregate. By Ordinance No.III of 1982, articles 2 and 3 of P.O.98

of 1972 were amended. In the definition clause in Article 2, 'body' was defined as *"body of individuals whether incorporated or not, and includes any company firm, society, association, organization or authority, by whatever name called"*. In Article 3 after the word 'family' the words "or body" were added. In view of this amendment the position as it now stands is that no company shall be entitled to acquire any land by purchase, inheritance, or otherwise exceeding 100 standard bighas.

Land Reforms Ordinance, 1984 (Ordinance No.IV of 1984)

By this ordinance, the total quantity of agricultural land which may be held by a family has been reduced to 60(sixty) standard bighas. It was promulgated to reform the law relating to land tenure, land holding and land transfer for the purposes mentioned therein. This limitation of holding land has been made in respect of agricultural lands only. Under this law the benami transaction of immovable property has been prohibited. Section 4 of the Ordinance provides inter alia as under:

> *"4.(1) No malik who or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance gift or any other means.*
>
> *(2) A malik who or whose family owns less than sixty standard bighas of agricultural land may acquire new agricultural land by any means, but such new land, together with the agricultural land owned by him, shall not exceed sixty standard bighas.*
>
> *(3) If any malik acquires any new agricultural land in contravention of the provisions of this section, the area of land which is in excess of sixty standard bighas shall vest in the Government and no compensation shall be payable to him for the land so vested, except in the case where the excess land is acquired by inheritance, gift or will.*
>
> *(4) Compensation for the excess land payable under sub-section (3) shall be assessed and paid in such manner as may be prescribed:*

Provided that where such compensation is payable only for a portion of the excess land, the assessment and payment of compensation shall be made for such portion of the excess land as the malik may specify in this behalf."

According to MMDL it has purchased agricultural lands and therefore, it has acquired lands in violation of section 4 of the said Ordinance.

Bangladesh Paribesh Sangrakhan Ain, 1995

Under this Ain, a Directorate under the name 'Paribesh Adhidaptar' would oversee preservation of eco-system and environment, development of quality of products and to prevent its degradation. The Government retains power to declare ecologically critical area of an area by notification if it has reason to believe that due to environmental erosion the eco-system of any locality is in danger due to any work or process in the said area. The Director General of this Directorate has been authorized to take steps for the conservation of environment, improvement of environmental standard and control and mitigation of pollution of environment and may give necessary directions to any person or organization to perform duties in accordance with the Ain. Section 7 of the Ain contains remedial measures if the eco-system is threatened stipulating that if it appears to the Director General that certain activity is causing damage to the eco-system directly or indirectly, he may, after assessing the extent of damage, direct the person responsible for taking appropriate corrective measures and such person shall be bound to comply with such direction. Section 9 prohibits the discharge of excessive environmental pollution from all sources including the commercial and industrial enterprises provided that where the discharge of any environmental pollution occurs in excess of the limit prescribed by any law or is likely to occur due to any accident or other unforeseen act or event, the person responsible for such act or the person in charge of the place at which such discharge occurs, shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge.

The Jaladhar Sangrakhan Ain, 2000

In the cause title of this Ain the purpose for promulgating it has been mentioned as under:

> মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণের জন্য প্রণীত আইন।
>
> যেহেতু মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণের জন্য বিধান করা সমুচীন এবং প্রয়োজনীয়।

Section 3 is in the nature of a non-obstante clause, which provides that the provisions of the Ain and the Rules framed thereafter shall prevail over other laws

prevailing in the country. Section 4 provides that after finalization of the Master Plan which means a Master Plan prepared by RAJUK, Chattagram Unnayan Kartipakha, Khulna Unnayan Kartipakha, Rajshahi Unnayan Kartipakha and any other Unnayan Kartipakha or Divisional or District Towns including the Pourashavas, a copy thereof shall be hung up at conspicuous places for attracting local people. Section 5 provides that except hereinafter provided, no play ground, open space, garden and natural water reservoir earmarked as such cannot be changed or used for any purpose or the same cannot be leased out for use for any purpose or in any other way. Section 6 empowers the owner of such classes of lands, river, canal, water reservoir by filing an application to the Government for changing its nature. So there is total restriction of use of water reservoir, river, canal or an open space earmarked as such other than the purpose for which it has been earmarked and no owner has any right or authority to lease out or sell the same to any person in any manner and violation of such prohibition is punishable under section 8 of the Ain.

Dhaka Metro Master Plan (DMMP)

In exercise of powers under section 73 of the Town Improvement Act, 1953 the DMDP was prepared authorizing the Kartripakha (RAJUK) to prepare Master Plan for the area within its jurisdiction including the manner in which the lands should be used. Sub-section (2) provides that the Master Plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals aforesaid with such degree of particularity as may be appropriate between different parts of the area and any such plan may, in particular, define the sites of proposed roads, public and other buildings and works, or fields, residential etc. Section 74 provides for publication of the Master Plan by notification which shall be conclusive evidence that the Master Plan has been duly made and approved and, thereafter, it will be unlawful for any person to use any land for any purpose other than that laid down in the Master Plan.

The Kartipakha has power to amend or alter any specific provision of the Master Plan by publication in official Gazette. In exercise of power under sub-section (2) of section 73 the Ministry of Housing and Works published notification on 3rd April, 1997 declaring the area under the Master Plan rescinding the existing Master Plan. The said Ministry thereupon by Gazette dated 3rd August, 1997 notified for suggestions and objections, if there be any, by an aggrieved person against the said Master Plan within time specified therein. Thereafter, the Ministry by Gazette dated 8th March, 2006 published the Dhaka Structure Plan (DSP) (Vol-I, 1995-2015) of Master Plan (Dhaka Metropolitan Development Plan) and Urban Area Plan (Vol-II, 1995-2015). The period of implementation of

the said plans was extended till 31st July, 2007. RAJUK thereafter by Gazette dated 28th December, 1996 (finalized the Master Plan for Savar area) pointing out that after the publication of the notification any development or construction work would be made with prior permission of the authority.

The first point urged by Mr. Azmalul Hossain appearing on behalf of MMDL is that the High Court Division fell in an error in holding that MMT is an unauthorized project, inasmuch as, there was no bar for undertaking housing project till 2004. In elaborating his submission the learned counsel argued that MMDL undertook MMT project in 1990 when there was no law regulating the conduct of companies dealing with housing projects. In the original Master Plan prepared for Dhaka City under sections 73 and 74 of the Town Improvement Act, 1953 it did not include the land in which the project is included. It is further argued, the original Dhaka Master Plan (DMP) did not regulate the conduct and activities of housing projects and the provisions of Town Improvement Act and the original DMP require that land within the areas should not be used for purpose other than that specified in the original Master Plan. It is further argued, the concepts of SPZ and Flood-Flow zones were totally unknown under the original Master Plan. Learned counsel further argued that in the SMP the use of the project lands has been included for housing and ancillary purposes. MMDL, it is argued, was encouraged by the SMP and commenced purchasing lands for the project. It is further argued that between 1990 and 1997, MMDL purchased lands for its project and raised the level of the lands with earth filling to bring the ground level above the flood level which was entirely legal till 1997 and it is only by Gazette notification dated 4th August, 1997, the DMDP was notified which does not deal with or regulate housing projects generally - it does not require any authorization from any authority for carrying on the business of MMDL. It is further argued that the DMDP regulates the use of the land within its area and therefore, the project remains lawful even after DMDP came into existence.

The United Nations Development Programme (UNDP) together with the World Bank, Asian Development Bank and other international agencies extended co-operation to cope with the urban transition through grants and technical assistance for implementing the project “Preparation of Structure Plan, Master Plan and Detailed Area Plans for Dhaka”. The main objective of the project is the preparation of multi-sectoral development plans, comprising Structure Plan, Master Plan and Detailed Area Plans (DAP) which form a framework of development planning preparation of sectoral Master Plan and feasibility studies for metropolitan infrastructure elements lacking development policies and investment programmes and with this goal in mind the project was planned to be implemented in phases.

Dhaka Structure Plan (1995-2015)(Vol-1)

In Dhaka, the projects work programme focused on four main components;

Component 2A	:	planning;
Component 2B	:	Drainage (including flood control);
Component 2C	:	Computerized Data and Mapping covering both Dhaka and Chittagong;
Component 2D	:	National consultancy Surveys

The structural plan

Paragraph 1.2.1 provides Structure Plan. DMDP Structure Plan provides a long-term strategy for 20 years to 2015 for the development of the greater Dhaka sub-region. Paragraph 1.2.2 contains "The Urban Area Plan (UAP)". The DMDP Urban Area Plan (UAP) provides an interim mid-term strategy for the 10 years and covers for the development of urban areas within Metro Dhaka management area. The geographic boundaries comprising the UAP are the areas within the proposed Flood Action Plan (FAP) components 8A and 8B as well as the Tongi-Gazipur and Savar-Dhamsona areas. The DMDP UAP has several parts consisting of an Explanatory Report, Resource Maps, Interim Management Report, Interim Planning Rules, Urban Area Plan Map, and a Multi-Sectoral Investment programme.

Explanatory Report- explains the basis for the UAP and describes the salient features for each of the 26 SPZ;

Resource Maps-record existing infrastructure locations, along with public and private sector development commitments;

Interim Management Report- describes basis and approach taken toward urban land use management;

Interim Planning Rules- state in a legal format the rules for urban land use management within the Urban Area Plan;

Urban Area Plan Map- designates various land use management zones;

Multi Sectoral Investment Programme- integrates and prioritizes urban development investments over the next 3-5 years.

Detailed Area Plans (DAP)

Paragraph 1.2.3 contains “DAP”. The DMDP DAP provide more detailed planning proposals for specific sub-areas of Dhaka. However, they do not initially cover the entire Dhaka Structure Plan area. While all sub-areas will eventually require a DAP, only priority areas will be dealt with initially. They may include the area of one or more SPZ, or parts of several SPZs, depending on circumstances. Until a DMP is prepared for a sub-area, however, land use management functions will be exercised through the policies, guidelines, and rules found in the Structure Plan and Urban Area Plan.

The DMDP structure plan proposes that the major new urban areas likely to be developed during the planned period by 2015 will be amongst Savar-Dhamsona as well. Paragraph 1.3.6 contains “The Dhaka Master Plan’ (DMP) submitted in 1959, covering the then Dhaka Improvement Trust (DIT) area covering roughly 220 square miles, with a population slightly exceeding 1 milion. Mirpur-Tongi (1978) population was estimated to be 900,000. DMP provided for major expansion areas at Mirpur, Tongi and Gulshan/Badda and proposed large scale reclamation at Keraniganj, Postogola and part of the DND Triangle. It was estimated that these areas would accommodate a population increase of 250,000 between 1958 and 1978.

Paragraph 2.2.1 contains ‘Physical Conditions’ in which it is said, physically Dhaka’s dominant feature is the small proportion of land which is permanently flood free, as brought home by the floods of 1987 and 1989. Virtually all flood-free land close to Dhaka has already been developed. Dhaka’s past growth and present urban configuration have been shaped by the city’s relative susceptibility to flooding. A major issue is the extent to which Dhaka, both in its existing urban form and in its future development, can be kept flood-free and free from water-logging as a result of urban encroachment in natural depressions, waterways and khals. A major problem will be how to safeguard the land areas needed for flood control structures to permit such flood protection, and the retention ponds and Dhaka’s natural drainage system.

Flood Protected Development Area.

Paragraph 3.3.1 contains Flood Protected Development Areas. By the year 2005, towards the end of the Medium-term DMDP Structure Plan period, the main elements of the flood mitigation works under FAP-8B, the priority project areas under FAP-8A, and the DND Triangle and Dhaka South-East, were completed.

Although protected from outside flooding the priority project areas will still require storm-water drainage facilities, designed to optimize the use of natural depressions and khals, to make them habitable. For this reason they will require major public sector commitment and involvement to ensure the comprehensive treatment of this critical aspect of development, including the enforcement of rigorous development control policies to prevent urban encroachment of proposed retention ponds, natural depressions and khals and formal approval of all land filling. The continuation of policies recommended under the ILDI approach will also be necessary.

Dispersed Flood-Free Development Areas

Paragraph 3.3.2 contains Dispersed Flood-free Development Areas. With most growth having been focused on Dhaka's main urbanized area and directed towards new priority project areas within the areas protected by FAP 8A and 8B during the DMDP Structure Plan period to 2015, there may be a case for reviewing options, prior to the end of the planned period, to divert some of Dhaka's future growth to more dispersed locations which have the advantage of relatively flood-free land.

Spatial and Environmental Sectors

Paragraph 4.2 contains 'Rural and spatial area policies'- it says, the policies pertaining to these non-urban areas relate to function and development treatment. The policies with respect to development treatment are essentially ones of conservation, whereby the function performed by the area requires a degree of protection from urban impacts via policies and some basic rules and regulations.

Flood Control, Drainage

Paragraph 4.2.2 contains Flood Control, Drainage and Irrigation Project Areas. It is said considerable investments are planned and already committed to improving the agricultural production capability of land within the metropolitan area which have historically being constrained by monsoon flood.

Flood-Flow Zones

Paragraph 4.2.3.1 under the heading 'Flood Plain Treatment' (Flood Flow Zone) states that land development, within the designated flood plain areas of the DMDP Structure Plan, will be controlled in order to avoid obstructions to flood

flow, which might otherwise result in adverse hydraulic effects, such as, for example, the rise of flood water levels and changes in flow direction. In respect of "Sub- Flood Flow Zone" it is said, the development compatible with the rural nature of these mainly rice growing areas, will be permitted on condition that;

- the structures are built on stilts, or on land raised above design flood water level;(emphasis supplied)

- alignment of structures and raised land to be designed so as not to distrub flood flow;

Volume II contains "Urban Area Plan (1995-2005)", in this volume in Part-I, paragraph 4.25 SPZ:173 Flood Zone West provides:

Description.

The zone covers the areas between the Savar-Dhamsona in the west and the present Dhaka established areas in the east. The zone is low lying cut across by Turag and its Khals and is designated by the Structure Plan as Flood Plain.

Major Issues/Problems

- This is a flood plain and all development should be discouraged to enable free flow of flood water. There will be considerable negative effect on surrounding areas if natural flow of flood water is prevented.(emphasis added)

- There have been many housing development schemes by private sectors, especially in the Ameen bazar area on the south of Dhaka-Aricha road. Some of these have received development permit from RAJUK. This will have considerable negative effect on environment.

- The army engineers are ventilating idea on a major upper income development scheme covering most of the area. From social, economic and especially environmental point of view these plans may create major complications.

Opportunity

- The area being low lying and subject to annual flooding, it offers opportunity for development of agriculture and pisciculture.

- The zone will provide a buffer between the central core and the emerging satellite zone thus providing essential open spaces to make life easy and comfortable.

Actions Committed/Required

- The area should be enabled to function properly as a flood plain and a basic rural/pisciculture zone.

- All the development permits issued for the development of housing should be withdrawn and no new one is needed to maintain the nature of the zone.(emphasis supply)

- Conversion of land from rural to urban should be regulated strictly in this zone. (emphasis given)

In part-2, Vol.II under the heading 'Urban Area Plan' (UAP) it is stated, within this general framework, the UAP indicates where development could be permitted, either as preferred or allowable land use (with appropriate conditions) and where it should not. (Either a proposed land use is not in line with the Structure Plan priority proposals, or the specific restrictions on the land use do not allow for the development). It also indicates where development conditions should be imposed (more specific conditions for the planned and formal development and more general targets and guidance for the spontaneous and informal growing areas). The interim nature of the UAP is stressed; as it will gradually be replaced by the DAP when they are completed. These will then become the development management documents for the respective areas they cover.

In paragraph 1.3.1 under the heading 'The Flood Flow Zone' (FFZ), it is said FFZ were determined by FAP 8A studies, and lie largely outside the present urban area. The Lands Study recommended that development in low-lying flood plain areas be restricted, since it could obstruct natural flood flow. Such restriction would cause a rise in water level and changes in flood direction; affecting the entire metropolitan area. In the Main Flood Flow Zone, now mostly agricultural land, urban development should be prohibited. Only development having no adverse hydraulic effects should be permitted. Such development includes:

(a) agriculture'

(b) open space for recreation;

(c) ferry terminals;

(d) brickyards;

The Sub-Flood Flow Zone is less affected by flood flow. It includes village and homestead areas. Development in this zone should only be allowed provided that:

(i) the developed land is raised more than the design flood water level;

(ii) the slope of such land is sufficiently gentle to prevent slope failure and is protected from erosion;

(iii) structure orientation is designed to minimize flood flow obstruction; (emphasis)

(iv) floor elevation of structures housing any toxic material is higher than the design flood water level, and the structures themselves are sufficiently strong to withstand flood damage.

In part-3, under the heading 'Interim Planning Rules' paragraph 5.1 contains 'Main Flood Flow Zone' (MFF), in which in paragraph 5.1.1 under the heading 'Relevant Structure Plan Policy', it is stated: Development, within the designated flood plain areas of the DMDP Structure Plan will be controlled in order to avoid obstructions to flood flow, which might otherwise result in adverse hydraulic effects, such as, for example, the rise of flood water levels and changes in flow direction. Paragraph 5.2 contains 'Sub- Flood Flow Zone' and in paragraph 5.2.2 under the heading 'Purpose and Intent' it is stated, the purpose of the Sub Flood Flow Zone is to generally define areas either temporarily or seasonally flooded (flood lands). The intent is to protect the health, safety and welfare of the general public; to reduce negative environmental impacts within natural waterways; and to protect and preserve natural drainage systems to ensure their proper and continued functioning. Areas designated on the Urban Area Plan Map as SFF are also hereby designated as Flood Prone Areas (FAP) for purposes of Part-3, Section 1.24(a) of the BNBC.

5.2.3 Permitted and Conditional Uses

PERMITED USES		**CONDITIONAL**
-Agriculture forestry & grazing		-Dwellings, farm
-Aquaculture & fisheries		-Dwellings, minimal housing
-Brick fields		-Dwellings, single/multi-family
-Roads/Railways/Utility ROW		-Explosives manufacture & storage
-Farm dwellings		-Industrial Class 2
-Ferry ghats & jetties		-Petrol/service stations
-Flood management structures		-Offices/Services
-Institutions		
-Public uses & structures		
-Recreation facilities, outdoor		**PLAN REVIEW REQUIRED**
-Religious uses & structures		-Golf courses
-Repair shops, minor		-Prisons
-Ship & boat servicing		-Terminals: Train, Bus, Freight
-Utility installations Type A		-Utility installations Type B

Mr. Azmalul Hossain contended that section 73(1) starts with the preparation of "a" Master Plan indicating the manner in which it proposes that land should be used. Once a Master Plan is prepared showing land use and it goes through process in sub-section (2) to (5) of section 73 and is approved by the Government and it is made public under section 74(1), it becomes "the" Master Plan for Dhaka and all land use is to be carried out under its provision. Learned counsel emphasized that if use of land contrary to the Master Plan is to be made, permission is required from the RAJUK and the legislative intent is clear, that is, permission is required for any derogatory use of land. It is further contended that where the Master Plan allows residential use or for housing and ancillary use, no permission is required for that purpose and if some one wishes to use land designated for housing for industrial use, permission will be required under section 75. This is, according to him, not the situation with the MHP. Mr. Hossain submits that under SMP the use of the land within MMT project is also consistent with the land use in Master Plan. It is not the legislative intention that in respect of some area extended by delegated legislation, the provisions for permission should go beyond the parent law and permission will be required for all development in Savar even when it is consistent with the Master Plan. It is finally contended that the MMT project land under DMDP falls within Sub- Flood Flow Zone in which certain types of development of certain conditions are allowed and therefore, there is no need for permission under section 75 for derogatory use since none is completed in the MMT project.

The DMDP was prepared in 1958. It is admitted by the parties that Bilamalia and Baliarpur mouzas under Savar police station having been included in DMDP and on and from the date of the jurisdiction of RAJUK was extended to those mouzas by notification dated 28th December, 1996 any development in the areas in those two mouzas permission of RAJUK was necessary. Mr. Mahmudul Islam contended that the expression 'any' has wide range of limit which varies in different context and it can mean 'some' or 'all'. In this connection learned Counsel has referred the meaning of the word 'any' in Stroud's Judicial Dictionary of Words and Phrases, Seventh Edition, Vol-I, page-141 as under;

> *"Any" is a word which excludes limitation or qualification (per Fry L.J.Duck V. Bates.12 Q.B.D. 79): "as wide as possible" (per Chitty J., Beckett V. Sutton. 51 L.J. Ch. 433). A remarkable instance of this wide generality is furnished in Re Farquhar (4 Notes of Fee. Cases, 651, 652, cited W Ms. Exs.), wherein the words "any soldier", etc. (Wills Act 1837 (c.26), s. 11), were construed as including minors, so that soldiers and seamen, within that section, can make nuncupative wills though under age. So, a power in a lease, enabling the lessor to resume "possession of any portion of the premises demised", enables him to resume all (Liddy V. Kennedy), L.R.5 H.L. 134). So, a notice of an extraordinary meeting (Companies Clauses Consolidation Act 1845 (c.16), s. 70 – see Companies Act 1948 (e. 38), Seh. I, reg.96), "to remove any of the present directors", justifies a resolution to remove them all (Isle of Wight Railway V Tahourdin, 25 Ch. D. 332)."*

Blacks's Law Dictionary, Sixth Edition the meaning of the word 'any' is as under:

> "*Some; one out of many, an indefinite number. One indiscriminately of whatever kind or quantity. Federal Deposit Ins. Corporation V. Winton, C.C.A. Tenn., 131 F.2d 780, 782. One or some (indefinitely). Slegel V. Slegel, 135 N.J. Eq.5, 37 A.2d 57, 58. "Any" does not necessarily mean only one person, but may have reference to more than one or to many. Doherty V. King, Tex. Civ.App., S.W..2d 1004, 1007.*
>
> *Word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute. Donohue V. Zoning Bd. of Appeals of Town of Norwalk, 155 Conn.550, 235 A.2d 643, 646, 647*".

Section 74(2) of Act, 1953 is an enabling provision regarding amendment or alteration and it does not take away the power of a statutory authority to rescind any delegated legislation including notifications conferred by section 21 of the General Clauses Act. In this connection Mr. Mahmudul Islam contended that had the legislature intended to take away the power to rescind as conferred by the General Clauses Act, the legislature was required to use clear language which is missing in section 74(2). It is settled law that jurisdiction expressly conferred by a statute cannot be extinguished by application from any expression used in a subsequent statute, much less by an enabling provision in a latter statute. Even if it is assumed that the Master Plan of 1997 is ultra vires section 74(2), it does not allow MMDL to proceed with development work without permission of RAJUK in view of section 75 of the Act.

After coming into the force of Jaladhar Ain, 2000 on 5th February, 2001, the permission of the Government is also necessary for conversion of the agricultural lands of those two mouzas to housing plots. RAJUK prepared DMDP with inclusion of Savar area by Gazette notification dated 3rd August, 1997. The third part of DMDP has not yet been prepared and this historical aspect showed that Savar was put under Master Plan by notification dated 28th December, 1996 describing mouzas Bilamalia and Baliarpur as agricultrual land and not for utilizing housing and ancilliary purposes. In the meantime, the Jaladhar Ain came into force prohibiting change of any land and permission of the Government became necessary for conversion of agricultural lands. The object of the said ain is protection of 'Prakritik Jaladhar' mainly for the purpose of proper drainage of flood and rain water.

The High Court Division held that on and from the date of publication of Gazette under SMP, it was incumbent upon the MMDL to obtain permission from RAJUK if the area was to be used in derogation to the purposes earmarked in the Master Plan. The High Court Division then observed, since the part of Mouzas Bilamalia and Baliarpur have been designated as housing ancillary use and partly urban service and agricultural land, the development of Modhumati area converting it to housing project was compatible to the Master Plan and thus permission under section 75 of the Act, 1953 was not necessary. This observation is self contradictory. Section 73 of Act 1953 authorizes RAJUK to prepare a Master Plan for the area within its jurisdiction indicating the manner in which it proposes that lands should be used. Once the Master Plan comes into force it becomes unlawful for any person to use any land for any purposes other than that laid down in the Master Plan unless he has been authorised to do so under section 75 of the Act. Any derogatory use of lands identified in the Master Plan shall need prior approval as per provisions of Acts, 1953 and 2000. More so, after

publication of the notification under section 74(1) of Act, 1953 the UAP and Structure Plan of DMDP have been brought under Master Plan.

Next line of Mr. Azmalul Hossain's argument is that under the বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪, MMDL was registered with RAJUK as an existing project and, therefore, MMT project was recognized as being lawful from its inception as an existing private housing project and has been given legal sanction by the prevalent law. Rule 4(1) of Rules 2004 provided that the project must be within the areas of Master Plan and land must be recommended as being suitable for development. It is further contended that under the SMP the Modhumati project could be used for housing and ancillary purposes and the DMDP, does not deal with housing projects generally and as such it does not require any authorization from any authority for carrying on housing project. It is also contended that if any project gets registration that project is an ongoing project within the area of the Master Plan and that its land is recommended as being suitable for development. In this connection learned Counsel has referred to annexure-X-1 to the writ petition. In elaborating his submission, Mr. Hossain argued that the words used in the Gazette notification dated 27th February, 1997 that "এই বিজ্ঞপ্তি প্রকাশের পর হইতে এই মাষ্টারপ্ল্যানের অন্তর্ভুক্ত এলাকার যে কোন ধরনের উন্নয়ন ও নির্মাণ কাজ এই মাষ্টারপ্ল্যান অনুসারে এবং যথাযথ কর্তৃপক্ষের অনুমোদনক্রমে সম্পূর্ণ করিতে হইবে" does not in any way require permission where the development is inconsistent with the Savar Master Plan.

I find inconsistency in the submission of learned Counsel. On the one hand, it is contended on behalf of MMDL by enclosing annexures-X-1 and X-2, that as per MMDL's prayer, the RAJUK accorded permission and on the other hand, the learned counsel submitted that no such permission is necessary. There is no dispute that the projects are included within RAJUK's jurisdiction. Section 3 of Act 1952 provides restriction for construction of building and other development works and as soon as MMDL has undertaken a housing project, unless it develops the area, how it will implement the project is not clear to me. True, it will not make permanent residential buildings but MMDL develops the area by filling earth for making it suitable for constructing buildings and for such development works also prior permission under Act of 1952 and Act of 1953 is necessary. How then would MMDL be able to sell plots to the purchasers which require prior permission for construction?

As regards the registration of the MMT with RAJUK, annexure-X-1, which is a letter issued by Zakir Hossain of RAJUK to Mr. Shawkat Ali Khan, Chief Town Planner DMDP, RAJUK Project Management and Co-ordination Cell. In this

letter there is an alleged permission at its bottom under the heading Ae¤¢m¢f which read thus:

> "এ. এফ. এম জাহাঙ্গীর, পরিচালক, মেট্রোমেকার্স এন্ড ডেভেলপারস লি: ইহা তাদের পত্র নং মেট্রো/আ:প্র:/রাজউক তারিখ ১৫/১১/৯৪ এর প্রেক্ষিতে প্রস্তাবিত আমিন বাজারস্থ ঢাকা আরিচা সড়কের দক্ষিণ পার্শ্বের বালিমারিয়া মৌজার জে, এল নং-৭৪১ এর একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের জন্য তাহাদের কোম্পানী কর্তৃক ক্রয়কৃত সম্পত্তিতে ভূমি উন্নয়ন করার অনুমিত দেওয়া গেল। ইহা মেট্রোমেকার এন্ড ডেভেলপারস লিমিটেড কর্তৃক দাখিলকৃত প্রকল্পটির বাস্তবায়নের জন্য (development permit) হিসাবে গণ্য হইবে।"

BELA filed a supplementary affidavit against the said alleged permission stating that MMDL created it by resorting to forgery. Under such circumstances, the High Court Division called for the record of RAJUK for ascertaining the genuineness of this endorsement and ascertained that though a copy of the letter was kept with the file, there was no such permission. The High Court Division thereupon came to a definite finding that *"This copy contains the signature of the issuer Mr. Zakir Hossain, Town Planner (Director), just after the finish of the main contents of the letter but Annexure-X-1 contained the same signature at the bottom of the alleged paragraph and as such it can be safely said that the issuer of the letter dated 29.7.1995 superfluously included this portion in Annexure-X-1 for the reason best known to him. Therefore, we hold that the allegation of forgery on the part of Modhumati in inclusion of that part in Annexure-X-1, has no basis"*.

It is to be noted that the recipient of the letter in question was Mr. Md. Shawkat Ali Khan, Chief Planner and not MMDL. In the subject matter of the said letter it was mentioned ষ্ট্রাকচার প্লান, মাষ্টার প্লান, ও ডিটেইল এরিয়া প্ল্যান প্রণয়ন সাভার এলাকায় গৃহীত সরকারী ও বেসরকারী উল্লেখ্যযোগ্য ও প্রতিশ্রুতি প্রকল্পসমূহ অন্তর্ভুক্তি পদ বিবেচনা প্রসঙ্গে" which does not relate to according development permission to MMDL. It was relating to inclusion of Government and private projects in the Structure Plan, Master Plan and Design Area plan in Savar Area. Therefore, it is apparent that there is no nexus between the subject matter and the alleged permission accorded at the bottom of the letter. There was no reason for issuing a copy to MMDL in the context of the matter. If the letter was intended as a 'Development permit', RAJUK was required to write it directly to MMDL and not to Mr. Md. Shawkat Ali Khan. MMDL used this letter to their benefit by holding out that they had been granted permission by RAJUK, which tends to suggest that the forged additional paragraph was included at the behest of MMDL.

On our query to Mr. Azmalul Hossain, whether a third party is legally entitled to a copy of any official correspondence made by a public servant to any another officer which does not relate to him. Mr. Hossain found it difficult to meet our query and left the matter for our decision on proper construction of the letter. It is totally curious to note that the Town Planner, RAJUK wrote a letter to the Chief Town Planner, RAJUK relating to inclusion of projects in the compiled planning. Furthermore, if such permission was granted by RAJUK as claimed by MMDL, there was no reason on the part of MMDL for seeking permission by writing letters on 26th October, 2001 and 18th July, 2002 respectively as appeared at pages 618 and 620 of paper book-II. RAJUK by memo dated 10th March, 2002 and 29th July, 200, pages 624 and 625 of paper book-II refused the prayers.

There is no gainsaying that MMDL inserted the permission at the bottom of the letter, annexure X-1, by resorting to forgery in collusion with Zakir Hossain with mala fide motive to secure a judgment from the High Court Division showing that its project was approved by RAJUK and for this forgery, the authorities of MMDL and the persons responsible for insertion of this permission in annexure-X-1 are required to be prosecuted in accordance with section 195(c) of the Code of Criminal Procedure.

Section 75 of Act 1953, clearly provides for permission for use of land contrary to Master Plan. The submission that the project has been earmarked as housing and ancillary use and, therefore, no such permission is necessary under section 75 has no basis at all in view of the fact that in the deeds there are clear recitals that the lands in question are low lying areas and identified in the new Master Plan as Sub- Flood Flow Zone and included in SPZ173 which is evident from the map opposite to page 32 Vol-I of the Master Plan and page 28 of the appendix at the end of Vol-II of the new Master Plan.

Mr. Mahmudul Islam contended that MMDL failed to produce any evidence showing that it started developing the lands purchased in the two mouzas since 1990 - the documents annexed to the writ petition of MMDL showed that it first advertised to sell plots on 25th June, 2001 and started selling the plots from 21st November, 2001 to 30th June, 2005, within which period it sold only 491 plots. It is contended that the lists did not disclose whether the sold plots were developed plots and from the registered deeds enclosed with paper book No.IV at pages 988 to 1025 showed that the dates of execution of these kabalas had been kept blank and on reading of these kabalas showed that from March, 2002 onwards proposed plots were sought to be sold and the lands sold were described as “boro nal land”. It is further contended that if developed plots were being sold, the lands sold would not have been described as “boro nal land”.

Mr. Mahmudual Islam next contended that the question "post facto" permission would not suffice as the new Master Plan does not at all contemplate establishment of modern housing project so, the question of giving permission to set up MMT does not arise in the Sub- Flood Flow Zone. Mr. Islam conceded that in part-3, Vol-II of the new Master Plan, the category of development subject to permission includes dwelling house, but according to him, the main focus of the new Master Plan and also of Jaladhar Ain is preservation of drainage of rain and flood water. Bilamalia and Baliapur mozas have been identified as part of SPZ 173. In this connection Mr. Islam has relied upon paragraph 5.22, Part-3, Vol.II of Urban Area plan which reads as under:

> "*Purpose and Intents". The purpose of Sub Flood Zone (SFZ) is to generally define areas either temporally or seasonally flooded (flood lands). The intention is to project the health, safety and welfare of the general people; to reduce negative environmental impacts within natural waterways; and to protect and preserve natural drainage system to ensure their proper and continued their functioning*". (emphasis added) The policy relating to Sub-Flood zone as stated at page 53, Vol-I of new Master Plan shows that the development must be compatible with rural nature, that is to say, the development should not be undertaken for housing scheme of the project of MMT and such development must not be such as to disturb natural flood flow. Where the development of land by filling earth for housing scheme over an extensive area is made this would surely disturb flood flow. Thus the Master Plan does not contemplate the housing project which the scheme of MMT has undertaken.

Admittedly Modhumati is developing the area by filing earth with an intention to raise the land above flood water level. As such, the same is not compatible with the policy adopted in DMDP. In this connection the High Court Division held that Modhumati is entitled to 'apply for plan review application as enunciated in Article 2.5.3 of the Interim Planning Rules formulated in part 3 of Vol-II of DMDP and also under section 75 of the Town Improvement Act, 1953'. Here the High Court Division made omnishambles, inasmuch as, the High Court Division failed to consider the purpose of earmarking Sub- Flood Flow Zone area which is also designated as Flood Prone Areas (FPA). The purpose of the area is to protect the health, safety and welfare of the general public. In the map of Dhaka structure plan, Vol-I, in between pages 32 and 33, Bilamalia and Baliarpur mouzas have been identified as part of SPZ 173 which is earmarked as the Flood Flow Zone area as will be evident from appendices at page 22 of DMDP, Vol-II wherein it

was stated against SPZ171/172/173 that 'New subdivision to create Savar Pourashava, Dhamrai/Dhamsona and the flood zone area....'

Further, the new Master Plan clearly shows that development must be compatible with rural in nature. Such development must not be such as to disturb flood flow. Over and above, the High Court Division totally ignored Jaladhar Ain, 2000. The object of Jaladhar Ain is to protect ' প্রাকৃতিক জলাধার' mainly for the purpose of proper drainage of flood and rain water in the Dhaka city, and under this Ain conversion of ' প্রাকৃতিক জলাধার' to undertake a housing project cannot be allowed as that would not be consistent with the purpose of the Ain. Bilamalia and Baliapur mouzas are ' প্রাকৃতিক জলাধার' as they are included in the Gazette of new Master Plan as Flood Flow Zones. So, assuming that this Master Plan is void in view of section 75, these two mouzas fall within the inclusive definition of ' প্রাকৃতিক জলাধার'; hence the project cannot be implemented being violative of Jaladhar Ain, 2000 as they are low lands earmarked for retaining rain water. The registration of MMDL's project with RAJUK will not improve the case, in that, the rules of 2004 do not confer any right to establish a housing project violating the mandatory provisions of law and secondly, these rules will not prevail over the parent law.

It is contended on behalf of the appellants in Civil Appeal No.254 of 2009 that they are bona fide purchasers for value and exercised due diligence when purchasing the plots from MMT and thus their interest cannot be denied. Accordingly, it is contended that the High Court Division has rightly held that their interest should not be interfered with. It was also contended that they being purchasers, their right is guaranteed under Article 42 of the Constitution. Mr. Azmalul Hossain, added that MMDL has a contractual and legal obligation to provide the infracture facilities as promised to the third party-purchasers such as roads, bridges, culvert, water channels, open spaces, recreation areas and other facilities on the common land of MMDL. They being purchasers for value without notice to any illegality or wrong doing, it would be expecting too much from laymen that they should have known the law, and the private property right of purchasers should not be taken away by a decision of this Division where a substantial number of them are not even involved in this dispute. Article 102 cannot be used to take away fundamental rights to be treated in accordance with law under Article 31 and the right to property under Article 42. These are express rights which can be protected under Article 102.

MMDL advertised for sale of plots firstly on 25th June, 2001 and long before that date Savar plan and then the new Master Plan came into operation restricting use of lands in the mouzas in question and the Jaladhar Ain, 2000 also came into

operation from 5th February, 2001. Every person is presumed to know the legal position because of the notification. The purchasers were required to enquire in the office of RAJUK whether houses can be built in the land in question and whether RAJUK has permitted the proposed land use. They did not make any such inquiry rather relied upon the permission annexure-X-1, which is apparently a forged one. The concept of bona fide purchasers for value without notice is applicable only in respect of transfer of immovable property and specific performance of contract for transfer of immovable property and not in respect of use of immovable property. It is contended by Mr. Mahmudul Islam that it is needless to say that the concept of bona fide purchasers for value without notice is an equitable principle which can not override the bar placed by the statutory provision. In this connection learned Counsel has relied upon the cases of ETV Ltd. V. Dr. Chowdhury Mahmud Hasan, 54 DLR(AD)130 and Sharif Nurul Ambia Vs. Dhaka City Corporation, 58 DLR(AD) 253.

In the ETV case, this Division observed *"the third party rights exist(s) and fall with Ekushy Television since their interest merged with that of ETV. The substantive legal principle in this regard is that every person is subject to the ordinary law within the jurisdiction"*. In Sharif Nurrul Ambia, the Government gave to the Dhaka City Corporation certain plots for construction of car park as earmarked in the Master Plan but the City Corporation constructed shops on the said plots and allotted the shops to the shop keepers taking salami. This Division in the attending circumstances refused to recognize the alleged right of the "bona fide" allottees and ordered stoppage of construction and demolition of existing structure. The statements of law argued on the question of bona fide purchaser for value without notice of any restriction is based on sound principle of law and I find no reason to depart from them. In view of the above, I find merit in the contention of Mr. Mahmudul Islam that these purchasers cannot acquire any better right in view of the statutory barrier to make development in areas earmarked as SPZ17[3].

The High Court Division failed to notice that if the original owners cannot use the land in question contrary to the bar created by the legislature or its delegate, the purchasers, bona fide or otherwise, cannot claim a better right than that of the original owner. These purchasers have acquired limited right to the lands by virtue of purchase from MMDL. All these purchasers cannot claim any right, inasmuch as, their vendor MMDL purchased lands in excess of the ceiling fixed by P.O.98 of 1972. The purchasers cannot claim right overriding any bar or prohibition imposed by law, inasmuch as, in Article 42 there is a rider clause, i.e. subject to any law to the contrary. Mr. Islam argued that protection of the environment and ecology have been recognized as components of right to life

guaranteed by Articles 31 and 32 of the Constitution. In this connection learned Counsel has relied upon the cases of Dr. Mohiuddin Faruk V. Bangladesh, 49 DLR(AD)1 and Sharif Nurul Ambia V. Dhaka City Corporation, 58 DLR(AD)253.

Environment and Human Rights

Environment protection encompasses not only pollution but also sustainable development and conservation of natural resources and the eco-system. Environmental degradation can be either localized such as the depletion of the nation's wetland, forest resources, open spaces or global, such as destruction of the ozone layer. There are various laws and rules for protection and preservation of environment, but the protection and preservation of the environment is still a passing issue of the day despite such laws. The main cause for environmental degradation is lack of effective enforcement of the various laws. As in this case, the functionaries did not take legal actions against MMDL despite finding that they were developing lands for housing project and the High court Division had interfered in the matter on the application of BELA which has been working in the regulatory field of environment and ecology. It is noticeable that there is lack of proper, effective and timely enforcement of the laws prevailing in the country on the subject matter. It is also noticeable that in all cases the High Court Division has come forward and pronounced a number of judgments and issued various directions with the objective of securing the protection and preservation of environment and eco-system.

The environmental problems of the day damage our natural environment and life on earth. Protection and preservation of the environment has been integral to the culture and religious ethos of most human communities. The international community has increased its awareness on the relationship between environmental degradation and human rights abuses. The international community has assumed the commitment to observe the realization of human rights and protection of environment. Thus there is no gainsaying that the protection of the environment and internationalized-human rights are presented as universal and protection of the environment appears as everyone's responsibility. Human rights and environmental law have traditionally been envisaged as two distinct independent spheres of rights. Now-a-days, the peoples perception is aroused to the notion that the cause of protection of the environment can be promoted by setting it in the framework of human rights, which has by now been established as a matter of international law and practice.

To avail the benefits of environmental law and human rights one must give protection to environmental law that would help ensure the well-being of future generations as well as the survival of those who depend immediately upon natural resources for their livelihood. Secondly, the protection of human rights is an effective means to achieving the ends of conservation and environmental protection. The focus is on the existing human rights. There exists a raging debate on whether one should recognize an actual and independent right to a satisfactory environment as a legally enforceable right. This would obviously shift the emphasis on to the environment and away from the human rights. Thirdly, in the Stockholm Conference in 1972, it was argued by the delegates that international environmental law has developed to such extents that even the domestic environments of states have been internationalized. Environmental law has in many parts of the world, be it at the international or domestic level, suffered from the problem of standing. Because of this barrier, it is often difficult for individuals or groups to challenge infringements of environmental law, treaties or directives, as the case may be.

The right to a healthy environment is now to be found in a number of regional human rights instruments around the globe. Article 11 of the Additional Protocol to the Inter-American Convention of Human Rights (1994) popularly known as the San Salvador Protocol, states; (1) everyone shall have the right to live in a healthy environment and to have access to basic public services; (2) the state parties shall promote the protection, preservation and improvement of the environment. The convention of the Rights of the Child, 1989, article 24(2)(c) requires state parties in the matter of combating disease and malnutrition to take into consideration, "the damage and risks of environmental pollution". The African Charter on Human and People's Rights 1981 proclaims in Article 24(1) a right to "a general satisfactory environment favourable to their development". In the final report on Prevention of Discrimination and Protection of Minorities listed amongst other including: (a) the right to freedom from pollution, environmental degradation and activities which threaten life, health or livelihood; (b) protection and preservation of the air, soil, water, flora and fauna; (c) healthy food and water; a safe and healthy working environment.

In the Stockholm Declaration 1972 as mentioned above, it was declared *"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations"*. In the United Nations General Assembly, resolution No.45/94 recalled the language of Stockholm, stating that all individuals are entitled to live in an environment adequate for their health and well-being. All

global and regional human rights bodies have accepted the link between environmental degradation and internationally-guaranteed human rights. The European convention on Human Rights has also been invoked in environmental matters. In Europe, most of the victims invoke either the right to information or the right to privacy guaranteed under the Convention. Under the said Convention and Protocol, it has been recognized that pollution or other environmental harm can result in a breach of one is right to privacy and family life.

In Argentina, its Constitution recognizes since 1994 the right to a healthy and suitable environment. In Columbia, the right to the environment was incorporated in 1991. Our Constitution though does not explicitly provide for the right to healthy environment, Article 31 states that every citizen has the right to protection from "action detrimental to the life, liberty, body, reputation, or property", unless these are taken in accordance with law. Mr. Islam submitted that 'action detrimental to the life' also encompasses any action which is detrimental to healthy life. There are different subordinate laws on the subject, such as, the Removal of Wrecks and Obstructions in Inland Navigable Water-ways Rules, 1973, The Bangladesh Wild Life (preservation) Order, 1973, The Bidi Manufacture (Prohibition) Ordinance, 1975, Bangladesh Paribesh Sangrakhan Ain, 1995, Paribesh Sangrakhan Bidhimala, 1997 and The Jaladhar Sangrakhan Ain, 2000 etc.

In Dr. M. Farooque, B.B.Roy Chowdhury,J. observed '*Although we do not have any provision like Article 48A of the Indian Constitution for protection and improvement of environment, Articles 31 and 32 of our Constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.*' In M.S. Shehla Zia V. WAPDA, PLD 1994 SC 69, Supreme Court of Pakistan held that Article 9 includes "*all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally*". In that case the petitioner questioned whether, under Article 9 of the Constitution, citizens were entitled to protection of law from being exposed to hazards of electro-magnetic field or any other such hazards which may occur due to installation and construction of any grid station, any factory, power station or such like installations. The Supreme Court noted that under the Constitution, Aticle 14 provides that the dignity of man and subject to law, the privacy of homes shall be inviolable. The fundamental right to preserve and protect the dignity of man and right to life are guaranteed under Article 9. It is said, "*if both are read together, question will arise whether a person can be said to have dignity `of man if his*

right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment".

The Supreme Court of India in relation to the meaning given to the Right to Life under Article 21 of the Constitution argued that the right to life has been used in a diversified manner. It includes, the right to survive as a species, quality of life, the right to live with dignity and the right to livelihood. In rural Litigation and Entitlement Kendra V. State of U.P. (1985) 3 SCC 614, the Supreme Court dealt with issues relating to environment and ecological balance. The concept of the right to life used in Article 21 was expanded further in Francis Coralie Mullin V. Union Territory of Delhi, AIR 1981 SC 746. In Charan Lal Sahu V. Union of India, AIR 1990 SC 273 & 1480, and in Subash Kumar V. State of Behar, AIR 1991 SC 420, the Supreme Court observed that "*right to life guaranteed by article 21 includes the right of enjoyment of pollution-free water and air for full enjoyment of life*". The Supreme Court has used the right to life as a basis for emphasizing the need to take drastic steps to combat air and water pollution and it has directed the closure or relocation of industries and ordered that evacuated land be used for the needs of the community. The Court has taken a serious view of unscientific and uncontrolled quarrying and mining and issued orders for the maintenance of ecology around coastal areas, shifting of hazardous and heavy industries and in restraining tanneries from discharging effluents.

On the concept of "sustainable and environmentally sound development" in which the "Earth Summit", meeting in Rio in 1992 endeavored to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted on that occasion. The General Assembly held in 1990 on the Declaration on International Economic Co-operation clearly recognized that "Economic development must be environmentally sound and sustainable". The concept of sustainable development contains as has been argued by different activists on three basic components or principles, first, among these is the precautionary principle, whereby the state must anticipate, prevent and attack the cause of environmental degradation. The Rio Declaration affirms the principle by stating that whereever "there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

The Brundtland Commission defined sustainable development as development which was formally known as the World Commission of Environment and Development (WCED). The Commission's report defines sustainable development as "*development which meets the needs of the present without compromising the ability of the future generations to meet their own needs*". The

principle envisages, firstly, that each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values, and should also be entitled to diversify comparable to that enjoyed by previous generations. This principle is called '*conservation and options"*. *Secondly, generation should be required to maintain the quality of the planet so that it is passed on in no worse condition than that in which it was received, and should also be entitled to planetary quality comparable to that enjoyed by previous generations. Thirdly, each generation should provide its members with equitable rights of access to the legacy of past generations and should conserve this access for future generations. This is principle of 'conservation of access"*.

The Supreme Court of India in a later case in M.C. Mehta V. Kamal Nath and others, (1997) 1 SCC 388 added that *"it would be equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of ways for utilities, and strip mining of wetland filling on private lands in a state where governmental permits are required"*. The facts of that case are that Kamal Nath's family has direct links with a private company, Span Motels Private Limited, which owns a resort- Span Resorts-for tourists in Kullu-Manali Valley. The problem is with another ambitious venture floated by the same company-Span Club. The club represnts Kamal Nath's dream of having a house on the bank of the Beas in the shadow of the snow-capped Zanskar Range. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The heavy earth-mover has been used to block the flow of the river just 500 metres upstream. The bulldozers are creating a new channel to divert the river to at least one kilometre downstream. The tractor-trolleys move earth and boulders to shore up the embankment surrounding Span Resorts for laying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore of rupees. Last September, these caused floods in the Beas and property estimated to be worth Rs 105 crores was destroyed. Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. The District Administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction.

The Supreme Court observed "*The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled an ecological perspective on property: A call for judicial protection of the*

public's interest in environmentally critical resources published in Harvard Environmental Law Review, Vol.12 1988, P.311 is in the following words:

> *"Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, leads to the unquestionable result that human activities will at some point be constrained.'*
>
> "*Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable*".

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

> *"We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that 'we choose death".*

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened. Historically, we have changed the environment to fit our conceptions of property. We have fenced, filled and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources-for example, wetlands and riparian forests-can no longer be destroyed without

enormous long-term effects on environmental and, therefore, social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

Ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions. The ancient Roman Empire developed a legal theory known as the 'Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one *(res nullious)* or by every one in common *(res communious)*.

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

The majority judgments adopted ecological concepts to determine which lands can be considered tide lands. The United Nations Conference on Environment and Development was of the view that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision making. Furthermore, the Conference recognized, in the specific context of environment, "*the need for new forms of participation*" and "*the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about the participation in (pertinent) decisions*". The Conference implicitly linked the notion of real participation in the right of access to information by nothing that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures". The link between

participation and information can also be found in Principle 10 of the Declaration of Rio.

It is now settled that right to life includes right to protection and improvement of environment and ecology and there is specific law in that regard restricting use of nal lands in the areas in question which operate as reservoir of flood and rain water. If these lands are filled up it will create serious problem in draining out the water resulting from flood and rain and the affected people would compel the authorities through judicial review to take steps to preserve and protect health, environment and ecology in the Dhaka Metropolitan area.

Now turning to the question of bar of P.O.98 of 1972, Mr. Azmalul Hossain contended that there is clear distinction in P.O.98 of 1972 as amended between the consequences that follows in the case of a transfer of land and excess of the 100 standard bighas limit to a family and to a 'body'. In case of a 'family', it is contended, the transfer is void in view of Article 5A and in case of a 'body', the transfer is valid but the excess land will be forfeited to the Government as per Article 12 and the burden of proving this assertion is upon BELA.

In the concise statement, MMDL has clearly stated in paragraph 9 that it purchased lands measuring 169.91 bighas for the project summary the lake area as under:

For cannel/lake 1, D1 is equal to	50.75 bigha
Cannel/lake to, due to equal to	48.44 bigha
Cannel/lake 3, D3 is equal to	24.89 bigha
Cannel/late 4, D4 is equal to	45.83 bigha
Totally	169.91 bighas

In paragraph 9(V), it clearly stated that it purchased *"about 550 acres of land by several deeds from the owners of the land in mouzas Bilamalia and Baliarpur which is right next to the main Savar Highway for the purpose of implementation of housing project and got the area survey (sic) and investigated …..".* Therefore, the submission that the burden lies upon BELA to prove that MMDL purchased excess land itself is self-contradictory. There is a relaxation of the celling of land in Article 4 of P.O.98 of 1972 imposed by Article 3 in the following cases namely;

(a) a co-operative society of farmers where the members thereof surrendered their ownership in the lands unconditionally to the society and cultivate the lands themselves;

(b) lands used for cultivation of the rubber or coffee orchards;

(c) an industrial concern holding land for the production of raw materials for manufacture of commodities in its own factories;

(d) any other case where such relaxation is considered necessary in the public interest.

Further in Ordinance No.X of 1984 the total quantity of agricultural land which may held by a family has been reduced to 60(sixty) standard bighas. Therefore, the acquisition of 550 acres of land by MMDL is violative of the provisions of Act, 1950, P.O.98 of 1972 and Ordinance X of 1984. The MMDL's case does not attract any of the said categories and admittedly it did not seek for relaxation to purchase lands in excess of 100 standard bighas for housing purposes from the Revenue Officer. When this bar of acquisition was drawn to the attention of Mr. Azmalul Hossain, learned counsel finds it difficult to meet the query made to him as regards MMDL's locus standi to acquire lands exceeding the ceiling and selling them to the third party-purchasers, and replied that he would make submission after a thorough examination of P.O.98 of 1972, but he concluded his submission without meeting the query.

The findings of the High Court Division are apparently self-contradictory. On the one hand it observed "*the project of Modhumati Model Town is unauthorized project as it has been continued in violation of section 75 of the Town Improvement Act, 1953 and the DMDP prepared thereunder the Act. Since Modhumati has been continuing with their unauthorized development work the obstruction made by RAJUK against such unauthorized development of Sub-Flood Flow Zone was quite lawful and as such Modhumati is not entitled to relief as prayed for in Writ Petition No.5103 of 2003" and in the other breath, it has observed, since Modhumati has undertaken such project it is entitled to such use of their purchased land provided that they observe the legal requirement as enunciated in the interim planning rules. Admittedly Modhumati is developing the area by filling earth with an intention to raise the land above design flood water level as such the same is compatible to the policy in DMDP*', on the other hand, it held '*Modhumati Purchased 1500 bighas Nal, Chala and Bhita lands and admittedly raised beyond flood level by filling earth before they sell it to 3500 buyers including added respondent Nos.8-52 thereby meaning that the added respondents purchased for value raised land from a developer who developed their purchased land owned vast land of 1500 bighas through earth filling, not over night but through years together, making all sort of advertisement in all*

possible media without any hindrance or objection from any quarter. This appears to have made the added respondents bona fide purchasers for value without notice to any mischievous act on the part of the developer as to the development permit allegedly to have been issued by RAJUK through it chief Town Planner.'

As regards bona fide purchasers, I found earlier that the purchasers could not claim any right on the plea of bona fide purchase since their vendor could not acquire lands exceeding the retainable ceiling provided in Act, 1950, P.O.98 of 1997, and Ordinance X of 1984, they could not acquire any better right than their vendor. The fundamental rights of the third party purchasers cannot override the fundamental rights of the overwhelming number of residents of the metropolis under Articles 31 and 32 of the Constitution. Further, no person can claim protection of law, and of right to life and personal liberty in violation of law. Both in Articles 31 and 32 protect those rights and liberty if he does not violate the law. Equal protection embraces the entire realm of state action, it would extend not only when a person is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Right of the State to charge its policy in respect of the retainable lands from time to time under the changing circumstances can not be questioned. The High Court Division has ignored this aspect of the matter.

As regards bona fide purchasers the findings of the High Court Division that "*when the citizen is bona fide purchaser for value without notice, the bona fide purchaser for value of the plots of Modhumati Model Town since purchased land raised above design flood water level with an aim to build structure for housing either single, multifamily or minimal, their accrued interest in the said land can not be dislodged on the ground that Bilamalia and Baliarpur have been earmarked in DMDP Urban Area Plan (1995-2005) as Sub-Flood Flow Zone when actual classification of zonal lands has not yet been commenced under the Detailed area plan of DMDP and they already published structure and urban plan is a relaxed one having option to change the same as per reservent*" are based on misconception of law. What's more, the High Court Division made out a third case that the purchasers raised the land above the flood water level which is

not at all the case of MMDL. Its specific claim is that it has raised the land for the purpose of selling plots to different purchasers above the flood water level.

Now the question is what will be the fate of MMT and those of the third party-purchasers. It has been found that the project was undertaken violating the provisions of Town Improvement Act, Bangladesh Paribesh Sangrakhan Ain, Jaladhar Sangrakhan Ain, P.O.98 of 1972 and hosts of other prevailing laws of the land. The concept of law contains within it the element of command and the requirement of obedience. The ownership right either by inheritance or purchase of the lands of MMDL has been curtailed by statutory provisions. No person or company can acquire lands more than 100 standard bighas. In a radically altered country land-lordism as formerly existed became a misfit and an anachronism. Before the abolition of Zamindary system the majority of the members of the Land Revenue Commission, Bengal, had expressed the view that whatever may have been the justification for the permanent settlement in 1793, it was no longer suited to the condition of the present time and that the Zamaindary system had developed so many defects that it had ceased to serve any national interest. They had accordingly recommended that the actual cultivators should be brought into direct relation with the Government by the acquisition of all rent-receiving interest in lands so that Government as the sole landlord may be in a much better position than any individual private landlord to initiate development measures with a view to improve the conditions of the tillers of the soil and also to ensure the maximum exploitation of the land and water resources of the country.

The commission felt it necessary that the existing tenancy laws should be suitably amended to provide the following:

a) *after the acquisition of rent receiving interests, there should be only one class of tenants under the Government and all such tenants should have occupancy rights and have option to commute the rents of their holdings and become free peasants;*

b) *all lands in the khas possession of rent receivers and others in excess of certain limit should be acquired by the Government with a view to distribute them among tenants with uneconomic holdings, borgaders and landless agricultural labourers;*

c) *transfer of lands except to bona fide cultivators owning lands less than prescribed maximum quantity should be prohibited to prevent accumulation of too much lands under one family as well as to prevent transfer of lands to non-agriculturists;*

d) sub-letting of lands by tenants except under certain special circumstances should be absolutely interdicted;

e) a rational system should be provided to regulate enhancement and reduction of rents of tenants;

f) Provisions should be made for amalgamation and consolidation of holdings with a view to facilitate the introduction of co-operative farming and mechanised cultivation;

g) So long as the borga system remains, provisions should be made for protection of borgaders against arbitrary eviction from their borga lands;

The object and purpose for which the feudal system was abolished about 50 years ago from this soil is being reintroduced by a group of persons and companies by acquiring lands from poor cultivators by means of allurement, coercion, threat, intimidation and other means, much higher ceiling than the law permits to acquire by way of purchase openly on tip of the nose of the Government by using their muscle and money power in the name of housing projects. The Government knowing well that these projects are illegal and unauthorised is keeping a blind eye to all those housing projects. There is a wrong notion that RAJUK is the authority which can authorise a housing project under the Act of 1953 and MMDL has proceeded with its project accordingly.

It should be remembered that no person or firm or company can acquire by way of purchase or otherwise any land which exceeds the ceiling and therefore, before the permission is sought for from RAJUK, the said person or firm or company is required to obtain permission from the Revenue Officer if the Project exceeds 100 standard bighas. Putting lands in excess of the required ceiling to residential use would be clearly contrary to the restrictions which the MMDL has undertaken the development plan without prior approval. The common law rights of the owners must give in to the statutory restrictions. The common law use and enjoyment of the ownership rights should, therefore, be subject to the requirements of the statutory law prevailing in the country.

These laws require conducting the elaborate survey of the civil needs of the citizens and feasibility and practicability of the various land uses and the prospective growth of the city before demarcating the land for different purposes. According to the Master Plan, the development plans should define various Zones into which the area sought to be developed may be divided and should also

indicate the manner in which the land in each Zone is proposed to be used. The dominant intention of the aforesaid statutory provisions is to plan for the present and future development of the whole area under the plan by restricting and regulating the use of ownership rights of the owners under the common law. Those owners can no longer enjoy their unrestricted right available to them to use their lands as they desire. Once a development plan has been prepared and approved in accordance with law, the owners of the area concerned can only use their lands in accordance with and in conformity with the provisions of the development plan. Once the Master Plan has been published, no one in the area can use the lands contrary to its provisions. In using or attempting to use the lands which MMDL has acquired by way of purchase within the SFF Zone as residential purposes, they are clearly violating, firstly, the provisions of Act, 1950 and P.O. 98 of 1972, and secondly, the provisions of Act, 1953 and the Master Plan, and are acting contrary to law.

Rule of law requires that the concerned authorities are under obligation to see that no one violates the law in implementing any project in a restricted area. The Revenue Officer and the Chairman, RAJUK cannot, therefore, permit any person or company or firm to use any land without complying the due requirement of laws. The public authorities should enforce the laws strictly so that the pollution or other environmental harm should not cause injury to human beings. MMDL has utterly violated the laws and has been implementing the housing project. The protection of the environment is not only the duty of the citizen but it is also the obligation of the state and its organs including the Courts. Therefore, MMDL is under an obligation to pay damages for mitigating the hardship of the third-party purchasers if they do not want to take back their monies paid to them in view of the fact that they have illegally acquired, advertised and sold plots suppressing material facts from them violating the laws.

In Manju Bhatia V. New Dellhi Municipal council (1997) 6 SCC 370, a real estate developer after obtaining request sanction built 8 floors as per guidelines which permitted 150 FAR with height restriction of 80 feet. After construction the flats were delivered to the purchasers and the appellant was one of them. At a later stage it was found that the builder constructed the building in violation of the regulation. Consequently the flats of the top four floors were demolished. The demolition came under challenge by way of writ petition in the High Court. The High Court dismissed the petition against which they preferred appeal in the Supreme Court. The Supreme Court observed that "*in the tort liability arising out of contract, equity steps in and tort takes over and imposes liability upon the defendant for un-quantified damages for the breach of the duty owed by the defendant to the plaintiff. Equity steps in and relieves the hardships of the plaintiff*

in a common law action for damages and enjoins upon the defendant to make good the damages suffered by the plaintiff on account of the negligence in the case of the duties or breach of the obligation undertaken or failure to truthfully inform the warranty of title and other allied circumstances. In this case, it is found that four floors were unauthorizedly constructed and came to be demolished by the New Delhi Municipal Council. It does not appear that the owners of the flats were informed of the defective or illegal construction and they were not given notice of caveat emptor. Resultantly, they are put to loss of lakhs of rupees they have invested and given as value of the flats to the builder-respondent". The Supreme Upon consideration of the totality of the facts directed the builder to pay 60 lacs including the amount paid by the allotees as damages with further direction to pay 21% interest per annum on the said amount from the expiry of 6 months.

In Rural Litigation and Entitlement Kendra V. State of UP, (1985) 2 SCC 431, a mining of lime quarries was ordered to be closed on the ground that mining therein would cause adverse impact of mining operation and the direction was made. The question is after closing of the mining quarry, the lessees of lime stone quarries would be thrown out of business in which they directly invested large sums of money and expended considerable time and effort. The Supreme Court though noticed that it would undoubtedly cause hardship to them, but at the same time, it was of the opinion that *'it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment. However, in order to mitigate their hardship, we would direct the Government of India and the State of Uttar Pradesh that whenever any other area in the State of Uttar Pradesh is thrown open for grant of lime stone or dolomite quarrying, the lessees who are displaced as a result of this order shall be afforded priority in grant of lease of such area and intimation that such area is available for grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible"*.

On consideration of the submissions and on perusal of the materials, I find inconsistent opinions of the High Court Division as to the correct legal position of the MMDL's housing project. The UAP and structure plan of DMDP were notified and brought into effect by Gazette notification dated 3rd August, 1997 as the Master Plan of the City prepared by RAJUK and approved by the Government and such publication is conclusive evidence in view of section 74(1) of Act 1953;

that the Master Plan has been duly approved. The High Court Division, in the premises, erred in law in holding that the said Urban and structure plans are relaxed ones having scope to be changed and that the said documents have been prepared and taken finality under sections 73 and 74 of Act, 1953. It failed to consider that once a Master Plan comes into force it becomes unlawful for any person to use lands for any purposes other than that laid down in the Master plan unless he has been authorised to do so under section 75. Any derogatory use of lands in Bilamalia and Baliarpur moujas identified in the Master Plan shall need prior approval of RAJUK.

From the above conspectus, the summary of my conclusion is as under:

(i) The human rights system should be strengthened by the incorporation of environmental concerns, enabling the expansions of the scope of human rights protection and generation of concrete solutions for cases of abuses;

(ii) Human rights and environmental law are two distinct, independent spheres of rights;

(iii) The environment and human rights are inextricably linked-the serious impact of a degraded environment on human health have to be adjusted in our policies and cultural practices to reflect understanding;

(iv) Human rights and human dignity within its broader social, economic and cultural context by contributing to those who are actively engaged in the environmental, conservation and public health areas should be protected;

(v) Protection and preservation of the environment is integral to the cultural and religious ethos of most human communities;

(vi) For protection of environment degradation, there has to be stringent enforcement coupled with increased level of awareness;

(vii) The Government should constitute expert committee in each district to identify forests, felling of trees from forests, directions for movement and disposal of timber, filling up wetland, fisheries, cutting earth from hills, removal of earth and rocks from hills; removal of stones and sand from river beds;

(viii) Land degradation, deforestation, destruction of ecosystem, unsuitable removal of forests and threat of massive destruction of wild life habitants are environmental problem of today;

(ix) The poor and illiterate who reside around forests are most exposed to environmental pollution - they should be enlightened of the link between social and environmental problem - it is necessary to educate about the need to protect environment for their self preservation;

(x) Environmental education should be integrated in the national curriculum framework and environmental consciousness should be instilled by teaching in schools and colleges;

(xi) Problems of environmental degradation should be tackled by concerted efforts by every person, organizations and institutions and by extremely stringent enforcement of the laws;

(xii) Dhaka Metropolitan Development plan (1995-2015) prepared by RAJUK has identified few areas within its jurisdiction as Flood plains, Rivers and Water Bodies, Flood Plain Treatment, Flood-Flow Zones, main Flood-Flow Zone, Sub- Flood Flow Zone, River Pollution control;

(a) The rivers and flood plains are the provider of water both for agricultural irrigation and for urban uses;

(b) land development within the designated flood areas of the DMDP structure plan should be controlled in order to avoid obstructions to flood flow, otherwise there would be adverse hydraulic effects, such as, the rise of flood water levels and changes in flow direction- any development work within flood plains should be made without restricting flood flow;

(c) land development for residential, commercial and industrial use by raising the level of land by filling earth should be strictly prohibited in main Flood-Flow Zone;

(d) sub-Flood Flow Zones are mainly rice growing areas and development in these areas will be permitted subject to the condition that structures are built on stilts, or on land raised above design flood water level and alignment of structures and raised land to be designed so as not to disturb flood flow; any building or structures must be commensurate with rural land use.

(e) the execution of the development in sub-paragraph (d) should be made by RAJUK in consultation with Dhaka Metropolitan River Consultancy Board (DMRC) and Bangladesh Water Development Board (BWDB), and a consultancy Board with these three organizations should be created within 6(six) months;

(xiii) MMT project is being implemented by MMDL which is located in a Sub-Flood Flow Zone in SPZ173 of the Master Plan Comprising the area between the Savar-Dhamsona in the west and the Dhaka City in the east;

(xiv) SPZ 173 and the moujas Bilamalia and Baliarpur within Savar thana are identified as Sub-Flood Flow Zone in the Master Plan and are also designated as Flood Prone Areas that prohibits change of nature;

(a) Land development, within the designated flood plain areas or DMDP structure plan, will be controlled in order to avoid obstructions of flood flow'

(xv) MMT project being located in a Sub- Flood-Flow Zone which is natural wetland within the meaning of Jaladhar Sangrakhan Ain, 2000, (Act XXXVI of 2000) any development and/or charge of the said area requires prior approval of the Government;

(xvi) Any person, body, organization, company makes development and/or changes 'wetland' within the Master Plan area without permission of the authority will be treated as an offence and be punishable under section 8 of Act XXXVI of 2000, and any construction or laying substratum in the said area without prior permission shall be dismantled by RAJUK within 6 (six) months from date;

(xvii) RAJUK has power to prepare a Master Plan in respect of any area of its jurisdiction indicating the manner in which the said lands should be used/utilized'

(xviii) The use of lands located in Bilamalia and Baliarpur moujas under Savar thana identified in the Master Plan dated 3rd August, 1997 require prior permission of RAJUK under section 75 of the Town Improvement Act;

(xix) The concept of bona fide purchasers for value without notice is applicable in case of conflict of title but this principle being an equitable relief will not override the statutory provision for the use of lands located in Sub- Flood Flow Zone;

(xx) The lands situated Sub-Flood Flow Zone are designated as Flood Prone Areas, its use for dwellings, minimal housing, single/multi-family is conditional;

(xxi) After the acquisition of rent receiving interest an agricultural or non-agricultural tenant cannot keep in his khas possession or acquire lands exceeding one hundred standard bighas other than for the purpose of large-scale diary farming or cultivation and manufacture of tea or coffee or for cultivation of rubber, if certified by the prescribed Revenue Officer;

(xxii) No person or Company whether incorporated or not or firm registered or unregistered shall be entitled to acquire any land by purchase, inheritance, gift, hiba or otherwise which, added to the land already held by him or it exceeds one hundred standard bighas in the aggregate for the purpose of housing project or for any purpose other than the purposes mentioned in sub-articles (4), (4A) of P.O. 98 of 1972, provided, however, that the Government may relax the limitation to such extent and subject to such conditions as it thinks fit in accordance with Article 4(a), 4(b), 4(c) and 4(d) of P.O. 98 of 1972;

(xxiii) Notwithstanding anything contained in the preceding paragraphs, the lands acquired by purchase, inheritance, gift, hiba by any person, company or firm exceeding one hundred standard bighas

shall absolutely vest in the Government free from all encumbrances;

(xxiv) Any person, body, company or firm holding land in excess of one hundred standard bighas shall have to submit to the Revenue Officer within the meaning of the State Acquisition and Tenancy Act within whose jurisdiction he/it resides or the body/company/firm has its principal office or ordinarily carries on its business, a statement, in such form and manner showing the particulars of all lands held by him/it, and he/it chooses to surrender excess land to the Government in accordance with Article 6 of P.O. 98 of 1972;

(xxv) The onus as to whether any person/body/company/firm holds land not exceeding one hundred standard bighas is upon such persons/body/company/firm that he/it does not hold excess lands;

(xxvi) If any person/company/body/firm acquires agricultural lands in contravention of the provisions of section 4 of the Land Reforms Ordinance, 1984, the area of land which is in excess of 60(sixty) standard bighas shall vest in the Government and no compensation shall be payable to him/it for the land so vested, except in case where the excess land is acquired by inheritance, gift or will;

(xxvii) Section 74(2) of the Town Improvement Act being an enabling provision regarding amendment, alteration or substitution of the existing Master Plan, it does not take away the power of the statutory authority to rescind any delegated legislation including the inclusion of Baliarpur and Bilamalia Moujas by notification dated 3rd August, 1997 in exercise of powers under section 21 of the General Clauses Act;

(xxviii) Bilamalia and Baliarpur moujas having been identified as part of SPZ173, though in the new Master Plan the category of development is subject to permission which includes dwelling house, the development must be compatible with rural nature and such development must not disturb Flood-Flow, that is to say, the development of land by filling earth for housing scheme should not be allowed to MMT;

(xxix) The alleged permission in the latter part of Annexure-X(1) to the writ petition of MMDL, in letter dated 29th July, 1995, has been subsequently inserted by MMDL in collusion with the employees of RAJUK by resorting to forgery for the purpose of selling housing plots.

(xxx) The purchasers of lands from MMDL in MMT project cannot claim right in their purchased lands as bonafide purchasers as the lands have come under the mischief of P.O. 98 of 1972 and Ordinance X of 1984.

(xxxi) Some purchasers form MMDL have acquired limited right and interest of their purchased lands which have not come under the mischief of P.O. 98 of 1972, that is to say, the purchasers who have purchased lands from MMDL within one hundred standard bighas out of the total lands held by MMDL and for ascertaining the quantum of lands, MMDL is required to submit return to the Revenue Officer specifying the dates of purchases made in accordance with the State Acquisition and Tenancy Act and P.O.98 of 1972.

(xxxii) Those transfers in favour of third party-purchasers within one hundred standard bighas will be treated as valid transfers subject to the condition that those purchasers could construct structures on stilts without disturbing natural flow of water beneath the structures; (but restricted to development compatible with rural nature)

(xxxiii) The purchasers are entitled to get back the money paid to MMDL along with damages within 6(six) months from the date of demand to be made to MMDL if they so desire and the amount of damages to be assessed @ Tk.12% interest plus registration costs incurred by them from the date of payment till the date of repayment;

(xxxiv) DDML is directed to restore original position of Bilamalia and Baliarpur moujas by removing filled up earth so that natural drainage system of rain or flood water is not disturbed, failing which, RAJUK shall restore the original position of the lands and the costs of such removal of earth be recovered from DDML.

With the above observations and directions, I agree with the operating part of the judgment of my learned brother.

J.

Nazmun Ara Sultana, J. : I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Syed Mahmud Hossain, J. I agree with the reasoning and findings given by Syed Mahmud Hossain,J.

J.

Syed Mahmud Hossain, J. : Civil Appeal Nos.256, 253, 254 and 255 of 2009 have been heard together and are being disposed of by this common judgment as they do involve common questions of laws and facts.

These appeals, by leave, arise out of the judgment and order dated 27.07.2005 passed by a Division Bench of the High Court Division in Writ Petition No.4604 of 2004 making the Rule absolute in part and discharging the Rule issued in Writ Petition No.5103 of 2003.

The factual matrix involved in these appeals as it is placed before this Division, in short, is that the appellant, Bangladesh Environment Lawyers' Association, in short BELA, is a registered Society under the Society Registration Act,1860 having registration No.1457 (12) dated 18.02.1992 and has been acting in the regulatory field of environment and ecology with adequate experts who have undertaken, in the last few years, policy regarding examination of legal issues relating to environment and undertook awareness programme and training in making the people conscious of their legal rights and duties. Through its various efforts, BELA has been developed into an independent legal institution with widespread respect and recognition as a dedicated, *bona fide*, sincere and public-spirited organization. It has also undertaken a large number of public interest litigations wherein the beneficiaries have been the common people of the country and their surrounding environment that affects people's material and spiritual well being.

It is further stated in its Writ Petition that, respondent No.4, Rajdhani Unnayan Kartipakka (RAJUK), has been created under the Town Improvement Act,1953 as amended by Act XXIX of 1987, which has been authorized and entrusted with the responsibilities, amongst others, to prepare and adopt a Master Plan for Dhaka City, earmarking layout plan, allot plots, approve building construction, recreation and other civic facilities and infrastructures plan for Dhaka City along with legal responsibilities to various uses of land within and around Dhaka City. It is further stated that environment of Dhaka City is being continuously endangered and

threatened by various unplanned and illegal activities originating from both private and public sectors causing environmental depredation in clear derogation of the policy of land use and minimum environmental standard.

The appellant BELA further stated that RAJUK in 1997 prepared a fresh Master Plan known as Dhaka Metropolitan Master Plan, in short, DMDP, for the Dhaka City and around, which was published in the gazette notification on 03.08.1997 identifying a few areas as flood plains, rivers, water bodies, sub-flood flow zone, etc to protect the safety, health and welfare of the common people from negative environmental impacts and to protect and preserve natural drainage system to endure their continual and proper functioning. Any interference with those areas as earmarked in the said Master Plan, will have devastating environmental effect for which the Master Plan in clear terms prohibited land development in those Zones for residential, commercial and industrial developments, including raising the level of plain land through earth filling in flood flows/sub-flood flow zones. The said Master Plan in categorizing the land use pattern for the City, identified 19 special planning Zone (in short SPZ) out of which SPZ 17 comprising the area between Savar-Dhansona in the West and present Dhaka area at the East which is low-lying area across Turag river and its khals and is designated as flood flow/sub-flood flow zone area within which Amin Bazar area under Savar Police Station has fallen as part of sub-flood flow zone. The DMDP has identified that there have been many private development schemes, approved by RAJUK, specially in the Amin Bazar area on the South of Dhaka Aricha Road will have considerable negative impact on environment and DMDP recommends that all such development permits issued by RAJUK for the development of housing within this area should be withdrawn and that no new one be allowed. Moreover, conditions and restrictions have been imposed in DMDP and also by secitn-5 of জলাধার সংরক্ষণ আইন, ২০০০, prohibiting change of nature of any land that has been earmarked as natural reservoir including flood flow zones. In addition to such restrictions, Section 7 of Environment Conservation Act,1995 (Act I of 1995) also imposed restriction of land use in derogation to conservation of environment.

The specific case of the appellant, BELA, is that, despite aforesaid clear prohibition and other legal limitation, Metro Makers and Developers Limited, a private limited company has undertaken a development project near Amin Bazar within Mouzas ‘Bilamalia’ and ‘Bailarpur’ which squarely is situated within SPZ 17 (3) and earmarked as sub-flood flow zone. Metro Makers has started filling earth in the substantial part of the zone with the object to implement an unauthorized non-permitted satellite township with housing purpose under the name and style ‘Modhumoti Model Town’ and also started, through regular media

advertisement, offering to sell housing plots in the said project. BELA further stated that the available documents suggest that RAJUK did not prevent the said development project of Metro Makers. RAJUK has rejected the prayer of Metro Makers through its letter vide Memo No. RAJUK/NA : PA/6-161 (aa-2nd) 105 dated 29.07.2003 to approve the project on the ground that the said project is situated within the sub-flood flow zone along with an earlier warning directing Metro Makers to refrain from illegal earth filling in the said project side. Thereafter, BELA undertook field survey and investigation and found that Metro Makers had been continuing with their illegal activities of earth filling in the project land and also found that none of respondent Nos.1-6 took any step which they are mandated by law to do, against such illegal activities of Metro Makers. Being aggrieved with such inaction on the part of respondent Nos.1-6, the petitioner, BELA, served a legal notice, demanding justice, upon respondent Nos.1-7 on 27.12.2003 requesting the respondents to immediately stop earth filling within the said sub-flood flow zone and to take appropriate measure to restore the original position of the area. BELA received a reply from Metro Makers wherein it has been mentioned that earth-filling in the said zone had been continuing on the basis of an order of stay passed in Writ Petition No.5103 of 2003 preferred by Metro Makers as the petitioner before the High Court Division against respondent No.4. But by a reply sent by respondent No.4, it was intimated to BELA that the order of stay passed in Writ Petition No.5103 of 2003 had been stayed by the Appellate Division of the Supreme Court of Bangladesh in Civil Petition for Leave to Appeal No.1573 of 2003. Accordingly, it appears to BELA that despite such order of stay by the Appellate Division, Metro Makers had been regularly publishing Media Advertisements for sale of plots which respondent Nos.1-6 failed to stop and to take legal steps against Metro Makers (respondent No.7). Thus BELA as the petitioner, preferred this writ petition and obtained Rule Nisi against respondent Nos.1-6. Later 45 plot purchasers of the project on their own initiative were added as respondent Nos.8-52.

Earlier to filing of Writ Petition No.4604 of 2004, Mr. A. F. M. Jahangir as Managing Director of Metro Makers and Developers as the writ-petitioner filed Writ Petition No.5103 of 2003 on 09.08.2003 impleading originally Chairman, Rajdhani Unnayan Kartipakka (RAJUK) as respondent No.1, Rajdhani Unnayan Kartipakka Unnayan Kartipakka (RAJUK) as respondent No.2, Executive Engineer, Dhaka South, RAJUK as respondent No.3 and obtained a Rule Nisi against them asking to show cause as to why the obstruction in the development of the project area of the Modhumoti Model Town in Mouza Bilamalia, JL No.741 and Bailarpur JL No.742 within Police Station-Savar under District-Dhaka in the name of flood flow zone, should not be declared to have been made

without lawful authority and to be of no legal effect. Along with the issuance of the Rule, the Metro Makers also obtained an interim order staying all further activities of respondent Nos.1-3 relating to obstruction to its project for a period of 3 (three) months. Subsequently as many as 15 persons alleged to have purchased plots in Modhumoti Model Town have been added as respondent Nos.4-18 on their own initiative.

Metro Makers in the said writ petition, stated, inter-alia, that M/S. Metro Makers and Developers Limited is a registered private limited company (in short Metro Makers) registered under the Company Act,1913 and engaged in Real Estate Development business specially in making new township for the purpose of facilitating housing to the less favored citizens of Bangladesh. In course of their business, they have undertaken making township for housing purpose within Mouzas, Bilamalia and Bailarpur, under Upazila Savar in the District of Dhaka, three kilometer west of Amin Bazar, adjacent to Dhaka-Aricha highway. The project area comprised 350 acres of land consisting of 2526 residential plots of different sizes with various public utility and facility purchased by Metro Makers from different land owners in those two Mouzas with a view to developing the area into a Satellite Township. In an investigation, at the initiatives of Metro Makers regarding flood vulnerability of the area, survey was conducted on the said area by the Institute of Water and Flood Management, BUET and also by the Bureau of Research Testing and Consultation which reported in their study report that the proposed project did not lie in the flood flow zone. The lands purchased by the Metro Makers, are mainly 'chala' and 'bhiti' lands and as such the lands of the project are above the flood plain and do not come under the purview of Jaladhar Ain, 2000. Moreover, there has been no play ground, open ground and natural water reservoir owned by Government within the project premises nor did the project land cause any hindrance to flood flow of any kind. Metro Makers also stated that they have obtained all sorts of licence and permit to prosecute their lawful business and have prepared a project plan and have sold most of the plots to the buyers. Further case of the Metro Makers in Writ Petition No.5103 of 2003 is that the Metro Makers came to know from a notice published in '**The Daily Janakhanta,** dated 23.07.2002 that RAJUK warned public at large that Dhaka Metropolitan Development Plan (DMDP) has been approved by the Government and has been published in official gazette on 04.07.1997 wherein main flood flow zone has been shown specially banning the same from earth- filling for the purpose of housing. The Mouzas, 'Bilamalia' JL. No.741 and 'Bailarpur' JL. No.742, have not been mentioned in the said notice issued by RAJUK on 23.07.2002.

The main grievance of the Metro Makers in Writ Petition No.5103 of 2003 is that although the Modhumoti Model Town Project has not fallen within the main flood flow zone, RAJUK most arbitrarily and without lawful authority started illegal obstruction against the development work of the Metro Makers in Modhumoti Project on the plea of Jaladhar Ain,2000. Moreover, RAJUK lodged a criminal case being Savar Police Case No.37, against the Metro Makers and that RAJUK has been obstructing the project of the Metro Makers at the behest of their competitor and other politically interested quarter inimical to the Metro Makers.

Being aggrieved by such illegal and malafide action of the RAJUK, the Metro Makers preferred Writ Petition No.5103 of 2003 and obtained the Rule Nisi.

The writ-respondent Metro Makers contested the Rule issued in Writ Petition No.4604 of 2004 by filing affidavit-in-opposition denying all the material statements made in the writ-petition. The case of the Metro Makers, in short, is that BELA, the writ-petitioner has no *locus standi* to file the instant writ petition as the RAJUK is already involved in a legal proceeding with Metro Makers in Writ Petition No.5130 of 2003 arising out of the same set of facts. The instant writ petition involves highly disputed questions of facts which cannot be decided in a writ petition. The affidavit in the writ petition was sworn in by one Syeda Rezwana Hasan by giving her false identity as a member of the Executive Committee of BELA, as would be revealed from the list of members of the Executive Committee of BELA supplied from the office of the Registrar of the Joint Stock Company dated 25.11.2004. The writ petition is evidently barred by the principle of 'alternative remedy' as is provided by section 8 of the Ain,2000 wherein the remedy for the grievance of the writ petitioner lies. Metro Maker's project is a legal one with the aim to help the country to solve its housing problems to a limited extent. The project area of Metro Makers is not at all in a Sub-flood Flow or Flood Flow Zone near Aminbazar and the allegation of BELA is imaginary and speculative. Rather in the Master Plan SPZ 17 Savar area is described at page No.76 of DMDP volume II as "Savar is a largely Flood Free Zone connected with Dhaka by Dhaka Aricha Road." Metro Makers started the project in the area of the Flood Free Zone of SPZ 17 with due permission from the RAJUK wherein substantial part of the said project was completed long ago. By this time nearly 3500 buyers by dint of bainanama deeds from different classes of the society have invested their hard-earned money in this project, out of these plots (3500), 300 plots have already been sold to different buyers by executing registered sale deeds. They are the third party buyers being *bona fide* purchasers for value; most of whom are middle class people and have invested their hard-earned savings and are already in possession thereof. Furthermore, the ongoing Development Project was duly approved by the RAJUK after close scrutiny of paper and the disputed area is a Flood Free Zone both in fact and in law (as per

gazetted Master Plan for Savar area). Metro Makers started the project with a proper and valid Development Permit bearing No. রাজউক/নঃপ:/৬-১৬১/৬৪৩-স্থা: তারিখ: ২৯/০৭/৯৫ইং from the RAJUK upon an application dated 15.11.1994 for starting housing project. The RAJUK has already issued Development Permit in favour of the appellant without canceling or rescinding the permit of Metro Makers and as such they are estopped from hindering the development work. Being aggrieved by two letters and hindrance by RAJUK at the behest of rival interested quarter Metro Makers already filed another Writ Petition No.5103 of 2003 as stated before. The Development Permit of Metro Makers stands valid and the subsequent letters by the RAJUK issued without any facts or basis whatsoever, tailored by interested quarters are matters of no relevance to the project. Metro Makers initiated the said Housing Project with the prior permit of RAJUK.

The affidavits-in-opposition of added respondent Nos.8-52 (hereinafter referred to as third party purchasers) are based almost on the same statements of law and facts as relied on by the Metro Makers and include the followings :

a) The DMDP VOl.II gazetted on 04.08.1997 at page 75.76 depicted the land of the Modhumoti Model Town located in the Flood Free Zone,i.e. the SPZ 17.1.

b) The Savar Area Master Plan gazetted on 27.02.1997 and page 76of the Dhaka Metropolitan Master Plan clearly depicted the area of the housing project, namely, “Modhumoti Model Town” as Housing and Ancillary Zone and Flood Free Zone respectively.

c) The writ petition is evidently barred by the principles of alternative remedy.

d) The two letters dated 10.03.2002 and 29.07.2003 were issued from the office of the RAJUK as malafide move at the behest of the rival business quarter of Metro Makers and RAJUK issued those two letters ignoring the provisions laid down in Savar Master Plan.

e) Before purchasing plots from Metro Makers, the purchasers confirmed that Metro Makers started the project with a proper and valid Development Permit being No. রাজউক/নঃপ:/৬-১৬১/৬৪৩-স্থা: তারিখ: ২৯/০৭/৯৫ইং Bs from the RAJUK at least seven years before the issuance of the letters dated 10.03.2002 and 27.07.2003.

f) 3500 low income families purchased land for building their houses in the housing project of Metro Makers.

g) These purchasers are *bona fide* purchasers for value.

The learned Judges of the High Court Division upon hearing parties by judgment and order dated 27.07.2005 made the Rule absolute in part in Writ Petition No.4604 of 2004 and discharged the Rule issued in Writ Petition No.5103 of 2003.

Feeling aggrieved by and dissatisfied with the judgment and order dated 27.07.2005 passed by the High Court Division, BELA as leave-petitioner filed Civil Petition for Leave to Appeal No.1085 of 2006 and obtained leave on 19.03.2009 resulting in Civil Appeal No.253 of 2009. Metro Makers filed Civil Petition for Leave to Appeal No.958 of 2006 against the judgment and order passed in Writ Petition No.4604 of 2004 and obtained leave on 19.03.2009 resulting in Civil Appeal No.256 of 2009. Metro Makers also filed Civil Petition for Leave to Appeal No.957 of 2006 against the judgment and order passed in Writ Petition No.5103 of 2003 and obtained leave resulting in Civil Appeal No.255 of 2006. Forty-four third party purchasers filed Civil Petition for Leave to Appeal No.1080 of 2006 against the judgment and order passed in Writ Petition No.4604 of 2004 and obtained leave resulting in Civil Appeal No.254 of 2009.

Mr. Ajmalul Hussain, learned Senior Advocate, appearing on behalf of the Metro Makers and Developers Ltd. referring to section 74(2) of the Town Improvement Act,1953 submitted that the expression "any specific provision of the existing Master Plan" limits the extent of amendment or alteration of the Master Plan which, accordingly, cannot be totally replaced in exercise of the power conferred by section 74(2) of that Act and as such, the new Master Plan replacing the old Master Plan is unauthorized and void so that limitation on land use imposed by the new Master Plan is not enforceable. He has further argued that Metro Makers started developing the land in question in the 1990s which is before publication of the bar to land use in respect of the wetlands in question. Referring to Memo dated 29.07.1995 (Annexure-X-1), he has submitted that Metro Makers developed the wetlands after obtaining permission of the RAJUK on 29.07.1995. Alternatively, he has argued that there is no requirement of "prior permission" and Metro Makers may obtain post-facto approval. Lending support to the third party purchasers, he has submitted that they are *bona fide* purchasers who are entitled to protect their interest in the wetlands.

Mr. Rafique-ul-Huq, Mr. Rokanuddin Mahmud and Mr. Abdul Matin Kashru, learned Senior Advocates appearing on behalf of the third party purchasers of the wetlands in question, pressed in aid the concept of *bona fide* purchasers for value without notice as regard limitations on the land use and also sought to enforce the fundamental right under Article 42 of the Constitution and submitted that Metro

Makers misrepresented to the purchasers that the project was authorized by RAJUK according to Annexure-X-1 and in any event the purchasers are entitled to protect their investment.

On the other hand, Mr. Mahmudul Islam, learned Senior Advocate, appearing on behalf of the BELA has submitted that the expression "any" appearing in section 74 of the Town Improvement Act is a multi-faceted word and carries different meaning in different contexts and in the context of section 74, it means all and the new Master Plan is intra-vires. He has further submitted that the High Court Division was wrong in not holding that the memo dated 29.07.1995 (Annexure-X-1) is a forgery inasmuch as even an author of a document in terms of section 464 of the Penal Code may be guilty of forgery if he alters the documents in material part after it has been made or executed. He has further submitted that the wetlands of Bilamalia and Bailarpur are Sub-flood Flow Zones which cannot be filled up for housing and that too without permission of RAJUK and that these lands are also Prakritik Jaladhar within the meaning of Act 36 of 2000 and its character as Prakritik Jaladhar cannot be changed without permission of the Government sought through RAJUK and Metro Makers violated the provision of section 5 of Act 36 of 2000. He then has submitted that keeping these wetlands is critical for protection of the environment of Dhaka City and RAJUK should be compelled to take appropriate action against Metro Makers. As regards, the claim of third parties being *bona fide* purchasers for value without notice, he has argued that the concept of *bond fide* transferees has no application outside realm of contract and cannot be applied to overcome any statutory bar; ignorance of law is no excuse and at any rate, the third party purchasers are not, on the facts and the circumstances of the case, *bond fide* purchasers for value without notice of the bar. He has further argued that the third parties cannot claim fundamental right to hold properties to defy any statutory provision and in any event they cannot seek to enforce their alleged right to the property in derogation of the right to life free from depredation to the millions of residents of Dhaka City. He has finally submitted that direction should be given for restoration of the wetlands in question and direction may be given to Metro Makers to compensate the third party purchasers.

We have considered the submissions of the learned Advocates, the impugned judgment, the leave granting order and the papers annexed to the paper-book.

To begin with, it is necessary to go through grounds on which leave was granted.

In Civil Petitions for Leave to Appeal Nos.957 and 958 of 2006 filed by Metro Makers and Developers Ltd., leave was granted on the following grounds:

"(1) The learned Judges of the High Court Division while deciding the question of discrimination by RAJUK in not approving the layout plan of the petitioner on the alleged ground that the project area is within the flood flow Zone under the Master Plan of Savar area failed to consider the admitted broad facts that although RAJUK allowed the other developer, namely, East West Property Ltd. to convert its project's area into Housing and Ancillary Zone though the same was within the flood flow Zone and also the action of BELA in singling out the petitioner's project as being implemented in violation of the so-called provisions of the Town Improvement Act,1953 as well as Jaldhar Ain,2000 vis-a-vis the provisions of Articles 27 and 30 of the Constitution of the People's Republic of Bangladesh in its proper perspective with reference to the attending facts and circumstances of the case as stated in the affidavit-in-opposition and the supplementary affidavits filed by this petitioner, the learned Judges of the High Court Division also treated the question of discrimination in a causal manner though was very pertinent and thus fell an error in passing the impugned judgment and order and, as such, the same needs interference by this Court.

(2). In view of the own finding of the learned Judges of he High Court Division to the effect that the permission vide Annexure-X(1) issued under the signature of Mr. Zakir Hossain, the town planner of RAJUK was not a forged document and the consistent case of respondent No.7 (petitioner) being that it started its Housing Project under the name and style, 'Modhumoti Mode Town' in 1990 and the further fact that there are other developers in the area who have been allowed to deviate to establish their own Housing Project particularly the East West Property Limited and respondent No.7 was approaching RAJUK again and again with the reasonable expectation that it being a statutory organization would not behave discriminately in approving its lay out plan to develop the project and by the time Writ Petition was filed the respondent invested more than taka 200 crores, but the learned Judges of the High Court Division failed to consider these apparent factual aspects and of the case vis-a-vis the concept of reasonable expectation and thus erred in law in ignoring a public document (Annexure-X-1) issued by a public functionary in his official capacity and which document and had not been revoked or rescinded and decided in a disputed question of fact in passing the impugned judgment and order and, as such, the same is liable to be interfered with.

(3). The question as raised by the writ-petitioner as to whether respondent No.7 was filing the land for its project Modhumoti in violation of Section 8 (2) of Jaladhar Ain,2000 and the Town Improvement Act,1953 very much involved the disputed question of facts as respondent No.7 categorically asserted that the land involved in the Housing Project, namely, Modhumoti Model Town at Mouza-Bilamalia and Boliarpur is not within the flood flow Zone and for that matter it filed tow conclusive reports given by two very renowned and prestigious organization, namely, BRTC of BUET and SPARSO, it no more remained only a question of interpretation of law as has been found by the learned Judges of the High Court Division to the effect ;

> "We do not find substance in the argument of Mr. Rokuddin Mahmud and Mr. Ajmalul Hossain, Q.C, as to the non-maintainability of Writ Petition No.4604 of 2004 in as much as the Writ Petition No.4604 of 2004 does not involve any disputed question of facts since the pertinent question to be decided whether any violation of provision of different laws have occurred in admitted filling earth within the zone earmarked in the DMDP as SPL-17 which is classified as Sub-flood Zone in the DMDP."

(4). Admittedly the Town Improvement Act,1953 as well as Jaladhar Ain,2000 have provided provisions for taking into task the offender of such law and RAJUK having taking steps under the said laws the writ-petitioner had not cause of action to bring the writ petition for the reliefs as prayed for in the name of so-called public interest litigation; in this regard the learned Judges of the High Court Division wrongly relied upon the case of Khandakar Mahbubuddin Ahmed Vs. State reported in 49 DLR (AD) 132 and thus fell into an error to hold that the criminal case lodged under Section 8 of Jaladhar Ain,2000 cannot be treated as efficacious remedy against grant of mandamus and thereby finding the writ petition maintainable.

(5). The learned Judges of the High Court Division misread and misconstrued the provisions of Sections 73 and 74 of the Town Improvement Act,1953 vis-a-vis the notification dated 3rd April,1997 and 3rd August,1997 in considering the point raised on behalf of the respondent-petitioner that the DMDP did not reach it finality thus it could not be said the petitioner's project is actually in the Sub-flood flow Zone and the same is being implemented in violation of the provisions of Section 75 of the said Act and Jaladhar Ain,2000 and thus erred in law in

holding that the project in question is being implemented illegally in the flood flow Zone and, as such, the impugned judgment and order is liable to be set aside.

(6) The questions involved in this Writ Petition are of great public importance and the same needs to settled down finally by this Court by way of giving leave from the impugned judgment and order".

In Civil Petition for Leave to Appeal No.1080 of 2006 filed by Anser Uddin Ahmed and others (third party purchasers), leave was granted on the following grounds:

"(1). From the Writ Petition itself and also from the affidavit file by RAJUK it is apparent that Section 75 of the Town Improvement Act,1953 as amended up to date permits deviation of the use of the land as specified in the Master Plan subject to approval by the RAJUK and in fact in the case of East West Property Development (Pvt.) Ltd., another developer such deviation has been allowed by RAJUK clearly shows that so-called environmental hazard as alleged to be created by respondent No.8 (in this leave-petition) company's project is not an unimpeachable one, therefore, there cannot be any public interest litigation for violation of any such deviation allegedly made by the respondent No.8 company and, as such, the writ petitioner had neither any cause of action nor any locus-standi to file the writ petition as a public interest litigation, the High Court Division erred in law in entertaining the writ petition and then making the Rule absolute in part declaring the Housing Project of the respondent No.8 company to have been implemented un-authorizedly, the impugned judgment and order is liable to be interfered with.

(2). The learned Judges of the High Court Division while deciding the question of discrimination by RAJUK in not approving the layout plan of the respondent company on the alleged ground that the project area is within the flood flow Zone under the Master Plan of Savar area failed to consider the admitted broad facts that although RAJUK allowed the other developer, namely, East West Property Development (Pvt.) Ltd. to convert its project's area into Housing an Ancillary Zone though the same was within the flood flow zone and also the actin of BELA in singling out the instant housing project as being implemented in violation of the so-called provisions of the Town Improvement Act,1953 as well as Jaldhar Ain,2000 vis-a-vis the provisions of Articles 27 and 30 of the

Constitution of the People's Republic of Bangladesh in its proper perspective with reference to the attending facts and circumstances of the case as stated in the affidavit-in-opposition and the supplementary affidavits filed by the respondent company as well as added respondents, the learned Judges of the High Court Division also treated the question of discrimination in a casual manner though was very pertinent and thus fell into an error in passing the impugned judgment and order and, as such, the same needs interference by this Division.

(3). That save and except the legal bar as imposed by Section 75 of the Town Improvement Act, 1953 and the warning notice as published by RAJUK in the daily News Papers on 23.07.2002 the writ petitioner failed to produce or file a single scrap of paper to show that the project in question of respondent No.8 company created any environmental hazard for Dhaka City or the area under Savar Police Station as earmarked in the Dhaka Metropolitan Master Plan (DMDP-1995-2015), or any one from the area, that is, Mouza-Bilamalia and Boliarpur made any complaint to any authority, whereas, the respondent No.8 company submitted tow study reports one from BRTC of BUET and the other from SPARSO which clearly substantiated its claim that the project in question shall not in any way obstruct the flood flow in the area in question, therefore, would not create no health hazard, thus no public interest was involved to bring the writ petition by the writ-petitioner BELA, but unfortunately the learned Judges of the High Court Division failed to consider those two reports in coming to the findings that the petitioner's project shall create environmental hazard and such non consideration has occasioned failure of justice in passing impugned judgment and order.

(4). In the Writ Petition the writ petitioner totally failed to show that because of the project in question a bulk section of people or a community of people suffered and were being affected, whereas, admittedly more than 3534 persons including the present added respondent-petitioners who already purchased the plots from the project in question clearly from a bulk group of people or class of people who shall be deprived to have their place of shelter in case the project of respondent No.8 company is abandoned or cancelled thus public interest is definitely in favour of respondent No.8's project, namely, Modhumoti Model Town as well as its plot purchasers and not in favour of the writ petitioner but unfortunately the leaned Judges of the High Court Division were moved by the so-called catchy concept of protection of environmental hazard in the project area and thus erred in law in

entertaining the writ petition and then deciding the same against respondent company and its housing project and, as such, the impugned judgment and order calls for interference by this Division."

In Civil Petition for Leave to Appeal No.1085 of 2006 filed by Bangladesh Environmental Lawyers' Association (BELA), leave was granted on the following grounds:

> **"(1).** The High Court Division erred in holding that the added respondents are bona fide third party purchasers for value and their interest need to be protected.
>
> **(2).** The learned Judges of the High Court Division failed to appreciate that the said project of respondent No.1 was being implemented in violation of the mandatory legal provisions of the Town Improvement Act,1953 and has been undertaken by respondent No.1 disregarding and abandoning the Master Plan prepared by respondent No.50 under the Town Improvement Act,1953.
>
> **(3).** That the High Court Division failed to appreciate that the continuation of the illegal and unauthorized implementation of the project in the name of "Modhumoti Model Town" by respondent No.1 defying all the lawful instructions and directions of respondent No.50 have resulted in consequences detrimental to the legal and constitutional rights of the petitioner and the City dwellers thus violating the fundamental rights guaranteed by Articles 31 and 32 of the Constitution.
>
> **(4).** The High Court Division failed to appreciate that the said project of respondent No.1 was being implemented in violation of the provisions of Act No.36 of 2000 and that the same had no authorization of respondent No.47.
>
> **(5).** That the decision of the learned High Court Division in favour of the rights of the purchasers will have the effect of shielding the illegal and fraudulent activities of respondent No.1 and thus negate the constitutional and legal sanctions and undermine rule of law and public interest."

The questions to be resolved in these appeals will be considered *seriatim*.

Whether the housing project, namely 'Modhumoti Model Town' within sub-flood flow zone of DMDP is permissible ? Dhaka Improvement Trust Act,1953 (in short, the Act) came into effect on 15.05.1953. Erstwhile Dhaka Improvement Trust (in short, DIT) was formed under the provision of section 4 of the Town Improvement Act,1953. Under section 73 of the Act, DIT was empowered to prepare master plan for Dhaka and the first master plan for Dhaka was prepared in August,1958. On 01.02.1979, this master plan was reappraised without any change or amendment. On 30.04.1987, by a gazette notification, Town Improvement Act,1953 has been amended and the Board of Trustees of the DIT has been substituted by Rajdhani Unnayan Kartipakka. On 01.09.1987, Savar Upazilla has been brought within the operational area of RAJUK. On 28.12.1996, the Government published in the official gazette a separate master plan for Savar area (Annexure-X-3 to the affidavit-in-opposition filed by Metro Makers and Developers Limited in Writ Petition No.4604 of 2004). The gazette notification is quoted as under :

গৃহায়ন ও গণপূর্ত মন্ত্রণালয়
শাখা-৮
বিজ্ঞপ্তি

তারিখঃ ২৮শে ডিসেম্বর, ১৯৯৬

নং শাখা (৮)-৪৯৮/৯৩/৩৯৪ সরকার কর্তৃক রাজধানী উন্নয়ন কর্তৃপক্ষেও নিয়ন্ত্রণাধীন এলাকা সম্প্রসারণ করার ফলে সাভার থানার প্রায় সমগ্র এলাকা বর্তমানে রাজধানী উন্নয়ন কর্তৃপক্ষের আওতায় আসিয়াছে। উক্ত এলাকার পরিকল্পিত উন্নয়নের লক্ষ্যে ১৯৯০ সালে রাজধানী উন্নয়ন কর্তৃপক্ষ একটি খসড়া মহা-পরিকল্পনা প্রণয়ন করিয়া ১৯৫৩ সালের টাউন ইমপ্রুভমেন্ট এ্যাক্টের ৭৩ ধারা অনুয়ায়ী উক্ত প্ল্যান জনগণকে অবহিত করিয়া তাহাদের নিকট হইতে আপত্তি ও মতামত গ্রহণের জন্য এতদসংক্রান্ত নোটিশ সংবাদপত্রে প্রকাশ করে এবং জনসাধারণের নিকট হইতে প্রাপ্ত আপত্তি ও মতামত মহা-পরিকল্পনা সংশোধন করিয়া একটি চূড়ান্ত মহা-পরিকল্পনা খসড়া প্রণয়ন করিয়াছে। এই গেজেট প্রকাশিত মাষ্টার প্ল্যান বা উহার কোন অংশের উপর কাহারো কোন আপত্তি থাকিলে তাহা ১৯৫৩ সালের টাউন ইমপ্রুভমেন্ট এ্যাক্টে এর ৭৩(৪) ধারা অনুযায়ী প্রকাশিত এই গেজেটে বিজ্ঞপ্তি প্রকাশের ৬০ দিনের মধ্যে সরকারের নিকট দাখিল করিতে পারিবেন। মাষ্টার প্ল্যানের বিস্তারিত বিবরণসহ নকশা সর্বসাধারণের অবগতির জন্য এতদসংগে মুদ্রণ করা হইল। এই বিজ্ঞপ্তি প্রকাশের পর হইতে এই মাষ্টার প্ল্যানের অন্তর্ভুক্ত এলাকায় যে কোন ধরনের উন্নয়ন ও নির্মাণ করাজ এই মাষ্টার প্ল্যান অনুসারে এবং যথাযথ কর্তৃপক্ষেও অনুমোদন ক্রমে সম্পন্ন করিতে হইবে। এতদসংগে উল্লেখিত এলাকার মাষ্টার প্ল্যানের নকশা প্রকাশ করা হইল এবং নিমে মাষ্টার প্ল্যান অনুসারে এবং যথাযথ কর্তৃপক্ষের

অনুমোদন ক্রমে সম্পন্ন করিতে হইবে। এতদসংগে উল্লেখিত এলাকার মাষ্টার প্ল্যানের নকশা প্রকাশ করা হইল এবং নিম্নে মাষ্টার প্ল্যানের অন্তর্ভুক্ত এলাকার বিবরণ প্রদান করা হইল।

(ক) প্ল্যান এলাকার সীমানাঃ-

পূর্বে মিরপুর ব্রীজ হইতে পশ্চিমে ঢাকা-আরিচা সড়কের দুই পার্শ্বে প্রায় অর্ধ মাইল করিয়া সাভার গণস্বাস্থ্য কেন্দ্র ও উত্তরে আনবিক শক্তি কমিশন পর্যন্ত।

(খ) মাষ্টার প্ল্যানে অন্তর্ভুক্ত মৌজাসমূহঃ

ক্রমিক নং	মৌজার নাম	জে.এল.নং
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৯৭	বিলামালিয়া (আংশিক)	৭৪১
৯৮	বৈলারামপুর (আংশিক)	৭৪২
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রাষ্ট্রপতির আদেশক্রমে
মোঃ মইনুল হক
সহকারী সচিব।

The gazette notification quoted above reveals that partial area of Mouza 'Bilamalia' and 'Bailampur' was included at serial Nos.97 and 98. After publication of this master plan of Savar area, at the behest of the Government, RAJUK prepared Dhaka Metropolitan Development Plan with the inclusion of Savar and its parts I and II have been notified in the gazette on 03.08.1997. The third part of DMDP has not yet been prepared and step has only been taken for preparation thereof. The chronological facts transpired that the first Dhaka Master Plan prepared in August,1958 was effective in 1990 under which Savar was included on 01.09.1987. Metro Makers and Developers Limited was incorporated on 28.05.1990 and according to it, the project 'Modhumoti Model Town' commenced on and from 28.06.1990. On 28.12.1986 separate Savar Master Plan (annexure-X-3) came into effect and the same provided for obtaining from RAJUK in the following terms :

"এই বিজ্ঞপ্তি প্রকাশের পর হইতে এই মাষ্টার প্ল্যানের অন্তর্ভুক্ত এলাকায় যে কোন ধরনের উন্নয়ন ও নির্মাণ কাজ এই মাষ্টার প্ল্যান অনুসারে এবং যথাযথ কর্তৃপক্ষের অনুমোদন ক্রমে সম্পন্ন করিতে হইবে।"

When the Savar Master Plan came into effect it was incumbent upon the Metro Makers and Developers Limited to obtain permission under the provision of Savar Master Plan if the area is being used in derogation of the purpose earmarked in the master plan.

In this connection, it is necessary to quote section 75 of the Act as under :

> "75.(1) If any person desires to use any land for any purpose other than that laid down in the Master Plan approved under sub-section (5) of section 73, he may apply in writing to the Chairman for permission so to do.
>
> (2) If the Chairman refuses permission to any person, such person may, within sixty days of the Chairman's refusal, appeal to the Kartipakkha against such refusal.
>
> (3) The decision of the Kartipakkha on any appeal under sub-section (2) shall be final.

Admittedly, Metro Makers and Developers Ltd. did not obtain any permission from RAJUK under the provision of Savar Master Plan but relying upon Annexure-X-1 dated 29.07.1995 appended to the affidavit-in-opposition filed by Metro Makers and Developers Ltd. in Writ Petition No.4604 of 2004 described the same as development permit. What is remarkable is that nothing was stated about the development permit in Writ Petition No.5103 of 2003. Metro Makers and Developers Ltd. claimed that the said development permit was issued in pursuance of their application submitted to RAJUK on 15.11.1994 (Annexure-X-II to Writ Petition No.4604 of 2009). Both the letters are reproduced below :

স্মারক নং-রাজউক/নঃ প্রঃ/৬-১৬৯/৬৪৩-স্থাঃ

প্রেরক ঃ জাকির হোসেন
নগর পরিকল্পনাবিদ (পরিচালক)
রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

প্রাপক ঃ জনাব মোঃ শওকত আলী খান
চীফ টাউন প্ল্যানার/এলপিও
ডি.এম.ভি.পি

রাজউক প্রজেক্ট ম্যানেজমেন্ট এন্ড কো-অর্ডিনেশন সেল
এনেক্স ভবন, ৬ষ্ঠ তলা, রাজউক, ঢাকা-১০০০।

বিষয়ঃ ষ্ট্রাকচার প্ল্যান, মাষ্টার প্ল্যান ও ডিটেইল এরিয়া প্ল্যান প্রণয়ন সাভার এলাকায় গ্রহীত সরকারী ও বেসরকারী উল্লেখযোগ্য ও প্রতিশ্রুতি প্রকল্পসমূহ অন্তর্ভুক্তি ও বিবেচনা প্রসংগে।

উপরোক্ত বিষয়ের আলোকে আপনার সদয় অবগতির জন্য সাভার এলাকায় সরকারী ও বেসরকারী পর্যায়ে গৃহীত উল্লেখযোগ্য ও প্রতিশ্রুতি প্রকল্পসমূহের তালিকা ম্যাপে চিহ্নিত করিয়া এতদসংগে প্রেরণ করা হইল। উল্লেখ্য যে, সাভার এলাকার জন্য রাজউক প্রণীত মাষ্টার প্ল্যান সরকারীভাবে অনুমোদন ও গেজেট প্রকাশের অপেক্ষায় রহিয়াছে।

উক্ত প্রকল্পসমূহ ডি,এম,ডি,পি প্রণীতব্য পরিকল্পনায় অন্তর্ভুক্ত করিয়া বিবেচনা করিত বিশেষভাবে অনুরোধ জানানো যাইতেছে।

সংযুক্তঃ বর্ণনামতে (প্রকল্পসমূহের তালিকা ও ম্যাপ)।

স্বাঃ/
(জাকির হোসেন)
নগর পরিকল্পনাবিদ (পরিচালক)
রাজধানী উন্নয়ন কর্তৃপক্ষ
ঢাকা।
তারিখঃ

স্বারক নং-রাজউক/নঃপ্রঃ
অনুলিপিঃ

এ, এফ, এম, জাহাংগীর, পরিচালক, মেট্রো মেকার্স এন্ড ডেভেলপারস লিঃ, ইহা তাদের পত্র নং- মেট্রো/আঃ/প্রঃ/রাজউক তারিখ ১৫/১১/১৯৯৪ ইং এর প্রেক্ষিতে প্রস্তাবিত আমিন বাজারস্থ ঢাকা আরিচা সড়কের দক্ষিণ পার্শ্বের বিলামালিয়া মৌজার জে, এল নং-৭৪১-এ একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের জন্য তাহাদের কোম্পানী কর্তৃক ক্রয়কৃত সম্পত্তিতে

ভূমি উন্নয়ন করার অনুমতি দেয়া গেল। ইহা মেট্রে মেকার্স এন্ড ডেভেলপারস লিঃ কর্তৃক দাখিলকৃত প্রকল্পটির বাস্তবায়নের জন্য "Development permit" হিসাবে গণ্য হবে।

METRO MAKERS AND DEVELOPERS LTD.
মেট্রো মেকার্স এন্ড ডেভেলপারস লিঃ

সূত্রঃ- মেট্রো/আ-প্র/রাজউক

বরাবর,
মাননীয় চেয়ারম্যান
রাজধানী উন্নয়ন কর্তৃপক্ষ
রাজউক ভবন, ঢাকা।

বিষয়ঃ আমাদের কোম্পানী কর্তৃক বেসরকারী উদ্যোগে ঢাকা-আরিচা মহাসড়ক সংলগ্ন এলাকায় একটি আধুনিক ও পরিকল্পিত আবাসিক শহর প্রতিষ্ঠাকালে প্রস্তাবিত এলাকাটিকে বৃহত্তর ঢাকা শহরের প্রস্তাবিত মাষ্টার প্ল্যানের সংযোজন ও সমন্বয়ের জন্য আবেদন।

মহোদয়,

বিনীত নিবেদন এই যে, অত্র কোম্পানী দেশের চলমান মুক্ত বাজার অর্থনীতির আলোকে বেসরকারী খাতের উৎকর্ষ সাধনের নীতিমালার সংগে সংগতি রাখিয়া উপরে উল্লেখিত এলাকার অর্থাৎ সাভার থানাধীন ঢাকা-আরিচা রোড়ের পাশ্ববর্তী বিলামালিয়া মৌজায় একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের লক্ষ্যে একটি মহতী উদ্যোগ হাতে নিয়াছে। প্রস্তাবিত প্রকল্পটি ঢাকার আমিন বাজার হইতে প্রায় ১ কিঃমিঃ পশ্চিমে কম বেশী ১৬০০ বিঘা জমির উপর প্রতিষ্ঠিত হইবে। প্রস্তাবিত প্রকল্পটির ভূমির মৌজা ম্যাপ আপনার সদয় অবগতির ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য এতদসংগে সংযুক্ত করা হইল।

প্রকল্পটি বাস্তবায়নকল্পে ইতিমদ্যে কোম্পানী ১০০ বিঘা জমি খরিদ করিয়াছে এবং ক্রয়ের জন্য আরও ২০০বিঘা জমি বায়না করিয়াছে। আগামী ১২ থেকে ১৬ মাসের মধ্যে প্রকল্পাধীন সম্পূর্ণ জমি ক্রয় করার প্রচেষ্টা দেওয়া হইয়াছে। সম্পূর্ণ জমি ক্রয় হইলে কোম্পানী ভূমি উন্নয়ন ও নাগরিক সুবিধাদির যাবতীয় কাজ শুর" করিবে এবং যথা সময়ে প্রকল্পের লেআউট প্ল্যান রাজউকে দাখিলপূর্বক অনুমোদন নিয়ে পর্যায়ক্রমে সম্ভাব্য গ্রহকদের নিকট প-ট বিক্রির ব্যবস্থা গ্রহণ করা হইবে।

দেশের বিদ্যমান আবাসিক সমস্যা সমাধানের বেসরকারী উদ্যোগে আমাদের কোম্পানী কর্তৃক গ্রহণকৃত এই তড়িৎ পদক্ষেপ আপনার প্রতিষ্ঠানের নিকট হইতে প্রয়োজনীয় পরামর্শ, সহযোগিতা নিশ্চিত করিয়া ও আমাদের প্রকল্পের প্রস্তাবিত এলাকাটিকে ঢাকা শহরের ভবিষ্যৎ মাষ্টার প্ল্যানের সংযোজন ও সমন্বয় সাধনের ব্যবস্থা গ্রহণ করিয়া বাধিত করিবেন।

বিনীত নিবেদক,
মেট্রো মেকার্স এন্ড ডেভেলপারস লিঃ
এর পক্ষে
(এ, এফ, এম, জাহাংগীর)
পরিচালক

সংযুক্তঃ
ভূমির মৌজা ম্যাপ দুই কপি।
অনুলিপি প্রেরণ করা হইলঃ-

নগর পরিকল্পনাবিদ, রাজধানী উন্নয়ন কর্তৃপক্ষ, রাজউক ভবন, ঢাকা-সদয় াবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের নিমিত্তে।

Having considered Annexurs-X-1 & X-2, it appears that through Annexure-X-2 Metro Makers and Developers Ltd. informed RAJUK of their ongoing housing project, 'Modhumoti Model Town' and prayed for inclusion of their project in the ongoing preparation of DMDP. Pursuant to this prayer, RAJUK under the signature of Town Planner (Director)sent a letter dated 29.07.1995 addressed to the Project Coordinator of DMDP requesting him to include 'Modhumoti Project in the DMDP. What is surprising is that the lower portion of Annexure-X-1 contained a paragraph alleged to have accorded a development permit to 'Modhumoti Model Town' in the following language :

অনুলিপিঃ

এ, এফ, এম, জাহাংগীর, পরিচালক, মেট্রো মেকার্স এন্ড ডেভেলপারস লিঃ, ইহা তাদের পত্র নং- মেট্রো/আঃ/প্রঃ/রাজউক তারিখ ১৫/১১/১৯৯৪ ইং এর প্রেক্ষিতে প্রস্তাবিত আমিন বাজারস্থ ঢাকা আরিচা সড়কের দক্ষিণ পার্শ্বের বিলামালিয়া মৌজার জে, এল নং-৭৪১-এ একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের জন্য তাহাদের কোম্পানী কর্তৃক ক্রয়কৃত সম্পত্তিতে

ভূমি উন্নয়ন করার অনুমতি দেয়া গেল। ইহা মেট্রে মেকার্স এন্ড ডেভেলপারস লিঃ কর্তৃক দাখিলকৃত প্রকল্পটির বাস্তবায়নের জন্য "Development permit" হিসাবে গণ্য হবে।

স্বাক্ষর অস্পষ্ট
(জাকির হোসেন)
নগর পরিকল্পনাবিদ (পরিচালক)
রাজধানী উন্নয়ন কর্তৃপক্ষ
ঢাকা।

By filing a supplementary affidavit, BELA alleged that this portion of Annexure-X-1 was an act of forgery on the part of 'Modhumoti Model Town'. The impugned judgment shows that the High Court Division called for the records of RAJUK for the purpose of ascertaining the genuineness of Annexure-X-1. Having gone though the file, the High Court Division found that a copy of Annexure-X-1 was retained in the file but that did not contain the paragraph alleged to have indicated according of development permit. The copy kept in the record contained the signature of Jakir Hossain, Town Planner (Director) just after furnishing of the main contents of the letter. Therefore, the High Court Division came to a finding that the issuer of the letter included this portion in Annexure-X-1. The High Court Division, however, surprisingly held that the allegation of forgery on the part of 'Modhumoti Model Town' in the inclusion of that part in Annexure-X-1 had no basis.

This finding as to the forgery by Metro Makers and Developers is erroneous. Admittedly, Savar has been included within the operational area of RAJUK on 01.09.1987 and within the knowledge of Metro Makers which had the knowledge of ongoing preparation of DMDP. Therefore, Metro Makers and Developers Ltd. made an application to RAJUK on 15.11.1994 (Annexure-X-2) for inclusion of its 'Modhumoti Model Town' within DMDP. Subsequently, Annexure-X-1 dated 29.07.1995 alleged to have been issued and sent by Zakir Hossain, Town Planner (Director) to Shawkat Ali Khan, Chief Town Planer/LPO contained at its bottom the so-called development permit. This is a glaring act of forgery because the copy preserved in the original file did not contain the portion of development permit. Admittedly, Metro Makers and Developers Ltd. is the beneficiary of the so-called development permit. It has even dared to use such a forged letter before the highest Court of the country to suit its purpose. Therefore, it cannot escape from the legal consequences for using such forged letter as evidence before the Court. In addition to above, section 75 of the Town Improvement Act deals with

permission and provides that the Chairman, RAJUK is empowered to accord such permission and on his refusal the Kartipakkha may accord such permission on appeal. Given such provision, it appears that exercise of according permission under section 75 is initially entrusted with the Chairman of RAJUK and then with the Kartipakkah in appeal and without specific delegation of such function, no officer of RAJUK is empowered to exercise such function. The High Court Division observed that Metro Makers and Developers Ltd. failed to satisfy about such lawful delegation by the Chairman, RAJUK and that Annedure-X-1 alleged to have accorded development permit by Town Planner (Director) of RAJUK was not a permit at all in the eye of law.

Mr. Ajmalul Hussain, learned Senior Advocate, appearing on behalf of the appellant-Metro Makers and Developers Ltd., submits that section 74(2) of the Town Improvement Act,1953 permits permitted amendment or alteration of any specific provision of the existing Master Plan and not the substitution or repeal of the then existing Master Plan by the notification dated 03.08.1997 which is ultra vires section 74(2) of the Town Improvement Act. He further submits that the Legislature in its wisdom has put the definite article 'the' before the Master Plan and as such, it could not be substituted by a new Master Plan.

The expression "any" has wide range of meaning which varies in different contexts and it can mean 'some' or 'all'. In this connection, reliance may be made on **Stroud's Judicial Dictionary of Words and Phrases 7th Edition, volume 1, page-141** and **Black's Dictionary, 6th Edition, page-94**. What is important to note here is that section 74(2) of the Town Improvement Act is an enabling provision regarding amendment or alteration and it does not take away the power of a statutory authority to rescind any delegated legislation including notification conferred by section 21 of the General Clauses Act,1897. Had the Legislature intended to take away the power to rescind conferred by the General Clauses Act, the Legislature was required to use a clear language which is missing in section 74(2) of the Town Improvement Act. Jurisdiction expressly conferred by a statute cannot be extinguished by implication from any expression used in a subsequent statute, much less by an enabling provision in a later statute. The use of expression 'specific' does not make any differences as a matter of law.

Even if the Master Plan of 1997 is held ultra vires section 74(2) of the Town Improvement Act, it does not allow the Metro Makers and Developers Ltd. to proceed with the development works without permission of RAJUK/Government because with the demise of new Master Plan, the notification dated 28.12.1996 requiring permission of RAJUK would surface as an existing provision having the force of law. After coming into force of Rjvavi AvBb,2000 on 05.02.2001

permission of the Government is also necessary for conversion of lands of 'Bilamalia' and 'Bailampur' to housing plots of a township.

DMDP part-I and II have been prepared and taken its finality under the mandate of section 73 of the Town Improvement Act,1953 and also under the procedure formulated in section 74 of the Act. Both the provisions are quoted below :

> "73.(1) As soon as may be after the provisions of Act comes into force, the Kartipakkha shall prepare a Master Plan for the area within its jurisdiction indicating the manner in which it proposes that land should be used (whether by carrying out thereon of development or otherwise) and the stages by which any such development should be carried out.
>
> (2) The Master Plan shall include such maps and such descriptive matter as may be necessary to illustrate the proposals aforesaid with such degree of particularity as may be appropriate, between different parts of the area, and any such plan may, in particular, define the sites of proposed roads, public and other open buildings and works, or fields, parks, pleasure-grounds and other open spaces or allocate areas of land for use for agricultural, residential, industrial or other purposes of any class specified in the Master Plan.
>
> (3) The Government shall, within one month from the receipt of the Master Plan from the Kartipakkha, publish the same in the Official Gazette.
>
> (4) Any person objecting to the plan or part thereof shall file objection with the Government within sixty days from the date of the publication of the plan.
>
> (5) The Government after considering the objections that may be filed, shall approve the Master Plan within four months from the date of publication either with or without modification."

> "74.(1) When the Government approves the Master Plan submitted under section 73, it shall announce the fact by notification and the publication of such notification shall be conclusive evidence that the Master Plan has been duly made and approved, and thereafter it shall be unlawful for any person to use any land for any purposes other than that laid down in the Master Plan, unless he has been permitted to do so under section 75.

(2) The Kartipakkha may, from time to time, with the approval of the Government and the Government may at any time amend or alter any specific provision of the Master Plan. Any such amendment or alteration shall be published in the Official Gazette.

(3) All future developments and construction, both public and private, shall be in conformity with the Master Plan or with the amendment thereof.

(4) The Master Plan, or an amendment thereof, shall neither before nor after it has been approved, be questioned in any legal proceedings whatsoever and shall become operative on the day it is approved by the Government and published in the Official Gazette."

Within the Master Plan, Flood Flow Zone has been divided into two parts and different control mechanism for land use has been prescribed for each of them and proposed control as follows :

"Main Flood Flow Zone :

Land development for residential, commercial and industrial development, including raising the level of land, via land filling, will be strictly prohibited.

Permitted uses, provided that they cause no adverse hydraulic effect will be:

* agriculture;

* dry season recreation facilities;

* ferry terminal; and

* excavation of mineral deposits, including dry season brick works.

Causeways for roads or railways will be permitted, subject to detailed geological surveys being undertaking and on condition that they are built with culverts sufficient to allow for unimpeded flood flow."

It appears from the above, that in the main flood flow zone, land development for residential and others via land filling is strictly prohibited.

Land use control mechanism in Sub-Flood Flow Zone

DMDP Structure Plan provides the following in relation to sub-flood flow Zone:

"Sub-Flood Flow Zone

Development compatible with the rural nature of these mainly rice growing areas, will be permitted on condition that the :

* structures are built on stills, or on land raised above design flood water level;

* alignment for structures and raised land to be designed so as not to disturb flood flow.

Implementing Agency : RAJUK, BWDB.

NB : Ideally a Dhaka Metropolitan River Conservancy Board, linked closely to BWDB, would be established to execute such controls and enforcement procedures within the flood plains of the metro region." (Ref: DMDP. Vol.1, Page-53).

From the foregoing discussion, it transpired that development within Sub-Flood Flow Zone is not barred and that structure may be built on stills or on land raised above design flood flow water or alignment of structure and raised land is to be designed so as not to disturb flood flow provided that all development must be compatible with the rural nature of the rice growing areas. After final gazette notification of DMDP dated 03.08.1997 Metro Makers and Developers Ltd. was required to apply for such permission but failed to do so and continued with the development work which became unauthorized under the provision of DMDP and section 74 of the Town Improvement Act,1953. Therefore, Madhumoti Model Town is an unauthorized project and Metro Makers has been continuing with their activities in violation of section 75 of the Town Improvement Act,1953 and the DMDP prepared under the Act.

It is contended that the Madhumoti Project of Metro Makers was lawful prior to its registration and remains so after registration according to the provision of Rule 4(2)(1)of বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা ২০০৪ Admittedly, Madhumoti

Model Town falls within sub-flood flow zones of the DMDP which was prepared according to the provision of section 73 of Town Improvement Act. Establishment of a Model Town within sub-flood flow zone goes against the spirit of such zone and as such is not at all permissible. Neither RAJUK nor the Government has the authority to give permission to change the very nature of sub-flood flow zone. Metro Makers has been trying to take advantage ofবেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা ২০০৪ on the plea that if any project gets registration, such registration shows acceptance by RAJUK that project is an ongoing project within the area of the Master Plan and that its land is recommended as being suitable for development. The Rules of 2004 do not have overriding effect over the parent law under which the Rules were prepared. There is no scope for establishment of a Model Town within sub-flood flow zone violating the DMDP prepared under the Town Improvement Act. Even the Rules of 2004 do not approve of establishing a Model Town changing the very nature of sub-flood flow zone. In this connection, it is pertinent to quote clauses 'চ' and 'জ' of Rule 6 and under:

> (চ) প্রকল্প এলাকায় কোন খাল, বিল, নদী, নালা বা অন্য কোন জলাশয় থাকিলে উহার পানি প্রবাহে বিঘ্ন সৃষ্টি না করিয়া প্রবাহিত পানি যাহাতে প্রকল্পের শেষ প্রান্ত হইয়া ক্ষেত্রমত খাল, বিল, নদী, নালা বা জলাধার পর্যন্ত প্রবাহিত হইতে পারে, উহা নিশ্চিতকরণ:
>
> (জ) প্রকল্প বাস্তবায়নের সময় পাশ্ববর্তী এলাকায় যাহাতে কোন ধরণের জলাবদ্ধতা সৃষ্টি বা পরিবেশের ভারসাম্য নষ্ট না হয় উহা নিশ্চিতকারণ:

Establishment of a model town within sub-flood flow zone involves raising huge quantity of land in that zone resulting in its depletion. Consequently, the adjoining area of the sub-flood flow zone, namely, main Dhaka City will be inundated by water logging and the natural environmental balance will be in jeopardy.

Whether permission of RAJUK to undertake development work was necessary and whether Metro obtained the permission ? The two mouzas, namely, Bilamalia and Boliarpur, where Metro Makers wants to establish Madhumoti Model Town have been identified in the new Master Plan as sub-flood flow zone included in a Special Plan Zone 17(3)(SPZ 17^3). With reference to the provision of 5.2.3 at page 16 of Part 3 of vol.2 of the new Master Plan, it is contended on behalf of Metro Makers that development of the land for housing in the two relevant mouzas is permissible with the permission of RAJUK and Metro Makers having started the development work after incorporation in 1990 and before the requirement of permission was introduced RAJUK should

legitimately accord that permission and, in fact, Metro Makers obtained that permission.

Metro Makers could not produce any evidence to substantiate that it started developing the lands purchased in the two mouzas in question since 1990. On the contrary, the documents annexed reveal that on 20.05.2001, Metro Makers first advertised for sale of plots and started selling plots on and from 21.11.2001 and alleged to have sold 491 plots up to 30.06.2005. The lists do not disclose whether the plots were developed plots. Nevertheless, several registered deeds of sale have been produced which can be seen at pages 988 to 1052 of paper-book No.IV. Curiously enough, the dates of execution of these deeds of sale have been kept blank, but registration coupons indicate the date of registration. A reading of these deeds of sale shows that from March,2002 onwards "proposed plots" were sought to be sold and the lands sold were "Boro Nal lands". If developed plots were being sold, the lands so sold would not be described as "Boro Nal lands" and the lands sold would definitely carry the plot number of the developed plots. It is contended that the new Master Plan does not require 'prior permission' so that the permission may be obtained at a later stage. The new Master Plan does not all contemplate establishment of a modern housing project like Madhumati Model Town in the Sub-Flood Flow Zone so that the question of giving permission to set up Madhumati Model Town does arise at all. There is no gainsaying the fact that in the new Master Plan the category of development subject to permission includes dwelling house. What is important to note here is that a document has to be read as a whole to understand it true purport. The main focus of the new Master Plan and of Jaladhar Ain is preservation of drainage of rain and flood water in the Dhaka Mahanagary. Bilamalia and Boliarpur have been identified as part of SPZ 17[3] as is evident from the map opposite to page 32 of volume 1 of the new Master Plan and page XXVIII of the Appendix at the end of vol.2 of the new Master Plan. The provision of 5.2.2 at page of part 3 of volume 2 reads as follows:

> **"Purpose and intent**: The purpose of the Sub Flood Zone is to generally define areas either temporally or seasonally flooded (flood lands). The intention is to protect the health, safety and welfare of the general people; to reduce negative environmental impacts within natural waterways; and to protect and preserve natural drainage system to ensure their proper and continued functioning." (emphasis added).

Whether Madhumati contravenes Jaladhar Ain,2000 (Act 36 of 200)? The object of Jaladhar Ain,2000 is protection of "Prakritik Jaladhar" mainly for the purpose of proper drainage of flood and rain water in Dhaka City. Conversion of

"Prakritik Jaladhar" into a housing project is not permissible. The definition of "Prakritik Jaladhar" has been given in clause `চ' of section 2 of the Ain as under :

> (চ) "প্রাকৃতিক জলাধার" অর্থ নদী, খাল, বিল, দীঘি, ঝর্ণা বা জলাশয় হিসাবে মাষ্টারপ্ল্যানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্যা প্রবাহ এলাকা হিসাবে ঘোষিত কোন জায়গা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমি ও ইহার অন্তর্ভুক্ত হইবেঃ (emphasis supplied)

Having gone through the definition, it appears that Prakritik Jaladhar includes, amongst others, flood flow zone declared by the Government in the gazette notification. Flood flow zone has been categorized into (I) main flood flow zone, (II) sub-flood flow zone. It is contended on behalf of Metro Makers that the definition of Prakritik Jaladhar does not attract sub-flood flow zone. This contention does not stand to reason because flood flow zone is divided into main flood flow zone and sub-flood flow zone. In the definition of "প্রাকৃতিক জলাধার", the Legislature was very careful in choosing the words, 'বন্যা প্রবাহ এলাকা' and not placing the word 'প্রধান' before the words, বন্যা প্রবাহ এলাকা Therefore, Prakitik Jaladhar shall mean and include not only main flood flow zone but also sub-flood flow zone. Bilamalia and Boliarpur are Prakritik Jaladhar as they are declared in the gazette of new Master Plan as Sub-Flood Flow Zone. Even if the Master Plan is adjudged void, Bilamalia and Boliarpur answer inclusive definition of Prakritik Jaladhar Ain as they are low lands retaining rain water.

It is contended on behalf of Metro Makers that conversion of zones is also permissible under the Jaladhar Ain,2000. Though conversion of land is permissible, it does not authorize the authority to change the nature and character of the Sub-Flood Flow Zone for establishment of model housing, namely, Madhumati Model Town.

What would be the position of the third party purchasers who claim to be *bona fide* purchasers ? At the very outset, it is important to mention that the third party purchasers are not at all *bona fide* purchasers without notice. On 25.06.2001, Metro Makers first advertised for sale and the purchasers started purchasing from 21.11.2001. Long before that day, Savar plan and then the new Master Plan came into place restricting land use in the mouzas of Bilamalia and Boliarpur and the Jaladhar Ain,2000 came into operation on and from 05.02.2001. It is needless to mention that every man is presumed to know the legal position. Nothing is *bona fide* which is not done with due diligence. According to the gazette notification, they were required to make queries to the office of RAJUK whether houses could be built in the lands in question and whether RAJUK had

permitted the proposed land use. But third party purchasers did not make any such query. Their stand is that they relied upon the document, Annexure-X(1) which is an act of forgery. The two parts of the said document are incongruous, even then they did not make any inquiry about genuineness of the said document. Therefore, they cannot claim that they are *bona fide* purchasers without notice of the bar in respect of use of the lands in question and they are not entitled to get what they received from the High Court Division.

The concept of bona fide purchasers for value without notice is applicable only in respect of transfer of immoveable property and specific performance of contract for transfer of immoveable property and not in respect of use of immoveable property and it is an equitable principle which cannot override the bar placed by any statutory provision. In this connection, it is pertinent to quote the proviso to section 27A of the Specific Relief Act as under :

> "Provided that nothing in this section shall affect the right of transferee for consideration who has no notice of contract or the part performance thereof."

Similar proviso has also been appended to section 53A of the Transfer of Property Act. Having gone through section 27A of the Specific Relief Act and section 53A of the Transfer of Property Act, in general, and the similar proviso appended to both the sections, in particular, it appears that the concept of bona fide purchasers for value without notice cannot be availed of to circumvent the statutory provisions of Town Improvement Act and Jaladhar Ain,2000.

In the case of ***ETV Ltd. Vs. Dr. Chowdhury Mahmood Hasan, 54 DLR (AD)130***, it was argued that if the terristerial channel of ETV is closed down for no fault of the foreign companies, they will suffer heavy loss to which this Division answered stating as under :

> "The third party rights exist and fall with the Ekushey Television, since their interests are merged with that of ETV. The substantive legal principle in this regard is that every person is subject to the ordinary law within the jurisdiction. Therefore, all persons within the jurisdiction of Bangladesh are within Bangladesh rule of law. The foreign investors in ETV are no exception to this principle."

In the case of ***Sharif Nurul Ambia vs. Dhaka City Corporation, 58 DLD (AD)253***, the Government gave to Dhaka City Corporation certain plot for construction of car park earmarked in the Master Plan but the City Corporation

constructed shops in the said plot and allotted those shops to shopkeepers taking huge salami. This Division in the attending circumstances refused to recognize the alleged right of *bona fide* allottees and ordered stoppage of construction and demolition of the existing structure. This Court further held as under :

> "Accordingly, the construction of multistoried shopping complex by the respondent Nos.1 and 5 in the place reserved as public Car Parking Centre in the Master Plan cannot be allowed despite the stand taken by them that shops have been allocated to 341 persons on acceptance of portion of salami/rent from them by the respondent No.5.
>
> In the result, the appeal is allowed without any order as to costs. The judgment and order dated 06.02.2000 passed by the High Court Division in Writ Petition No.937 of 1995 is hereby set aside. It is declared that the construction of 'Udayan Market' undertaken by the respondent Nos.1 and 5 in the public Car Park Centre as earmarked in the Master Plan (Annexure-B) of respondent No.2 has been undertaken unlawfully, surreptitiously, for collateral purposes, against public interest and without any lawful authority and in violation of the condition of transfer/handing over of the land in question from the respondent No.4 to the respondent No.1. Appropriate action should also be taken by the respondent Nos.1 and 2 to comply the order of this Court within 60 days from the date of receipt of a copy of this order. The respondent Nos.1 and 5 are directed to stop construction of the multi-storied building and to demolish the structure, if any, already constructed."

An original owner cannot use the lands of two mouzas, namely, Bilamalia and Boliarpur, contrary to the bar created by the Legislature and his successors and purchasers, *bona fide* or otherwise can not claim a better right than the original owner had.

Majority of the third party purchasers have not acquired any title to the lands of two mouzas on the basis of their purchase from Metro Makers simply because the purchase of these lands by Metro Makers in excess of the ceiling fixed by P.O.No.98 of 1972 stood forfeited under article 12 of that Order.

Metro Makers in its written argument submitted before this Division admitted that it is true that those relevant laws are there and that it would be too much to expect

from laymen that they should have known the laws. Needless to say, ignorance of law is no excuse. Now they cannot escape the consequences of breach of different provisions of Town Improvement Act and the Jaladhar Ain,2000.

Whether the fundamental right claimed by the third party purchasers is protected under article 42 of the Constitution ? The third party purchasers tried to avail of the benefit of article 42 of the Constitution. Let us have a glimpse over sub-article (1) of article 42 of the Constitution as under :

> *"42(1). Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsory acquired, nationalised or requisitioned save by authority of law."*

Article 42 guarantees, subject to any law to the contrary, the right to acquire, hold and transfer any property. Thus this right cannot be claimed overriding any bar or prohibition imposed by law. Therefore, the purchasers cannot claim any right to a land which has come under the mischief of P.O.No.98 of 1972. Equally some of the purchasers who are not adversely affected by the provision of article 12 of P.O.1972 cannot claim any right to purchase the land overriding the restriction imposed by new Master Plan and the Jaladhar Ain. On the other hand, protection of the environment and ecology has been recognized as a component of right to life guaranteed by articles 31 and 32 of the Constitution. In the case ***Dr. Mohiuddin Faroque Vs. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and others (1997) 49 DLR (AD)01,*** it has been held as under :

> *"It is said that any ecological disaster is an economic disaster. Environment and ecology are now matters of universals concern. The World Commission on Environment and Development in its landmark report, 'Our Common Future', made it clear that the environment, natural resources and life support systems of our planet have continued to deteriorate, while global risks like those of climate change and ozone depletion have become more immediate and acute. Yet all the environmental deterioration and risks we have experienced to date have occurred at levels of populations and human activity that are much less than they will be in the period ahead. And the underlying conditions that*

have produced this dilemma remain as dominant driving forces that are shaping our future and threatening our survival (from Statement by the Secy-Gen., UNCED, at the opening of the Earth Summit at Rio de Janeiro, Brazil, 3 June 1992)"

In the case of ***Sharif Nurul Ambia (ibid),*** this Division relied upon the case of Lakshmipathy Vs. Karnataka, AIR 1992 Karnataka 57, a portion of which is as follows :

> "The right to life inherent in Article 21 of the Constitution does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the Court would not hesitate to use its innovative power within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Specific guarantees Article 21 unfold penumbras shaped by emanations from those constitutional assurances which help give them life and substance. In the circumstantial context and actual back-drop, judicial intervention is warranted, especially since the Supreme Court of India have already laid the foundation of justice activism in unmistakable language of certainty and deep concern."

The right to life of overwhelming number of residents of Dhaka City cannot be overlooked and the third party purchasers cannot claim any relief *dehors* the fundamental right of the residents of Dhaka City under articles 31 and 32 of the Constitution.

Whether Metro Makers has any obligation towards the third party purchasers? By publishing advertisements to various national dailies Metro Makers invited people to purchase plots in Modhumati Model Town without disclosing the fact that it has not obtained the required permission from the concerned authority. In respect of filling up the nal lands for the purpose of housing, there is a bar in the new Master Plan and the Jaladher Ain. The third party purchasers admitted that they were convinced by Annexure-X-1, the so-called permission of RAJUK in respect of development of the lands in question. In this situation, the third party purchasers can not be allowed to construct houses to the serious depredation of environment and ecology. Other means of

compensating the loss of the third party purchasers have to be adopted. Metro Makers having led this purchasers through the garden path must be compelled to return the money that they received from the purchasers together with such compensation as may appear to be just and proper. In the case of ***Manju Bhatia vs. New Delhi Municipal Council,(1997) 6 SCC 370,*** the defendant sold unauthorizedly constructed flats which were demolished by the Municipal Council, the Court ordered the builder-respondent to pay to each of the flat owners Rs. sixty lacs in compensation including the amount paid by the flat owners observing, "*in the tort liability arising out of contract, equity steps in and tort takes over and imposes liability upon the defendant for unquantified damages for breach of the duty owed by the defendant to the plaintiff.*" Similar view has also been taken in the case of ***Rural Litigation and Entitlement Kendra vs. State of U.P.,(1985)2 SCC 431 in para 12 as under:***

> "The consequence of this Order made by us would be that the lessees of lime stone quarries which have been directed to be closed down permanently under this Order or which maybe directed to be closed down permanently after consideration of the Report of the Bandyopadhyay Committee, would be thrown out of business in which they have invested large sums of money and expended considerable time and effort. This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment. However, in order to mitigate their hardship, we would direct the Government of India and the State of Uttar Pradesh that whenever any other area in the State of Uttar Pradesh is thrown open for grant of lime stone or dolomite quarrying, the lessees who are displaced as a result o9f this order shall afforded priority in grant of lease shall be given to the lessees who are displaced so that they can apply for grant of lease of such area and on the basis of such application, priority may be given to them subject, of course, to their otherwise being found fit and eligible. We have no doubt that while throwing open new areas for grant of lease for lime stone or dolomite quarrying, the Government of India and the State of Uttar Pradesh will take into account the considerations to which we have adverted in this order."

Whether there is any legal bar to acquiring more than 100 bighs of land under President's Order (P.O) No.98 of 1972 ?

This issue had been exhaustively argued by both the sides before this Division. This issue was also raised before the High Court Division which, however, failed to give any finding in this regard. This Division is, however, not precluded from addressing the issue on the basis of materials on record. Therefore, we have decided to address this issue.

P.O.98 of 1972 as amended till date contains restrictions in article 3 (a) and (b) to retain or to acquire any land over the limit, that is, hundred bighas. These restrictions apply equally to a family or to a body.

In its writ petition, BELA obtained an order of injunction against which Metro Makers filed an application for vacating the interim order and claimed to have purchased 350 acres in the aforesaid two mouzas as is evident at page No.295 of paper-book No.2. In the affidavit-in-opposition to the said application BELA pointed out that because of the ceiling fixed by P.O. No.98 of 1972 no "body" can own more than 100 bighs of land at a given time. At page 33 of its concise statement Metro Makers stated that it bought 550 acres of land in the two mouzas. At the very beginning of the argument in appeal, this issue came into consideration to which the reply of Metro Makers was that Metro was continuously buying and selling the lands so that Metro Makers did not own more than 100 bighas of land at any given time. The reply does not stand scrutiny. What is important to note here is that Metro Makers has not produced any evidence of selling any part of the lands purchased in the two mouzas before 2001. On the contrary, the documents produced by Metro Makers show that Metro Makers for the first time on 25.06.2001 published advertisement in the daily Ittefaq inviting people to purchase plots in Modhumati Model Town. On the other hand, Metro Makers has furnished list of the documents executed and registered by it selling plots in Madhumati Model Town. The list shows that the first deed executed and registered by it is dated 21.11.2001. Therefore, the irresistible conclusion to be reached is that Metro was holding lands much in excess of the ceiling fixed by P.O. No.98 of 1972 and the excess land stands forfeited to the Government under article 12 of P.O.No.98 of 1972 much to the detriment of the project of Metro Makers.

It is a truism that right to life includes right to protection and improvement of environment and ecology. Even if there could not have been any law imposing restriction relating to the use of the nal lands in the areas in question which operate as reservoir of flood and rain water. If these lands are filled up it will cause serious problem in draining out water resulting from flood and rain and the affected people can compel the authorities through judicial review to take steps to preserve and protect health, environment and ecology in the Metropolitan areas. The fundamental right of the third party purchasers cannot override the fundamental right of overwhelming number of residents of the metropolis under articles 31 and 32 of the Constitution.

BELA in its writ petition prayed for (I) direction to protect the Sub-flood Flow Zone of Bilamalia and Bailarpur mouzas within Savar Police Station of Dhaka near Aminbazar from illegal earth filling and (II) declaration that Madhumati Model Town project is unauthorized and in violation of Jaladhar Ain,2000. The facts and circumstances of the case, the documents placed on record and the law cited and discussed before clearly establish BELA's contention that Bilamalia and Bailarpur mouzas within Savar Police Station of Dhaka have been treated as Sub-flood Flow Zones in the Master Plan and there should not be any construction within this zone and that too without the permission of RAJUK and the earth-filling which has taken place in this zone is in violation of the provisions of the Jaladhar Ain,2000. The pleas of Metro Makers that they obtained permission from RAJUK on 29.05.1995 or at any rate there having been no requirement of prior permission, they can still apply for and obtain permission of RAJUK and that the interest of huge number of persons who have *bona fide* purchased plots developed by them may not be prejudiced cannot stand scrutiny and are untenable. The concept of *bona fide* purchase without notice has no application outside the realm of contract and cannot be introduced to overcome statutory bar; nothing is *bona fide* which is not done diligently and the third party purchasers having had the opportunity of verifying facts before purchase and not doing that cannot be taken to be innocent purchasers. At any rate, they cannot claim protection in derogation of the right of millions of residents of the Dhaka City to have environment free from depredation. Metro Makers having not obtained permission from RAJUK, the High Court Division rightly discharged the Rule in the writ petition of Metro Makers but the High Court Division was not right in making the Rule in BELA's writ petition absolute in part.

This Division previously exercised the power of doing complete justice under Article 104 of the Constitution in several cases including the cases of ***Gannysons***

Ltd. and another Vs. Sonali Bank and others, (1985)37 DLR (AD)42 and AFM Naziruuddin Vs. Mrs. Hameeda Banu (1993)45 DLR (AD)38. The subject matter of the instant case not only represents an occasion to, but also demands, exercise of this power by this Division for the avowed purpose of protection of environment. Madhumati Model Town project in Bilamalia and Bailarpur Mouzas is declared unlawful and Metro Makers are directed to restore the wetlands of these two mouzas to its original state within six months from the date of availability of the certified copy of the judgment, failing which, RAJUK is directed to undertake the work of restoration of these wetlands and recover the cost of restoration from Metro Makers and their directors treating the cost as a public demand. Though the third party purchasers may not be treated as *bona fide*, yet it is a fact that they have been roped in by Metro Makers by misrepresentation that permission for the development work had been obtained from RAJUK and justice demands that they should be compensated. Accordingly, Metro Makers are further directed to refund the purchasers double the amount of the money including the cost of registration of the deeds of sale received by them from the purchasers within six months from the date of availability of the certified copy of the judgment.

Accordingly, Civil Appeal No.256 of 2009 and Civil Appeal Nos.254-255 of 2009 are dismissed without any order as to costs. Civil Appeal No.253 of 2009 is allowed without any order as to costs and Civil Petition for Leave to Appeal No.1689 of 2006 is accordingly disposed of in the light of the above judgment.

Let a copy of this judgment be transmitted to the Ministry of Land of the Government of Bangladesh for necessary action under Presidential Order No.98 of 1972.

J.

Muhammad Imman Ali, J. : I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Syed Mahmud Hossain, J. I agree with the reasoning and findings given by Syed Mahmud Hossain, J.

J.

Md. Shamsul Huda, J. : I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J. and Syed Mahmud Hossain, J. I agree with the reasoning and findings given by Syed Mahmud Hossain,J.

J.

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

Present:

Mr. Justice A.H.M. Shamusddin Choudhury

AND

Mr. Justice Sheikh Md. Zakir Hossain

SUO MOTU RULE NO. 19 OF 2010[2]

IN THE MATTER OF :
An application under Article of the Constitution of the People's Republic of Bangladesh;

AND

IN THE MATTER OF :

The State

... Petitioner

-VERSUS-

Government of Bangladesh and others

... Respondents

Mr. D.H.M. Munir Uddin, Advocate

... For the Petitioner

Mr. Rokanuddin Mahmud, Advocate

... For the Respondents

Mr. Akhtar Imam and
Mr. Fida M. Kamal
Mr. Anisul Huq

[2] The judgment has been appealed against

Mr. Manzil Murshed and
Ms. Syeda Rizwana Hasan
Mr. M. Iqbal Kabir, Advocates
... As Amicus Curiae.

Heard on: 22.02.2011, 13.03.2011 15.03.2011 and 20.03.2011 and Judgment on: 03.04. 2011.

A.H.M. Shamsuddin Choudhury, J. : The Rule under adjudication, issued suo motu, on 03-10-2010, was in following terms:

> "Let a Suo Motu Rule issue to show cause as to why the respondents, namely (1) Government of Bangladesh represented by the Secretary Ministry of Housing and Public Works, Bangladesh Secretariat, Dhaka (2) Chairman, Rajdhani Unnayan Kartripakkha (RAJUK), 1 RAJUK Avenue, Dilkusha Commercial Area, Dhaka 3) President, Bangladesh Garments Manufactures and Exports Association (BGMEA), Hatirjheel, Dhaka 4) Authorized Officer (Building Construction), RAJUK, Dhaka 5) Deputy Commissioner, Dhaka and Commissioner, Dhaka Metropolitan Police, Park Avenue, Dhaka should not be directed to take necessary and appropriate steps in accordance with law to demolish the BGMEA Building located at Hatirjheel, Dhaka, being an unauthorized construction, and as to why they should not be directed to take appropriate steps against the concerned officials for failing to discharge their respective duties in accordance with law and/or pass such other or further order or orders as to this Court may seem fit and proper."

As clippings from an English vernacular daily, named, New Age, published a feature under the caption, "No Plan to Demolish Unauthorised BGMEA Building Soon", was brought to the attention of a differently constituted Bench of this Division. The said Bench issued a Suo Motu Rule, requiring the respondents to show cause in terms as stated above.

The Newspaper feature, referred to above, which was attributable for the issuance of the Rule under review, is reproduced below, verbatim in the interest of clarity;

> "The government has no plans to immediately demolish the unauthorised BGMEA Building, obstructing the ongoing city beautification work surrounding the Hatirjheel-Begunbari lake, said the state minister for housing and public works.

The 15 storey building stands defying the law as a tall and odd Monumental structure to eclipse the main lake, at least partially, said citizens' and environmental groups.

The state Minister, for Housing and public works, Abdul Mannan Khan, told New Age that he would wait and see whether or not the Bangladesh Garments Manufactures and Exporters Association leaders voluntarily demolish the building.

As it creates a chaotic situation, whenever the government demolishes a structure, we expect a change in the mindset of the BGMEA functionaries and at the same time we want the project work to proceed, he said.

If we see that the building is obstructing the project, we will fix the problem through consultations with the BGMEA leaders,' he said.

Hopefully, they would realise the problem, he said.

The Tk. 1,480 crore project of Rajdhani Unnayan Kartripakkha, was planned long ago to restore and preserve as much as possible the remnants of the Hatirjheel and Begunbari lakes, with the Moghbazaar-Tejgaon section of the Tongi Diversion Road, dividing them.

The project envisages construction of circular roads around the two lakes, once part of a long canal, which had taken off and fell into rivers, passing by the city.

Environmentalist recalled many of the 78 canals that once criss-crossed through the historic Dhaka City, now only live in the memory of senior citizens as land grabbers virtually took them all for personal gains.

One can see the unmistakable impact of the grabbing, they said, whenever the city suffers water logging after rains.

The Hatirjheel-Begunbari project suffered setbacks due to irregularities as well as grabbers swallowing much of the lake areas.

BGMEA built its building without caring to take approval from Rajuk, the city development authority under the Ministry of housing and public works.

Rajuk chairman told New Age that it's a matter of political decision whether or not the unauthorised BGMEA Building would be demolished.

Rajuk will demolish the “illegal” structure only after it gets the green signal from the government”, he said.

The prime minister, Sheikh Hasina, inaugurated the construction of BGMEA in her first tenure in November 1998.

Subsequently, on its completion, the then prime minister Khaleda Zia inaugurated the building in October, 2006.

During the two years the military backed emergency caretaker government ran the country, Rajuk fined BGMEA a nominal penalty of taka 12.5 lakh for building the structure without obtaining its approval.

The law empowers and requires Rajuk to demolish all unauthorised structures.

Rajuk Chairman, however, said that payment of a fine does not mean BGMEA got an approval for its unauthorised building.

BGMEA vice president Saiful Islam Mohiuddin told New Age that the incumbent government can demolish the building only if it considered the lake to be more important than BGMEA.

He also said that Rajuk took fine for not being able to build a bridge on the lake, adjacent to the BGMEA Building, during that tenure of the emergency caretaker government.

Citizens’ groups and environmentalists have been demanding that the unauthorised building at a vantage point of the city be demolish without further delay.

They say that there was no scope whatsoever, to save the building, built on government land in gross violation of two laws, including the Environment Wetland Protection Act, 2000.

BGMEA, they said, built the building filling up a part of the lake.

Dhaka Metropolitan Development Plan (DMDP) prohibited any change in the character of Begunbari, the remnant of a natural canal, and designated it as a flood flow zone of the city.

Rajuk must immediately demolish the unauthorised structure, said Bangladesh University of Engineering and Technology Professor Mujibur Rahman, also the leader of the team which studied the feasibility of the Hatirjheel-Begunbari project.

After enjoying and enormous advantage from the government, BGMEA should respect public interest and demand, said, Dhaka University Teacher Muntasir Mamun, a campaigner against grabbing of water bodies.

Allowing this unauthorised building to stand, he said, would mean that the law is not equally applied for all.

It would, he said, obviously give birth to questions about the intentions of the government.

Rajuk must demolish buildings in the list of unauthorised structures it had prepared without any discrimination, said Abdullah Abu Sayeed, the founder of Biswa Shahitya Kendra.

> “It stands, defying the law in the heart of the city’, he said.
>
> He described the BGMEA Building as an unmistakable symbol of unauthorised construction to inspire others to violate the law.
>
> University Grants Commission Chairman, Nazrul Islam, said in the best interest of the Hatirjheel Beautification Project, the BGMEA building should be demolished.
>
> Bangladesh Environmental Lawyers Association executive director Syeda Rizwana Hasan said that the law required Rajuk to demolish the building without waiting for a political decision.
>
> If law is subject to politics, justice can never be ensured, she commented.”

The allegations as figured in the reproduced Article, in the succinct form, divulges that Bangladesh Garments Manufacturers and Exporters’ Association, BGMEA for short, erected a sky scrapper (henceforth the building), barren of Rajdhani Unnayan Kartripakhya’s (RAJUK) approval in the location which used to be a canal, named, Begun Bari Canal, in the olden days, through which water flew to rivers and thereby kept the part of the city free from water logging and impurities. The reproduced feature also suggests that the unauthorised erection of the

building also stands as a major stumbling block in implementing ambitious Hatirjheel Project. It is claimed that RAJUK appears to be emasculated in purging the illegalities that has been perpetrated by BGMEA: it went no further than imposing a meager amount of fine.

Following the issuance of the Rule, BGMEA, which had been impleaded as the respondent No. 3, filed its pleading, stating inter alia, that the subject building is not liable to be demolished as the same was erected in compliance with all the dictates of law, inclusive of what the Building Construction Act 1952, stipulates. According to this respondent's claim, an application was duly tabled before an Authorised Officer of RAJUK, seeking approval for its plan to erect a 15 storied building on 0.66 acres of land at 23/1 Panthapath Link Road at the Karwan Bazar Area of the city, which land is owned by the said respondent as being an allottee from the Export Promotion Bureau (EPB), an offshoot of the Ministry of Commerce. An approved site plan of BGMEA for the construction of a multistoried building was issued under the signature of RAJUK's secretary on 14th July 2003, pursuant to a decision taken in one of RAJUK's general meetings.

The approval was, however, accorded subject to certain covenant.

BGMEA also successfully applied for clearances and authorisation from other concerned authorities.

By a communication dated 27th January 2004, RAJUK intimated BGMEA that the Building Construction Committee had accorded approval to the earlier's plan and requested it to submit further documents and BGMEA obliged.

By another communication, dated 20th August 2006, RAJUK asked BGMEA for an undertaking to remove certain structures from such spaces which were meant to remain vacant as per the approved plan and to pay a sum of Tk. 12,50,000 as penalty for having commenced construction work before procuring approval.

By a letter dated 29th August 2006, RAJUK informed BGMEA that the plan had been approved, yet, delivering the same would be delayed pending receipt of a dossier from the Bangladesh University of Engineering and Technology (BUET) on Hatirjheel Project. In the face of RAJUK's indolence even after it received BUET's dossier, BGMEA approached the earlier, seeking delivery of the approved plan, stating that it had already kept 2.41 kathas of land vacant as per the earlier's dictate for the proposed lake.

By another memo dated 27th March 2007, RAJUK intimated BGMEA of its approval for the 2 level basement and 15 storied building and that the latter would be required to build an aesthetically spectacular bridge over the canal in front of the building and to pay a sum of Tk. 1250000 as penalty. BGMEA obliged and informed RAJUK that it had taken steps to construct the said bridge and had submitted plans to RAJUK and the Water and Sewage Authority (WASA) and repeated the request for the delivery of the approved plan.

BGMEA, through its said pleading, continued to say that the Export Promotion Bureau (EPB for short), upon approval of the Ministry of Commerce, allotted the subject land to BGMEA to enable it to construct its building.

BGMEA went on to say that RAJUK never issued any notice upon it alleging any breach of any provision of the Building Construction Act 1952 (henceforth the Act) or requiring BGMEA to remove its building or any part thereof. No other authority labeled any aspersion as to any violation either.

BGMEA subsequently filed yet another affidavit in opposition in supplementation to its original pleading, tabling such assertions which run as follows;

BGMEA was allotted .66 acres of land from several dags of Mouzas Boramoghbazar and Begunbari, pursuant to an agreement sealed between itself and the EPB, dated 7th May 2001. Clause 2 of the said covenant stipulates that in the event of any dispute on the title to the land, the responsibility shall lie on EPB.

BGMEA has in fact been vested with .63 acres of land from C.S. dags No. 208 and 209 and .03 acres from C.S dag No. 105 and the building has been constructed on .63 acres of land on dags No. 208 and 209, leaving 2.41 katha on the northern side vacant, which is contiguous to the land in CS dag No. 105, which is indeed Begunbari Canal. BGMEA has erected no structure on that land. As per RAJUK's desire, BGMEA is to build a connecting bridge on this land.

Land allotted to BGMEA by EPB is part of the land which had been transferred by the Railway authorities to EPB. Initially, possession of 6.12 acres of land was conveyed by the Railway to EPB, but finally, by a registered Title deed, dated 17th December 2006, 5.55 acres of land were transferred for a consideration of Tkd. 43,56,86,274.00. The land allotted by EPB to BGMEA is thus, within the admeasurements of land purchased by EPB from Bangladesh Railways. BGMEA has fully paid the consideration due to EPB in installments. EPB requested BGMEA by a letter dated 26th April 2010 for the payment of the residual amount of Tk. 2,62,35,284.00 which remained outstanding, and that BGMEA had, by a

pay order under cover of a letter dated 21st October 2010, had cleared the same and that BGMEA has, ever since, been pursuing for the execution of a registered deed of conveyance in its favour, the last such request being on January 2011.

As the Rule matured we invited a number of bodies, having genuine interest and concern on the matter, who are familiar with relevant facts and laws, to assist us as amicus curiae, Bangladesh Environmental Lawyers' Association (BELA) being one of such bodies. BELA duly obliged by filing an affidavit, fully impregnated with invaluable facts and information, supported by documents annexed, which are recorded below in conspectus;

The erection of the building has been out and out illegal as the same has been done by filling up significant part of Begunbari Canal in breach of Wetland Protection Act (No. Act 36 of 2000) and the Environment Conservation Act 1995. The construction has been carried out barren of nod from the concerned authorities such as the respondents No. 1, the Department of Environment etc. No prior approval for filling in Begunbari Canal was taken, notwithstanding mandatory statutory requirement to that effect. The respondent No. 3 concealed the fact that the building was on Begunbari Canal when it submitted plan for the building.

> "All of the statutory and semi statutory agencies, including those that purported to transfer the land to BGMEA, states BELA, "quite conveniently and designedly obliterated these facts." The authorities concerned, in according clearance for the building, also played the same kind of gimmick. BELA obtained precious documents of extreme rarity by invoking Right to Information Act 2009 and enclosed them with its pleadings, which enhanced the treasure trove preserved in this file". These instruments, states BELA through its pleadings, "reveal that the initial discussion on approval for the construction of a building by BGMEA led to the decision that out of the total of 40 kathas of land purportedly sold to the body by EPB, 5.23 kathas had to be excluded from the construction as the same would adversely impede implementation of Hatirjheel-Begun Bari Project as well as of Begun Bari Canal". In a subsequent congregation, however, for some obscure and inexplicable reasons, unsupported by any rational attribution, the respondent no. 2 deviated from the earlier proposition and rescinded the embargo it previously imposed on 5.23 kathas of the BGMEA's land. The said respondent, instead, emerged with a fresh proposition to protect 2.41 kathas of land to the north of BGMEA land. Those documents further depict that merely a land use permit was accorded to BGMEA for construction of the building

> and there never was any permission for the actual construction itself of the same, nor was the building plan ever approved as per the requirement of Section 3 of the Building Construction Act 1952 and the Rules framed thereunder in 1996. It was clearly stipulated in RAJUK's letter dated 14th July 2003 that " ইমারত বিধিমালা মোতাবেক ইমারতের নক্সা রাজউক হতে অনুমোদন করতে হবে।"

Although the Building Construction Committee, in its meeting dated 2nd January 2004, resolved to conditionally approve the plan submitted by BGMEA, no approval letter was, as a matter of fact, issued, because of BGMEA's persistent failure to adhere to the conditions attached, and to halt the construction work it had commenced bare approval. BEMEA paid no heed whosoever either to the sanction of law or to RAJUK's dictation, requiring the earlier to refrain from any construction work before obtaining approval. Minutes of RAJUK's meeting dated 7th and 8th June and 2nd July 2006, divulge that BGMEA concluded construction of the 15 storied Building nude of any approval, in frenzied defiance of the laws of the land.

Over and above a decision to impose a penalty, RAJUK had also resolved to demolish such portion of the building which had been constructed in desolation of approval, by engaging the apposite provisions of the Building Construction Rules. RAJUK also required BGMEA to construct a bridge, for the purpose of paving an approach pathway in front of the Building to allow unhindered flow of the Sonargaon Lake, which included Begunbari Canal.

BGMEA haughtily discarded RAJUK's instruction to provide an undertaking to demolish unauthorised part of the structure.

BGMEA's high handed and, visibly arrogant, attitude reflects its abhorrent and weird resolve to project itself as being above law and demonstrate its ability to flout the law of the land with unfiltered impunity.

RAJUK has also exhibited its own apparent connivance with BGMEA's filthy perversion. It served no notice on the latter requiring it to demolish unauthorised construction and had also **travelled** far beyond the sanction of law, irrationally by drawing a fence between that part of the building that was included in the submitted plan (not approved) and that portion which was not so included, notwithstanding that the building as a whole was constructed without approval.

The respondent no. 2, RAJUK, also filed its own, independent, pleading to put on the **slade** the following assertions; BGMEA building was erected in conspicuous

violation of Section 3 of the Building Construction Act 1952 as well as in breach of "মহানগরী, বিভাগীয় শহর ও জেলা শহরের এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উম্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষনের জন্য প্রনীত আইন, (Act XXX VI of 2000).

Notwithstanding BGMEA's act of repulsive vilification in constructing the building, infecund of approval, no step, save imposition of a negligible penalty, has been taken to purge the violation: no step to demolish the building. BGMEA applied to RAJUK on 9th September 2002 for a clearance certificate for constructing the 15 storied building on an area of 0.66 acres on Dag nos. 208, 209 of Baro Magh Bazar Mouza. The Environment Directorate then channeled a communication to RAJUK, with a query as to whether or not the latter had consented for the use of the land on the basis of the application that had been filed to the aforementioned Directorate.

Land measuring 0.66 acres, out of 6.12, that was proposed to be leased to BGMEA was claimed to have been owned by EPB, which obtained nod from the Ministry of Commerce in September 1998 to convey it to BGMEA. EPB then executed a deed extending permission to BGMEA only to use the land, inserting a stipulation therein that it would be open to BGMEA to take necessary plan to construct a multi storied building to be passed by RAJUK. RAJUK initially objected to the use of 5.23 kathas as the same was linked with the proposed lake, but, then, eventually, agreed to accede to the proposition that 2.41 kathas could be given away by BGMEA to RAJUK for the balanced development of the proposed lake. It was, however, also emphasised that BGMEA would not acquire any title over the land by virtue of the said agreement.

BGMEA then commenced construction work without procuring RAJUK's approval. As this factum came to RAJUK's know, it imposed a penalty to the tune of Tk 12,50,000 and resolved to dismantle that portion of the Building for which approval was not asked for in its submitted plan. BGMEA eventually paid the penalty on 14th May 2007.

At the very inception of the hearing, what emerged to us to be the issue of much greater import was the question as to the title to the land, whereas the questions as to approval etc turned out to be of secondary introspection.

We did, therefore, direct the Deputy Commissioner (DC), Dhaka to depute an official, familiar with relevant information on the title to the postulated land, to appear before us with all the relevant documents and volumes. In compliance with that direction, one Khurshid Ahmed, a land surveyor at the DC's office, turned up with the volumes and dockets retained in the district administration office and

made the same available for our browsing and scanning. Mr. ABM Altaf Hussain, the learned Deputy Attorney General, read the texts in the **docets** over to us as part of his submission. None of the learned Advocates raised any dispute as to the authenticity of any of these **docets**.

Facts that emerged from these documents, are figured below in the original language. There is nothing in BGMEA affidavit to assert otherwise;

সুমোটো রুল ১৯/২০১০

বিষয়- বি জি এম ই এ এর কথিত মালিকানা জমির বিস্তারিত ইতিহাস।

বাংলাদেশ রেলওয়ে বিভাগ রেলওয়ে স্কিমের মাটি কাটার জন্য এল,এ, কেস ১৬/৫৯-৬০ এর মাধ্যমে ৫টি মৌজা হইতে যথাক্রমে ১। রাজার বাগ ২। শহর খিলগাওঁ ৩। বড় মগবাজার ৪। বেগুন বাড়ি। ৫। বাগনোয়াদ্দা ৬। কাওরান, হইতে সর্ব মোট ৫৮.৫৮ একর সম্পত্তি সি,এস, রেকর্ডিও মালিকদের নিকট হইতে অধিগ্রহণ করা হয়। রেলওয়ে বিভাগকে উক্ত সম্পত্তি ১৮-১-১৯৬০ খ্রিঃ সালে দখল হস্তান্তর করা হয় এবং ২৮-০৩-১৯৬৮ খ্রিঃ সালে গেজেটে প্রকাশ করা হয়। পরবর্তি পর্যায়ে বাংলাদেশ রেলওয়ে বিভাগ বিশ্ব বানিজ্য কেন্দ্র স্থাপনের জন্য রপ্তানী উন্নয়ন ব্যুরোকে উপরে উল্লেখিত অধিগ্রহণ জমি হইতে ৬.১২ একর সম্পত্তি ০৫-০২-২০০৮ খ্রিঃ তারিখে হস্তান্তর করার সিদ্ধান্ত হয় যাহা বির্তকিত, যাহার বিবারন।

মৌজা নং	দাগ নং	পরিমান	বিজিএমই এর বরাদ্দকৃত জমির পরিমান
বড় মগবাজার-২৮০	২০৩(অংশ)	০.৯২ একর-	. . . . .
	২০৮(অংশ)	৩-৯০ একর	০.৪১ একর
	২০৯	০.৫৮	. . . . .
বাগনোওদ্দা-২৮১	১(অংশ)	০.২২ একর	০.২২
বেগুন বাড়ি-২৭৯	২০৫(অংশ)	০.৫০ একর	০.৩

উক্ত সম্পত্তির কাতে ৫.৫৫৫ একর সম্পত্তি ১৭-১২-২০০৬ খ্রিঃ তারিখে ৬৬৮১ নং দলিল মূলে রপ্তানী উন্নয়ন ব্যুরোকে বাংলাদেশ সরকারের মহামান্য রাষ্ট্রপতির পক্ষে বিভাগীয় এস্টেট অফিসার বাংলাদেশ রেলওয়ে সাফ কবলা দলিল সম্পাদন করিয়া দেন। যাহার তফসিল বিবারন নিম্নরূপঃ-

জিলা-ঢাকা, থানা-রমনা ও সাব রেজিস্ট্রি অফিস ঢাকা সদর অধীন।

ভুমি অফিসের নাম/বিবরণঃ বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয়।

মৌজাঃ-সাবেক ২৮০ নং বড় মগবাজার স্থিত।
সাবেক ২০৩(দুইশত তিন) নং দাগের ০.৮৬১৪ একর, ২০৮ (দুইশত আট) নং দাগের ৩.৫২৪৬ একর এবং ২০৯ (দুইশত নয়) নং দাগের ০.৫৬০০ একর, মোট ৪.৯৪৬ একর।

জিলা-ঢাকা, থানা-তেজগাওঁ ও সাব-রেজিস্ট্রি অফিস মোহাম্মপুর অধীন।

ভুমি অফিসের নাম/বিবরণঃ-বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয়।

মৌজাঃ- সাবেক ২৭৯ নং বেগুনবাড়িস্থিত।

সাবেক ১০৫(একশত পাচঁ) নং দাগের ০.৪০৯৫ একর।

জিলা-ঢাকা, থানা-রমনা ও সাব-রেজিষ্ট্রি অফিস ঢাকা সদর অধীন।

ভুমি অফিসের নাম/বিবরণঃ-বার্ষিক খাজনা সহকারী কমিশনার (ভুমি) স্থানীয় তহশীলে অফিসে আদায় হয়।

মৌজাঃ-সাবেক ২৮১ নং বাগনোয়াদাস্থিত।

সাবেক ০১(এক)নং দাগের ০১১৯৯৫ একর।

একুনে তিন মৌজায় সাবে ৫টি দাগে মোট ৫.৫৫৫ (পাচঁ দশমিক পাচঁ পাচঁ পাচঁ)একর।

উক্ত দলিলে জমির শ্রেণী হিসাবে ১৮ নং অনুচ্ছেদে ডোবা দেখানো হইয়াছে। বি,জি,এম,ই এর সাফলিমেন্টারী এফিডেভিট এনেক্সচার ''কে-২'' পৃষ্ঠা ২০ কথিত বিজিএমইএর কথিত বিল্ডিং এর জমি বরাদ্দের চুক্তি পত্র (অরেজিষ্ট্রিকৃত) সম্পাদিত হয় ০৭-০৫-২০০১ খ্রিঃ তারিখে যাহার তফসিল নিম্নরূপঃ-

মৌজা জে, এল, নং	সি, এস, দাগ নং	মোট জমির পরিমান	বরাদ্দকৃত জমি
বড় মগবাজার-২৮০	২০৩	০.৯২ একর	তিন দাগের কাতে
	২০৮	৩.৯০ একর	০.৪১ একর
	২০৯	০.৫৮	
বাগনোয়াদ্দা-২৮১ ০১	০.২২	০.২২ একর	
বেগুন বাড়ি-২৭৯ ১০৫	০.৫০	০.৩ একর	

(বিজিএমই এর এফিডেভিট ইন অপজিশন এনেক্সার ''আই ২'' পৃষ্ঠা ১৫) কিন্ত বাংলাদেশ রপ্তানি উন্নয়ন ব্যুরো বিশ্ব বানিজ্য কেন্দ্রের জন্য ৮-৯-১৯৯৮ খ্রিঃ তারিখে বিজিএমই এর এনেক্সার ''আই'' সিরিজ, পৃষ্ঠা ৪৯ কথিত যে সম্পত্তির বরাদ্দ অনুমোদন করেন তার তফসিল নিম্নরূপঃ-

মৌজা জে, এল, নং	সি, এস, দাগ নং	মোট জমির পরিমান	বরাদ্দকৃত জমি
বড় মগবাজার-২৮০	২০৩	০.৯২ একর	
	২০৮	৩.৯০ একর	০.৪১ একর
	২০৯	০.৫৮একর	
বাগনোয়াদ্দা -২৮১১	.২২	.২২ একর	
বেগুন বাড়ি-২৭৯ ১০৫	.৫০ একর	০.৩একর	
		০.৬৬ একর	
মোট-			

সার্বিক পর্যালোচনা বিজিএমই এর পক্ষে ৭-৫-২০০১ খ্রিঃ তারিখে অরেজিষ্ট্রিকৃত একটি বরাদ্দ পত্র ছাড়া আর কোন মালিকানা দলিল পত্রে পাওয়া যায় নাই, সার্বিক বিবেচনায় আর দেখা যায় যে কথিত যে সম্পত্তিতে বিজিএমই এর বিল্ডিং নির্মিত হয়েছে সি, এস, জরিপের পরে আর কোন জরিপ কিংবা হাল নাগাত কোন নাম জারি দেখা যায় নাই। বিজিএমইএ কথিত নালিশি সম্পত্তিতে ভবন নির্মানের জন্য রাজউক বরাবরে বিগত ১১-০১-২০০৩ খ্রিঃ তারিখে ২০৮ ও ২০৯ নং দাগে বেগুনবাড়ী (কাটা)/বড়মগবাজার মৌজার সম্পত্তিতে ইমারত নির্মান অনুমোদন চাহিয়া আবেদন করেন করেন যেখানে মালিকানার প্রমান হিসাবে সংযুক্ত করেন ক্রয় সূত্রে দাবি করিয়া দলিলের কপি সংযুক্ত করেন যাহা দরখাস্তে উল্লেখ আছে।

কথিত নালিশি ভূমিতে ইমারত নির্মান আইনের ''৩ খ'' ধারার বিধান অনুযায়ী মঞ্জুরী লাভ ব্যাতিত বিজিএমইএ তথায় ১৫ তলা ইমারত নির্মান করিয়াছেন পরবর্তীতে রাজউক উক্ত অনঅনুমোদিত ভবনের কিছু অংশ অপসারন পূর্বক ভাঙিয়া ফেলার শর্ত সাপেক্ষে ৫০,০০০/- হাজার টাকা জরিমানা এবং নির্ধারিত ফি এর ১০ গুন ফি তথা ১২,৫০,০০০/- টাকা ফি আদায় সাপেক্ষে কথিত নক্সাটি অনুমোদনের সিদ্ধান্ত হয়। কিন্ত বিজিএমইএ কর্তৃপক্ষ রাজউকের সিদ্ধান্ত প্রতিপালন করেন নাই, বিজিএমইএ ভবনের বিভিন্ন ফ্লাট বিভিন্ন ব্যক্তি ও প্রতিষ্ঠানের নিকট আর্থিক ভাবে লাভবানের জন্য বরাদ্দ ও হস্তান্তর করিয়া বহাল তবিয়াতে আইনের প্রতি শ্রদ্ধা না দেখাইয়া মাথা উচু করিয়া দাড়াইয়াছে।

এই অবৈধ ভবনটি আইন অমান্য করিয়া সরকারী জলাদার এর উপর অবৈধ ভাবে নির্মিত বিল্ডিং এর একটি প্রতিবেদন ডেইলি নিউ এজ, পত্রিকায় ২-১০-২০১০ খ্রিঃ তারিখে প্রকাশিত হইলে সুপ্রীম কোর্টের এক জন বিজ্ঞ আইনজীবি জনাব ডি, এইচ, এম, মনির উদ্দিন বিজ্ঞ আদালতে দৃষ্টি আর্কশন করিলে অত্র আদালতের একটি বিজ্ঞ দ্বৈত বেঞ্চ যাহা বিচারপতি জনাব জুবায়ের রহমান চৌধুরী এবং বিচারপতি মিসেস ফারাহ মাহবুব এর দ্বারা গঠিত বেঞ্চ ০৩-১০-২০১০ খ্রিঃ তারিখে অত্র সুমোটো রুল জারি করেন।

অত্র রুলের বিষয় হচ্ছে বিজিএমইএ ভবনটি ইমারত নির্মান আইন ১৯৫২ এর ৩ (তিন) ধারার বিধান ভঙ্গ করিয়া এবং মহানগরী, বিভাগীয় শহর, জেলা শহর, পৌর এলাকা সহ দেশের সকল পৌর এলাকার খোলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন ২০০০ এর ব্যর্তায় ঘটিয়া অবৈধ ভাবে নির্মিত কিনা তাহাই মূখ্য বিষয়।

সার্বিক পর্যালোচনায় এবং দাখিল কৃত কাগজপত্র হইতে দেখা যায় যে বিজিএমইএ নালিশি সম্পত্তিতে তাহাদের বির্তকিত মালিকানা লাভের পূর্বেই অনঅনুমোদিত নক্সার ভিত্তিতে নির্মান করিয়াছেন বিজিএমইএ দাখিল কৃত এনেক্সার ''কে-২'' হইতে দেখা যায় যে, রপ্তানি উন্নয়ন বুরো তথা বিজিএমইএ বায়া তথা রপ্তানী উন্নয়ন ব্যুরো উক্ত এনেকসারএ বর্নিত সাব কবলা মূলে মালিকানা দাবী করেন, যাহার তারিখ ১৬-১২-২০০৬ খ্রিঃ অথচ বিজিএমইএ কথিত ভবন নির্মানের জন্য কথিত ভবনের জায়গা ক্রয় সূত্রের মালিক হিসাবে দাবি করিয়া দলিলের কপি সংযুক্তির মিথা তথ্য দিয়া ১১-১-২০০৩ খ্রিঃ সালে ইমারত নির্মানের আবেদন করেন।

কথিত নালিশি বিল্ডিং এর জায়গা রেলওয়ে স্কিমের মাটি কাটার জন্য এল,এ, কেচের নং ১৬/৫৯-৬০ মূলে অধিগ্রহণ করা হয় এবং সেখান হইতে মাটি কাটিয়া অধিগ্রহনের উদ্দেশ্যে সম্পন্ন হয়, যাহার ফলে এলাকাটি নিচু ও জলা ভূমির সৃষ্টি হয়। অধিকন্তু সি,এস, জরিপের পরে উক্ত কথিত ভূমির আর কোন জরিপ হয় নাই বলিয়া সার্বিক কাগজ পত্র বিচার বিশে-ষনে দেখা যায়, যদিও যে উদ্দেশ্যে কোন জমি অধিগ্রহন করা হয় সে উদ্দেশ্যে ব্যবহৃত না হইলে অথবা প্রয়োজন না থাকিলে আইন অনুয়ায়ী জেলা প্রশাসন বরাবরে হস্তান্তর করিতে হয় কিন্তু এ ক্ষেত্রে তাহার ব্যর্তায় ঘটিয়া বিভাগীয় স্টেট অফিসার বাংলাদেশ রেলওয়ে ঢাকা রপ্তানি উন্নয়ন ব্যুরোর বরাবরে যথাযথ কার্যপ্রনালী প্রতিপালন ব্যতিরেকে সাফ কবলা মূলে সি,এস,জরিপ রবাবর বিক্রয় করিয়াছেন, যাহা সম্পূর্ন অবৈধ এবং কথিত দলিলও বাতিল যোগ্য। এ ক্ষেত্রে ট্রান্সফার অফ প্রর্পাটি এ্যাক্ট ১৮৮২ এর সংসোধনী আইনের '৫৩ সি', উল্লেখ করা হইল, যাহা নিম্নরূপঃ-

> 53C. Immovable Property without khatian not to be sold.-No immovable property shall be sold by a person unless his name, if he is the owner of the property otherwise than by inheritance, or his name or the name of his predecessor, it he is the owner of the property by inheritance, appears in respect of the property in the latest khatian prepared under the State Acquisition and Tenancy Act, 1950, and any sale made otherwise shall be void."

অধিকন্ত বিষয়টি রেজিস্টেশন এ্যাকট ১৯০৮ সালের সংশোধীত ''৫২ এ'' ধারার বিধান লঙ্ঘিত হইয়াছে, যাহা অনুধাবন করার জন্য নিম্নে ধারাটি উপস্থাপন করা হইলঃ-

> "52 A. Registering Officer not to register unless certain particulars are included in an instrument of sale. Upon prosecution of an instrument of

sale of any immovable property, the Registering Officer shall not register the instrument unless the following particulars are included in and attached with the instrument, nemely-

(a) the latest khatian of the property prepared under the State Acquisition and Tenancy Act6, 1950, in the name of the seller, if he is owner of the property otherwise than by inheitance;

(b) the latest Khatian of the property prepared under the State Acquisition and Tenancy Act, 1950, in the name of the seller or his predecessor he is owner of the property by inheitance;

(c) nature of the property;

(d) price of the property;

(e) a map of the property together with the axes and boundaries;

(f) a brief description of the ownership of the property for last 25 (twenty-five) years; and

(g) an affidavit by the executant affirming that he has not transferred the property to any person before execution of this instrument and that he has lawful title thereto". Z

আমাদের সামনে আর একটি বিষয় যে বিজিএমএ এর কথিত অনঅনুমোদিত ভবন টি জলাধারায় আইন অমান্য করিয়া তথায় নির্মিত হইয়াছে কিনা? মহানগর, বিভাগীয় শহর, জেলা শহরের ও পৌর এলাকা সহ দেশের সকল পৌর এলাকার খেলার মাঠ, উম্মুক্ত স্থান, উদ্যান ও প্রকৃতির জলাদার সংরক্ষন আইন ২০০০ সালের '২(চ)' ধারা অনুযায়ী জলাদার বলতে যাহা বুঝায় তাহা নিম্ন রুলঃ-

২-(চ) প্রাকৃতিক জলাধার অর্থ নদী, খাল, বিল, দীঘি,.....জলাশয় হিসাবে মাষ্টার প্ল্যানে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্য প্রবাহ এলাকা হিসাবে ঘোষিত কোন সংস্থা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমি ও উহার অন্তর্ভূক্ত হইবে;

কথিত বিল্ডিংটি জলাশয়ের উপর নির্মিত তাহা স্বীকৃত কেননা বিজিএমইএ পক্ষে দাখিল কতৃ এনক্সসার ''কে ২(এ)'' ১৮ অনুচ্ছেদের জমির শ্রেনীর (ডোবা) হিসাবে চিহ্নিত আছে যে, ডোবাটি ১৯৬০ সালের দিকে রেলওয়ে স্কিমের মাটি কাটার জন্য সৃষ্ট হইয়াছে। সে ক্ষেত্রেও উল্লেখিত জলাধার সংরক্ষিত আইনের ৬(৩) ধারা প্রতিপালন না করার জন্য উক্ত আইনের ধারা ৮(১) ২(৩) প্রয়োগযোগ্য যাহা নিম্নরূপঃ-

৮। শাস্তি, ইত্যাদি। (১) কোন ব্যক্তি এই আইনের কোন বিধান লঙন করিলে তিনি অনধিক ৫ বৎসরের কারাদন্ডে বা অনধিক ৫০(পঞ্জাশ) হাজার টাকা অর্থদন্ডে অথবা উভয় দন্ডে দন্ডনীয় হইবেন।

২) ধারা ৫ এর বিধান লঙন করিয়া যদি কোন জায়গা বা জায়গার অংশবিশেষের শ্রেনী পরিবর্তন করা হয়, তাহা হইলে সংশি-স্ট কর্তৃপক্ষ নোটিশ দ্বারা জমির মালিককে অথবা বিধান লঙন কারী ব্যক্তিকে নোটিশে উল্লেখিত জায়গার শ্রেনী পরিবর্তনের কাজে বাধা প্রদান করিতে পারিবে এবং নিধার্রিত পদ্ধতিতে অনঅনুমোদিত নির্মাণকার্য ভাংগিয়া ফেলিবার নির্দেশ দিতে পারিবে এবং অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উক্তরূপ ভাংগিয়া ফেলিবার জন্য কোন ক্ষতিপূরণ প্রদেয় হইবে না।

(৩) এই আইনের বিধান লঙ্গন করিয়া যদি কোন নির্মান কার্য সম্পাদিত বা অবকাঠামো তৈরী হইয়া থাকে সেই সকল অবকাঠামো আদালতের আদেশে সংশ্লিষ্ট কর্তৃপক্ষের বরাবরে বাজেয়াপ্ত হইবে।

উপরোক্ত আলোচনা বিচার বিশ্লেষন এবং সার্বিক পর্যালোচনায় ইহা সুস্পষ্ট যে,

ক) নালিশি অধিগ্রহণকৃত সম্পত্তি যথাযথ ভাবে রপ্তানী উন্নয়ন বুরো তৎপর বিজিএমইএ কর্তৃপক্ষের নিকট হস্তান্তর হয় নাই।

খ) বিজিএমইএ কথিত মালিকানা (বির্তকিত মালিকানা) লাভের পূর্বেই মিথ্যা তথ্য ক্রয় দলিল এর কপি সংযুক্ত করিয়া ইমারত নির্মানের অনুমোদনের প্রার্থনা করিয়াছেন, যাহা চরম প্রতারণার সামিল।

গ) রেলওয়ে কর্তৃপক্ষ কর্তৃক রপ্তানী উন্নয়ন বুরো বরাবরে কথিত সাব কবলা দলিল ট্রান্সফার অফ প্রর্পাটি এ্যাক্টের ''৫৩ সি'' ধারার বিধান অনুযায়ী বাতিল যোগ্য এবং রেজিষ্টেশন এ্যাক্টের ''৫২ এ'' ধারা অনুযায়ী বারিত বটে।

ঘ) মহানগর, বিভগীয় শহর, জেলা শহর, পৌর এলাকা সহ খেলার মাঠ, উম্মুক্ত স্থান উদ্যান ও জলাধার সংরক্ষন আইন ২০০০ এর চরম লঙ্ঘন।

পরিশেষে এই উচ্চ ভবনটি দেশের প্রচলিত আইনের কোন বিধি বিধান এর তোয়াক্কা না করিয়া সংশ্লিষ্ট কোন কোন কর্তৃপক্ষের সহিত আতোয়াত করিয়া, কিংবা কোন কোন ক্ষেত্রে ভূল বুঝাইয়া ও প্রভাব খাটাইয়া মালিকানা না থাকার সত্ত্বেও নির্মান করিতে সর্মথ হইয়াছে, যাহা সম্পূর্ন রূপে বেআইনী ও জনস্বার্থের পরিপন্থি।

As the hearing on the Rule commenced, a Galaxy of Impeccable Lawyers with their endowed ingenuity appeared on both the sides of the fence and they included such brand names as M/s. Rukonuddin Mahmud, Aktar Imam, Anisul Huq, Fida M Kamal, Monsurul Huq Chowdhury, Manzil Murshed and Ms. Syeda Rizwana Hasan.

Mr. Rokanuddin Mahmud, the learned Senior Advocate, under instruction from the respondent No. 3, BGMEA, in his ice breaking part of the speech, picked up the question of this court's competence to issue the Rule and proffered with his

characterstick hyperbaric style, that no scope to issue suo motu order in the form of mandamus exists under Article 102 of the Constitution. There must be an application by an aggrieved person. He referred to Part 11 of the High Court Rules (Rule's relating to Special Jurisdiction) to lend weight to his submission on this point.

On substantive matters, to refute the assertion that the building was pricked up in derogation of several statutory surmons, Mr. Mahmud posited that the land upon which the perpendicular stands, was not a wet land as the same was not so declared by the authorities in consonance with the জলাধার আইন।

On the accusation that the sky scrapper was elevated in violation of several statutory dictations, Mr. Mahmud expostulated that even if it is accepted for argument's sake that the structure was erected barren of approval, that misfeasance was cured when RAJUK imposed fine and the same was duly paid. He cited Section 3(B) of the Act to substantiate his articulation on this point, insisting that Section 3(B)(5) is a condition precedent to carry out demolition. He tried to draw a line of distinction between the instant case on the one hand and RAJUK-V-Abdur Rouf Chowdhury (RANGS Building Case) and Jamuna Builders Ltd.-V-RAJUK (Jamuna Future Park case), on the other.

He however, kept pursuing that the construction proceeded with RAJUK's nod. In his remonstration, the map was duly approved, though was not handed over. He also relied on **Deminimus** Rule. He said RAJUK asked BGMEA to construct a stunning bridge and the latter obliged. He went on to submit that the area over which the building is situate, does not spread over to Begunbari Camal.

He was quite momentous in arguing that the Court can not order demolition unless the regulatory body does so, because it is the satisfaction of that body, rather than that of the court, that is what the apposite statute contemplates. He also remained obstinate to the theme that there can be no demolition unless set rules are followed.

Mr. Mahmud concluded his submission outlining that the plot is indeed owned by BGMEA because it has bought the land from its previous owner for a consideration. He asked us to recognise BGMEA member's insubstitutable contribution to our economy, not only by creating Juggernaut scale employment, but also being one of our major sources of foreign exchange earning, and tried to have us to perceive that an order derogatory to the body would be inconducive to national interest and that acquisition of land for BGMEA would, because of its

status and role, satisfy "public purpose" criterion as envisaged by land acquisition statues.

Mr. Mahbubey Alam, the learned Attorney General, with his characteristic rhetoric, came up rather dispassionately, concentrating primordially on the ownership aspect of the land. According to him, if BGMEA has no title over the land, it is immaterial whether the building was raised in breach of several legislations or not. That said however, he did not abandon the allegation that the building is liable to be scrapped also because it was erected in breach of relevant legislations.

On title, his strenuous assertion is that we need go no further than scanning the records retained in the office of the Deputy Commissioner, Dhaka, to unveil the whole truth, on the proprietorship of the land, adding that these **docets** divulge beyond any qualm that the land was acquired for the Railway for specific purposes and, as such, when the residual part of the acquired land stood redundant, the same **willy nilly** reverted back to the district authority and hence, BGMEA never had any title over the property. It was, said Mr. Alam, out of EPB's competence to transfer the property to an amalgam of private individuals for the latters' private accrual.

On the question of construction beyond approval and in breach of various legislative schemes, the learned AG argued that since the structure was erected in blatant and bizarre violation of the laws and the Rules specified in the town planning and building construction as well as environment protection legislations, the same is certainly liable to be demolished without further ado, in any event.
Mr. A.B.M Altaf Hussain, the learned Deputy Attorney General plated, with a significant degree of force, that in so far as the building had been hoisted without sanction, there exists nothing to distinguish the instant case from those of Jamuna Future Park and RANGS Building. In substantiating his oration, the learned DAG tried to have us to swing to the conclusion that imposition of fine under Section 3(B) does not imply exoneration. "If that was the case", submitted the learned DAG, "that would encourage unscrupulous affluent persons to make construction without approval and than try to have their yucky action legalised by paying fine." That, according to Mr. Altaf Hussain, can not be the scheme of the legislation and would be tantamount to licensing wrongdoers. He however, put utmost emphasis on the title, insisting that if BGMEA is without title, as it definitely is, questions of approval becomes otiose, because an interloper can not erect its building on the land owned by the government. He read over to us the dossier Dhaka District administration

prepared, as cited above, with reference to the records brought by its officers for our perusal.

Mr. Aktar Imam, appearing to assist us, again with his symptomatic **splendour,** proffered that facts are fairly clear: the construction was in breach of Section 3 as there was no prior approval.

Document at Annexure D of BGMEA's affidavit shows nothing more than an initial NOC - it has nothing to do with ownership.

He however, cited 43 DLR page 147 to say that there can be ex-post facto sanction and submitted that private interest may not always be sacrificed at the alter of public interest and that procedural safeguards must not be bartered. Private interests in his view, must also be protected. He asked us to be attentive to public interest, justice and equity in the round.

Mr. Anisul Hoque, appearing to assist us probono as an amicus, with his characterstick aura of articulation projected with distinctive audibility, BGMEA's bareness of title.

He had it to say that the legislation pertaining to acquisition of land suffers from no ambiguity: it is established with **unjettisonable** probity that land belonging to a citizen can only be acquired if such an action is justifiable for public purposes. It is also well in line with authorities of high preponderance that if an acquired piece of land or, part thereof, is not needed for the purpose which necessitated acquisition, the same shall revert back to the acquiring authority and the requiring authority would have no role in the matter. This legal theme, according to Mr. Huq, entails that such part of the acquired land that was found to have been in excess, certainly vested in the district administration. He expanded his submission, saying that an unbroken chain of authorities have elaborated with meticulously defined precision what "public purpose" means for land acquisition. Relying on the **propoundment** expressed by Ispahai J in the case reported at page 272 of 9 DLR, Mr. Huq went on to submit that to seek sanctuary under the shed of public purpose, the purpose must be of benevolence to the whole community or to a considerable part thereof. He also cited quotation from Willoughby's Constitutional Law, Vol-11.

He proceeded to illuminate his perspicacity stating that the land was purportedly vested in EPB for constructing World Trade Centre, whereas BGMEA constructed its own building for its own financial augmentation, which has no relevance to Word Trade Centre and again it did not pay the entire consideration

amount and that handing over the land to BGMEA was papably illegal. BGMEA sold parts of the building to fatten its own purse. So, there was no public purpose element even in the microscopic degree.

Mr. Fida M. Kamal, appearing to assist us ex-**gratia**, who happened to have had represented the state in the RANGS Building case in his capacity as the Attorney General of the day, with the treasure trove of inestimable knowledge he gained during the progression of that case, commenced his submission, toeing his traditionally pellucid style, by unequivocally proclaiming that this case is indeed distinguishable from that of RANGS Building in that while RANGS raised its building on its own realty, BGMEA had done so on the land owned by the government, gaining wretched entry on it as an illegal intruder and hence BGMEA can not animate any submission at all and can certainly not rely even on those contentions which were advanced, abortively though, by RANGS. It would be ludicrous for a squat to engage any law that can be taken in aid by a person with title. He did then move forward to say that even if BGMEA was duly attired with title, its building would have been amenable to annihilation for the same reason RANG's building was reduced to rubble, because, if a structure is erected in breach of provisions stipulated in the town planning and building construction legislations, or any other apposite statute, the same is liable to be ravaged, irrespective of whether fine has been imposed or not, in the same way a convict's name does not wane from the record simply because he has paid the fine imposed.

Mr. Kamal also vocalised the theme that the building has been constructed on the plots which are not the same that were even purportedly conveyed to BGMEA. He was unequivocally inquisitive as to how BGMEA obtained the land it erected the building on. The map does not show that this land was conveyed to BGMEA – "it had grabbed this land stealthfully", uttered Mr. Kamal. There was no plan for the land and the papers reveal irreconcilable degree of discrepancies even on the purportedly transferred land.

He lent enduring weight to the view that land acquired under the Land Acquisition Act 1894, suffers from the incapacitation as to transferability and as such, it could only be used for another "public purpose", when excess land turned redundant for the original purpose, in the way Cypress doctrine applies.

Mr. Mansurul Haque Chowdhury submitted that RAJUK is mandatorily required to act in accordance with Section 12 of the Imarat Ain 1952 and hence demolition is irrestitible. In his vocabulary, if BGMEA is allowed to retains its illegal structure on the plea of its contribution to the national exchequer, and on the plea that enormous sums of money had been expended to construct it, and that the

parts of the building had been sold to innocent buyers, the Rule of Law and constitutionally imposed Rule against discrimination would be rendered topsy turvy. In such an event it will not remain open to any court to order elimination of any illegal construction, because others will then engage Article 27 and 28 of the Constitution. He concluded submitting that it will herald an unpalatable and pathetic judicial retreat if this Court gives in to the desire of a mighty body.

Mr. Manzil Murshed argued that as the whole area was a Jaladhar, the Building is liable to be demolished under the Environment Protection Act 1995. Environment Pollution Control Ordinance 1977 also proscribes construction of building on Jaladhar. He drove on to say that even RAJUK is stripped of any authority to grant approval to make any construction on a Jaladhar. The amount RAJUK took was by way of compensation: that cannot be treated as legalising the building. No lake can be filled in. It has to be looked at in juxtaposition with Hatirjheel Project. This building is obstructing the progression of Hatirjheel Project wherefore only one part is being constructed. Breach of Jaladhar Ain is a congnisable offence. It would entail an ugly precedence if this building is allowed to stand erect because of the opulence of the people who erected it.

Ms. Syeda Rizwana Hasan, appearing for BELA, placed her copiously resourceful and lucidly analytical submission in her traditional charismatic manner, embracing all possible applicable areas of jurisprudence, starting with the question of title and then trailing her odyssey through the legislations that control town planning, building construction and environment protection. In her vignette, the building must be leveled to the ground as it ignominiously stands on the land owned by the state, despicably projecting its vulgar superciliousness. She, at the inception of her submission, expressed her dismay at the fact that despite incessant request, BGMEA kept mum in supplying the information BELA asked for, which compelled her organisation to procure documents by engaging provisions in right to Information Act, which have been enclosed with BELA's pleading. She did then, submit comprehensive written submission, which are reproduced verbatim, herein under;

A. LEGALITY OF HANDING OVER OF THE LAND TO BGMEA/OWNERSHIP OF BGMEA

1) The laws on acquisition (Land Acquisition Act, 1948, Acquisition and Requisition of immovable Property Ordinance, 1982) require "public purpose" to be satisfied for all acquisition processes. Case laws have defined "public purpose" and held that acquisition in

favour of private entities per se is not a public purpose (9 DLR (1957) page 272; 41 DLR (1989) page 326 and hence selling lands that were acquired for a definite public purpose to a private entity like BGMEA is untenable in the eye of law.

2) Where lands are not utilized for the purpose for which it was acquired, it has to go back to the original owner (3BLC page 18). This established principle of law rendered the purported transfer even to EPB void ab-initio, let alone BGMEA.

3) The land in question was acquired in favour of Railway vide LA case 16/59-60 under a project of excavation of soil for Railway Scheme. Possession was handed over to Railway on 18 January, 1960 which was notified in the Gazette dated 28 March, 1968. The total amount of acquired land was 58.58 falling under 6 different mouzas, namely Razar Bag, Shohor Khilgaon, Boro Mogh Bazar, Begunbari, Bagnoadda and Kawran (Enclosure-1).

4) An inter-ministerial meeting, held on 10 December, 1997 decided to hand over 6.12 acres of this total 58.58 acres of land to the Export Promotion Bureau (EPB) for building a World Trade Centre thereon. The land proposed to be handed over (through sale) to EPB fell under three different mouzas, namely Boro Mogh Bazar, Begunbari and Bagnoadda (Enclosure-2).

5) It was only on 20 December, 2006 that a Deed of Conveyance was purported to be executed between Bangladesh Railway and the EPB (page 14 of the supplementary affidavit of BGMEA) that recorded that only 5.555 acres of land instead of 6.12 acres could be handed over to EPB. This Deed shows that EPB indeed handed over possession of part of 5.555 acres of land to BGMEA on 19 December, 1999, i.e., six years prior to the execution of the Deed in its favour on 20 December, 2006 which is beyond the scope of law. Again, for the land, EPB was required to pay Taka 43, 56, 86, 274 to Railway in five installments. The last installment was paid by EPB on 15 May, 2011 (page 17 of the supplementary affidavit of BGMEA) whereas EPB executed the Sale Deed with BGMEA on 07 May, 2001 (page 54 of the affidavit in opposition of BGMEA).

6) The Deed has not given EPB the right to transfer the land (page 18 of the supplementary affidavit of BGMEA).

7) EPB has not yet got the land mutated in its own name. The same is true for BGMEA. It has not been able to produce any document of ownership/mutation.

8) It is a mandatory requirement of law under section 17 of the Registration Act, 1908 that any Deed of Sale must be registered. Evidently, the Deed of Sale dated 07 May, 2001 in pursuance of which EPB purportedly "sold" the property in question to EPB was not registered. At the time of execution of the so-called Sale Deed, EPB was not the lawful owner of the property in question as it registered its own Sale Deed on 20 December, 2006. Since EPB was never the owner of the property at the material time, the question BGMEA becoming the owner does not arise at all. As such BGMEA is an unlawful encroacher a squatter to be precise, on the public property and is liable to be evicted under section 5 of the Government Property (Recovery of Possession) Ordinance, 1970.

9) The Sale Deed signed between EPB and BGMEA on 7 May, 2001 clearly states (condition 1, page 54 of the affidavit in opposition of BGMEA) that BGMEA shall pay all the ten installments in five years failing which EPB may cancel the agreement. Records show that BGMEA completed the construction of the building in 2006 although the last payment was made by it only on 21 October, 2010 that again on the face of repeated reminders given by EPB (page 27 of the supplementary affidavit of BGMEA). EPB took no initiative to cancel the agreement.

10) Further, although the agreement clearly prohibits (condition 5, page 54 of the affidavit in opposition of BGMEA) any transfer of the property prior to construction of the BGMEA Building, as per approved plan from RAJUK, it is evident that part of the unauthorized building has been transferred to at least two other entities (Enclosure-3). EPB has not proceeded against BGMEA against such breach.

B. DISCREPANCIES IN THE DESCRIPTION AND MEASUREMENT OF LAND

i) Various documents adduced display serious anomalies in the description of lands that have purportedly been sold and handed over to BGMEA and the land on which the building has been structured;

ii) While, as per the permission letter of the Ministry of Commerce dated 6 September, 1998 (page 49, Annexure I, Affidavit in Opposition of BGMEA), no land was earmarked to have be given to BGMEA from C.S. dag No. 203 and 209, the agreement purportedly signed between EPB and BGMEA shows that BGMEA was given 0.41 acres from CS dag No. 203, 208 and 209.

iii) Again, although the amended certificate of authentication by EPB dated 28 March, 2004 (page 45 of the affidavit of BELA) states that land measuring 0.03 acres from C.S. dag No. 105 only was given to BGMEA for use as connecting road, the agreement instead, has included this land in the schedule of land to be sold to BGMEA. This corrected certificate of EPB clearly suggests that BGMEA was not allocated any land from dag Nos. 203, 105 and 1.

iv) The application submitted by BGMEA (page 10 of the affidavit in opposition of BGMEA) to Rajuk for approval of its Building plan mentions C.S. dag Nos. 208 and 209 only and does not mention C.S. dag Nos. 203, 1 and 105 at all. While all the five dags together make up 0.66 acres on which BGMEA is claiming to have constructed its building, exclusion of dag Nos. 105 and 1 from the application render the size of the plot to 0.41 acres only. Hence Rajuk can, if it can at all, only approve the plan on 0.41 acres and not on 0.66 acres and that again on submission of proper document as to ownership, which BGMEA has, thus far not been able to produce.

v) All subsequent correspondences, however, show that Rajuk decided to approve the plan on 0.66 acres although due to differing statements as to allocation and scattered location (page 33 of BELA affidavit) of the plots in question, the occupation of 0.66 acres of land by BGMEA on the five plots is impractical, impossible and not tenable in the eye of law. The claim by

BGMEA that it has constructed the building on 0.66 acres of land falling within C.S. dag Nos. 208 and 209 must be rejected for the fact that it was only allocated 0.41 acres of land from C.S dag No. 208 and nothing was even purportedly sold to it from C.S. dag No. 209.

vi) It is due to these anomalies in the description of land that Rajuk could never hand over the plan, it conditionally approved for the BGMEA building, absence of title notwithstanding.

vii) On-site visit, the DC office records show that the BGMEA building stands on C.S. dag No. 208, 1 and 2 (Enclosure-4) and not on C.S dag No. 208 and 209 as claimed by BGMEA in its application (page 10 of the affidavit in opposition of BGMEA).

C. LEGALITY OF THE CONSTRUCTION

1. It is clear that although Rajuk, vide its letter dated 14 July, 2003 (page 35 of the BELA affidavit) gave site clearance to BGMEA for constructing a multi-storied building on plot Nos. 208 and 209, the same was subjected to approval of building plan under the Building Construction Rules, 1996. Similarly, although Rajuk decided to conditionally approve the building plan of BGMEA (page 43 of the BELA affidavit), the same was subjected to the submission of a statement as to mouja, C.S dag number and area of the land in question that BGMEA till date has not been able to submit.

In the absence of accurate description of the lands and proper documentation as to ownership, the plan that Rajuk decided to approve was never handed over to BGMEA. Defying Rajuk's lawful directions (pages 47, 50, 59 (item 49.1 and 49.3), 64 of BELA affidavit), BGMEA proceeded with and completed the construction of the building without any approved plan which is a clear violation of Section 3 of the Building Construction Act, 1952.

3. The Deed of Conveyance describes the land handed over to EPB as "DOBA" (ditch). The CS record (Enclosure-5) shows that dag No. 208 and 209 where BGMEA is claiming to have its Building are recorded respectively as "nala" and "pond", Annexure "K-1" (page 11) of the supplementary affidavit of BGMEA which shows that lands whereon the building has been constructed, are surrounded

by wetlands and lakes. All these documents prove it beyond any shadow of doubt that the unauthorized building has indeed been constructed on wetlands and in clear violation of the provisions of Act No. 36 of 2000.

D. LEGAL CONSEQUENCES

1. The unauthorized construction of the BGMEA building is liable to face the consequences laid down in section 3B for (a) it is contrary to the master plan (Enclosure-6), (b) it is causing undue inconvenience in the implementation of the project on Hatir Jheel Development, and (iii) due to the discrepancies in land description, lack of ownership of EPB/BGMEA and the legal bars against transfer of acquired property, sanction, it prayed for, could not be granted (section 5(d).

2. As the building has been constructed by filling up part of a wetland and without obtaining prior approval of the Ministry of Public Works, it is liable to face the consequences laid down in section 8 of Act No. 36 of 2000.

3. The Sale Deed dated 7 May, 2001 signed between EPB (without being the owner of the lands in question) and BGMEA (being a private entity) having purportedly been executed without lawful authority, makes no sense whatsoever in the vision of law and carries nihility.

4. BGMEA, having acquired no ownership at all on the land in question, is an unlawful encroacher on the public property and is liable, not only to be evicted under section 5 of the Government Property (Recovery of Possession) Ordinance, 1970, but to be prosecuted and penalised for having sinfully and feloniously squatted on it for over a decade.

5. For not preventing the unauthorized construction of the BGMEA building, the negligent officers of Rajuk should face dire consequences."

As we moved to embark upon our job, after hearing submissions from all the learned Advocates and perusing Ms. Hassan's written treatise, we reckoned that the questions that should be addressed to dispose of the Rule are whether (i) we

are competent to issue an order in the form of mandamus suo motu (ii) BGMEA is fortified with any title over the land and if not, what consequence should ensue, (2) the building is liable to be dismantled in any event irrespective of who holds the title.

Before stepping on the ladder to explore the substantive questions, as in (ii) and (iii) above, however, we must determine whether it is open to us to issue a Rule, suo motu, involving an order in the form of mandamus.

Mr. Mahmudul Islam, the acclaimed author of Constitutional Law of Bangladesh, emerged as the pivotal advocate to insist that there exist no opportunity to issue suo motu rule under the scheme envisaged by Article 102 of the Constitution. He is of the view that the phrases, "on the application of any person aggrieved", necessarily connote that there must be an application by an aggrieved person, to set the judicial review machinery on the move.

This theme, has, however, failed to attract the Appellate Division's favour, and as such, we need move no further on this issue, save iterating that such a negative and pruning view can only be endorsed if the word, "application", is construed narrowly.

That takes us to explore the issue no(ii).

Documents adduced by BGMEA itself project that on 6th September 1998, a memo was issued by a Senior Assistant Secretary, Ministry of Commerce, intimating that the government has approved allotment of 0.66 acre of land in favour of BGMEA to enable it to construct its own complex, from 6.12 acres of land, adjoining Hotel Sonargaon in Kawran Bazar area, which was allotted for the construction of "World Trade Centre."

By a memo, dated 8th September 1998, EPB intimated BGMEA that pursuant to the Ministry of Commerce decision, dated 6th September 1998, it has been decided to allot 0.66 acre of land to BGMEA from 6.12 acres of World Trade Centre land in Kawran Bazar on condition that the price for the land, fixed at Tk. 5176470.50 as fixed by the Ministry of Commerce, shall be paid by BGMEA by 10 installments in 5 years and that if it becomes impossible on BGMEA's part to construct its own building for any reason, it will not be open to BGMEA to transfer or sell the land to any person, institution or organisation. BGMEA was asked to pay the first installment to EPB. A map demarcating the land was enclosed. It was also stated that the land was conveyed to BGMEA free of encumbrances.

BGMEA also adduced a document captioned "Pzw³ bvgv", showing EPB as the first party and BGMEA as the second one. This so-called agreement recites that pursuant to the Ministry of Commerce decision, EPB has allotted the scheduled land to BGMEA with a view to sell it on 8th September 1998. It proceeded to state that BGMEA would pay Tk. 5176470.50 in 5 years by 10 installments, failing which EPB would be at liberty to rescind the agreement.

In the event of the emergence of any dispute on the title to the land, the responsibility shall fall on EPB, which shall remain obliged to refund to BGMEA the money the letter shall pay. BGMEA will not be free to sell the property before constructing its building with RAJUK's approval. It was specified that the deed would be used solely for the purpose of obtaining RAJUK's approval for the building plan.

The agreement was an unregistered one, and undated.

Another document adduced by BGMEA reveals another agreement, this time a registered one, concluded between Bangladesh Government on the one hand and EPB on the other, evidencing transfer of 5.555 acres of land by the government to EPB to enable the latter to construct a "World Trade Centre," pursuant to a decision of the Ministry of Commerce. Reason for reducing the quantum of the land from 6.12 to 5.555, has been assigned.

It states that it was decided in 1995 that an area of land covering 6.12 acres in Boro Mogh Bazar, Begun Bari, and Bognoada Mouza, adjoining Hotel Sonargaon, would be sold directly by Bangladesh Railway to EPB and the government on principle, agreed to this proposition. Subsequently, because of the situation of the land, it was decided to transfer 5.555 acres in buyer's favour. On 28.06.2006 a letter was addressed to EPB for the execution of a Saf Kabala. EPB paid Tk. 435686274.00 to the Railway.

Paradoxically, this agreement was concluded on 27th November 2006, and registered on 17th December, 2006.

Other documents put forward by BGMEA portray that there have been exchange of correspondences between EPB and BGMEA in the years 2010 and 2011, revealing that EPB has been asking for the consideration money and BGMEA, stating in January 2011, that it has paid the money and hence sale deed should be executed, evincing that even as of January 2011 no transfer deed was executed.

By a latter dated 9th January 2011, BGMEA intimated EPB that the earlier had already drafted a sale deed, and the same should, hence, be executed.

The documents cited above depict a plethora of absurdity: The government approved allotment of 0.66 acre of land to BGMEA, on 6th September 1998 and then, two days later EPB addressed a memo to BGMEA, intimating that pursuant to the Ministry of Commerce's decision, it has allotted the said portion of land to BGEMA, from 6.12 acres, meant for World Trade Centre. This was followed by a so-called instrument, unregistered, which was not even dated, though date ascribed by the witnesses suggest that this so-called instrument was executed on 7th May 2001, which stipulates that BGMEA would pay a consideration in 10 installments over a period of 5 years.

Curiously enough EPB did not even own the land on that date because, as BGMEA produced document impart, the government transferred the land to EPB years later, i.e. in 2006.

The information that enjoy consensuality, unmask that the land concerned, were, until 1960, owned by the local people, who stepped on to the dominion over the land as the heirs or successors of the C.S. recorded people. In that year, land admeasuring 58.58 acres from Reynar/Rag, Khilgaon, Baro Moghbazar, Begunbari, Boagnodha, Kawran Bazar, were acquired for the then East Bengal Railway vide L/A case No. 16/59-60. The same were handed over to the Railway. Some 6.12 acres, part of which is the subject matter of our adjudication, formed part of that 58.58 acres, acquired from the people in the vicinity. There is no duality on this fact. It is also beyond altercation that part of the acquired land turned out to be unnecessary for the purpose for which the same were acquired.

Documents and averments further disclose that initially reluctant RAJUK, eventually granted it's consent for the construction of a building on conditions that an area of 2.41 Kathas would be set apart for RAJUK. It was emphasised that the said agreement would not mean recognition of title. By a letter dated 26th April 2010, EPB asked BGMEA to pay the unpaid consideration amount to the sum of Tk. 26235284,00, and BGMEA paid the amount on 21st October 2010. No deed of conveyance has been registered, despite BGMEA's request, the last of which was on 9th January 2011, as stated above.

So, what legal position on title are reflected from those admitted facts and documents, adduced by BGMEA itself?

To trace the answer, we have to dissect the provisions contained in the "Land Acquisition Ordinance" 1894 and in the "Acquisition and Requisition of Immovable Property Ordinance" 1982, as well as in the Transfer of Property Act. But before scanning these provisions, any sane person would ask:

"Who was EPB in 1998 to transfer the land it did, admittedly, not have ownership over?"
It is axiomatic that the land was acquired under the Ordinance of 1894. As the 1982 was the reigning one at the time of purported transfer to EPB/BGMEA, provisions of the latter Ordinance are also apposite.

The 1894 Ordinance empowered the government to acquire land if public purpose necessitated such moves.

Unbroken chain of unimpeachable authorities, in interpreting provisions as to acquisition and requisition of land, inflexibly proclaim that if land or part of the same becomes unnecessary, post acquisition, the requiring body must return the same to the government which will then either use it for another "public purpose" or return it to its original owner.

In Shankar Gopal Chatterjee-V-Additional Deputy Commissioner, Dhaka, 41 DLR 326, this Division held that acquired land shall not be used for a purpose other than the one for which it was acquired.

In Salam-V-Government of Bangladesh 1BLC 53, it has been held that if any land remains unused for the purpose for which it was acquired, it will remain open to the government to decide as to whether the requiring body will be entitled to use it for any other public purpose or will return the same to its original owner.

In Naushad Ahmed Chowdhury-V-Ministry of land Administration and Land Reform, 3BLC 18, this court expressed, that in view of Section 17(2) and 41 of the Ordinance of 1982, unused acquired land should have been released in favour of the original owner as the inquiry officer found that the land had remained unused since 1962.

Indeed, Section 17 of the 1982 Ordinance explicitly so ordains.

The concept "public interest" underwent judicial scrutiny in a fairly good number of cases. As power to acquire immovable property override's a citizen's Constitutional right to own property, superior courts firmly maintain the proposition that the phrase "public purpose" must be strictly construed.

In the classic case of Jogesh Chandra Lodh-V-Province of East Pakistan, 9DLR, Ispahani and Khan JJ pronounced without prevarication that "public purpose" encompasses something that is of benevolence to the whole community or a substantial part thereof, amplifying that anything that furthers the general interest of the community as opposed to the particular interest of the individual, is to be regarded as a public purpose. Their lordships magnified their views stating that no reason of general public policy will suffice to validate an order of requisition unless the order is made for public purpose or in public interest and that verbal assertion that requisition is made for the development of jute industries through a certain private agency for the benefit of the public, was not enough.

Their Lordships were quite vigorous in asserting that existence of public purpose is the foundation of the power and is indeed sina qua non to acquire a property and that the government can not acquire private property for the private interest of some individual or individuals.

In Razab Ali-V-Province of East Pakistan 10 DLR 489, Amin Ahmed Chowdhury and Sattar JJ laid down their edict saying that the purpose must be for the general good of the people as opposed to the good of a particular individual or group of individuals. They went on to accentuate the theme with the following observation, "As between individuals, no necessity; however great, no exigency, however imminent, no improvement, however valuable, no refusal, however **unneighbourly**, no **obstinancy**, however extravagant, can compel or require any man to part with an inch of his estate."

It has also been pointed out that there is no public purpose in any undertaking or venture in which the public is served indirectly and in a circuitous way and that every grocery in a country serves a public interest, but such groceries are not primarily and directly concerned with such purpose.

In Abdus Sabhan Sowdagar-V-Province of East Pakistan 14DLR 486, Murshed and Siddiqiky JJ insisted that the minimum consideration must be as to whether the efficient working of a public utility concern would be affected without its having another accommodation and secondly, it must also be considered whether or not such an accommodation can be available otherwise than by a compulsory order of acquisition.

They went on to underscore that the District Magistrate must be satisfied not only that there is a public purpose but also that the property is required for such a

public purpose, iterating that the concepts, "requirement" and "public purpose", are **justiciable**.

They also stressed that public purpose can only be established if it is shown that the purpose will bestow benefits on the public directly, not incidentally and that if the purpose is, however, to benefit an individual or a group of individuals directly and the benefit to the people or to a section of it, is only prospective or incidental, the purpose is private.

In Mrs. Maleka Siraj-v-Bangladesh, WP No. 2713 of 2010 (unreported), this Division came out with the view that the purpose shall be for the community as a whole or a substantial part thereof, not for a class of people, however important that class may be.

In the backdrop of the decisions cited above, we find the so-called approval accorded by the Commerce Ministry for the transfer said part of acquired land to BGMEA, as intimated by its memo of 6th September 1998, as absolutely horrendous, least said, not only because the said approval or transfer was not signified by any recognised instrument, but primarily because, being acquired land, the same could not be transferred to a private body for the latter's private purpose. The purported transfer to enable BGMEA to construct its own complex, went nowhere nearer the concept, "public purpose".

Purported confirmation of transfer by EPB to BGMEA, as conveyed through its memo dated 8th September 1998, reflects even a worse scenario, because apart from the total embargo on the transferability of acquired land for private purpose, EPB was not even the owner of the land until November 2006. Documents portray that it was a purely commercially oriented move any way.

We are prepared to be swayed to the conclusion that vesting the residual part of the acquired property to EPB in 2006 was not devoid of the sanction of law because; (i) it is the government which decided to do so after the requiring body abandoned it, (ii) the purpose was capable of showering direct benefit on the people at large as a Twin Tower would have done, (iii) it was not meant to enrich an individual or a group, (iv) the transfer was vide a registered deed.

But, it will be grotesque to say that the purported transfer by EPB to BGMEA was blessed with any degree of legality. Such an avowal would be repugnant to the theme established by the high profile authorities, cited above.

The pertinent question any self righteous person would be inquisitive about is how the public at large or even a substantial section of it, could reap any benefit, even incidentally or circuitously, from an edifice that has been constructed for the visible economic well being of the members of BGMEA alone. What amelioration have people been deriving out of it, except that it is delineating itself as an obnoxious symbol of sheer disdainfulness of a group, endowed with fleshy economic muscle, deliriously, withering aspired seraphic image of Hatirjheel Project, a dreamy project that has been animated with huge amount of tax payers' money? There can be no qualm whatsoever on the assertion that it is BGMEA members alone, who are the exclusive beneficiaries. As truth has it, BGMEA has, a fact that has not been rebutted, sold most part of the building to banks and other commercial entities and has, thereby, enabled its members to be aggrandised. It has been like a holocaust on civility.

BGMEA has not acquired any title also because there has been no transfer of title through a device recognised by any provision of the Transfer of Property (TP) Act, 1882 and the Registration Act, 1908. The purported allotment intimated through a couple of memo issued by the Ministry and EPB, was tantamount to a totally vacuous moves. It was neither a sale nor even a lease.

The second move initiated by EPB by executing a so-called unregistered Pzw³ bvgv was also a hoax. There can not be a sale of real property without a registered deed as narrated above. While ordinarily there can be a verbal contract under the Contract Act, 1872 a contract in respect to a realty must be reduced into writing and registered as that is what the TP Act and the Registration Acts surmon. No recognised transfer deed stood executed or registered even in January 2011 as is apparent from BGMEA's letter dated 9th January 2011. In any event, as the land was acquired for public purpose and the EPB itself obtained the acquired property to hoist, "Twin Tower" for public purpose, it was out of EPB's competence to transfer the same for the private purpose of an agglomerate.

It does, hence, go without saying that BGMEA does not, and did never have, at any point of time, any kind of title or interest over the land.

What can be asseverated without mortifying the truth is that, a scam of abysmal proportion had been perpetrated in respect to the land, which is certainly government property, in which uncanny plot, EPB and, of course, some depraved officials of RAJUK, also extended their debauched hands.

Apart from the said unregistered allotment instrument, which enjoys no recognition by any stature, there is nothing whatsoever to support BGMEA's

claimed title. Neither the BGMEA's pleading nor those of any other party, depict any instrument of title in BGMEA's favour. Although the building in dispute was erected well after C.S. survey, again, there is nothing whatsoever to show BGMEA's title or even possession vide any post C.S. survey.

BGMEA, in its application to RAJUK on 11th January 2003 claimed title over the land, relying on the said stale documents, although curiously enough, by its own statement, EPB by a so-called contract, bereft of any legal status, only allowed it to use the land with liberty to construct a building thereon. We find this contract, if it can be described as a contract at all, to be rather elusive. The so-called allotment can not be drawn to any concept of transfer of realty known to any provision of the TP Act or any other statute.

RAJUKs pleading divulge that BGMEA applied for approval as early as in 2002 for a clearance certificate, when all the papers submitted even by BGMEA show that the land belonged to the government.

These reflect perpetuation by BGMEA of a series of pernicious acts of **inexonerable** proportion, amounting to fraud and deceit.

It is abundantly clear that BGMEA, with the visible connivance of EPB, indulged upon a fraud of reprehensible diversity, to grab government's property. Question is, how on earth could BGMEA apply for the approval of the building in 2003, when document submitted by it shows that even EPB did not acquire any interest on the land at that time and, that by no means, is the end of the harrowing episode. The building was structured on the land beyond that which was purportedly given to BGMEA, as is disclosed by the map and the **docets** in the DC's office. By doing so BGMEA obtruded upon the entire wetland.

It is also obvious from all the instruments that as soon as it became clear to BGMEA and EPB that the earlier's land grabbing exercise has become exposed, they proceeded to create fraudulent documents years after BGMEA applied to RAJUK, claiming ownership over the land.

BGMEA's action has not only been reproachful but is also felonious, to say the least.

M/s. Rokanuddin Mahmud and Akhtar Imam reminded us of the contribution members of BGMEA infuse into our exchequer.

We are not oblivious of this. But, can we, or for that purpose, can the state, allow them impunity or immunity from the law? We are unable to accede to such a proposition. The rule of law shall cry in wilderness if we allow impunity to a class of people because they make important contribution to our economy. Irrespective of whether they do so or not, they must remain amendable to the law of the land like any one else, and must not be allowed to act as a reprobate lot, or else the rule of jungle shall reign. Such squalid acts can not be endorsed.

BGMEA, we must iterate, acted in the most decadent, disdainful and imperious manner by pretending that its members' stentorian economic muscle place them with supra legal status. They have, raised a building on the government land, effectively frustrating the long cherished Hatirjheel Project. The very presence of the building shows that a conglomerate of financially affluent people can scorn and unravel our law with impunity in a nauseating manner. Such a view is simply repulsive to notion of justice.

Most insalubriously, it had been built by displaying bizarre audacity to put an stumbling block on part of Hatirjheel Project, by impinging upon Begunbari Canal, culpably filling in the same, obnoxiously imperiling the expected pageantry of the Project.

The buildings stands their as a cancerous growth with the capability to dilate malevolency not only to Hatirjheel area, but to the city in its entirety. In our view, unless this malignant growth is evaporated forthwith, it will swamp the whole city.

If a body claims to be a major contributor to the country's economy, its contributing aspect must pervade to all areas. It can not be licensed to indulge upon anarchy. It must behave in an orderly manner or else face the harsh rigour of law, to which every one is subject, irrespective of his stature or standing.

Garments workers, by keeping the garments industries rolling, also make tremendous contribution to our economy. Similar contributions are made by Bengali diaspora, stationed abroad, who inject loads of money to our treasury. Even the poor peasants yield crops to feed the whole nation, and thereby block exodus of foreign exchange, without whose bestowal, the entire populace, inclusive of the BGMEA members, will starve. So, the claimed dispensation by

BGMEA on ground of their contribution is absolutely indecorous. We can not allow a class of privileged people to flout the law because they are rich: Lord Denning's command must not be ignored;

"Be you ever so high, the law is above you".

We must put on record that even the government is totally handicapped in this respect because it can not transfer this land to any individual or even to a conglomerate for the latter's private purpose as the land was acquired for public purpose.

It is therefore, obvious that the Rule is destined to see the face of success on this count alone, and the building is fated to be scrapped and deflated to ground as it does guilefully stand on the government owned land.

Although our above finding makes embarkation on the second count unnecessary, we would, nevertheless, proceed to that aspect as well, to satisfy the interest of totality.

Question as to whether payment of fine imposed by RAJUK for unapproved construction, entitles the structure concerned to enjoy sanctification, came up in two widely publicised cases in the recent past.

In Jamuna Builders Ltd.-V-RAJUK (Jamuna Future Park Case), this Division's decision to summarily reject Writ Petition No. 421 of 2010, stating that RAJUK is, notwithstanding provisions in section 3(B)(5) of Act, sufficiently fortified with the power to dismantle an unapproved construction, had received Appellate Divisions endorsement.

In RAJUK-V- A. Rouf Chowdhury 61 DLR (AD) 28, the so-called RANGS Building Case, the Appellate Division **undistortedly** vouched that a structure heightened to encroach upon the realm reserved for the Civil Aviation Authority, is liable to be scrambled.

There is nothing in section 3(B)(5) of the Act to say that receipt of fine amounts to legalizing unapproved construction.

What section 3(B)(5) says is that no dismantling order shall be made unless it is found that (a) such building . . . . . has been constructed . . . . . in a manner which is contrary to the Master Plan or development plan . . . . (d) sanction if prayed for could not be granted.

It is beyond argument that the building has been constructed in a manner which is contrary to the Master Plan and development plan.

The subject building is liable to be reduced to extinction also on the ground that it was built in breach of Rjvavi AvBb, and Act XXXVI of 2000, irrespective of whether payment of fine made the wrong, right. Even RAJUK can not allow someone to raise structures in breach of these laws.

In this respect we wholly endorse and adopt what Ms. Hasan has laid down in her written submission, quoted above in it's entirety, and what Mr. Morshed verbally submitted.

The Rule is hence made absolute, as it is so destined, coupled with the direction that the authorities will demolish the building within 90 days.

The fact that lots of money had been spent, can not be a ground to allow it to stay upright.

BGMEA must return money to those who bought flats in the building, as those transactions stand vitiated, within 12 months from the receipt of claims. The flat buyers, can however, not, in our view, claim interest, because, as we look at it, they are guilty of contributory negligence. They had actual or constructive knowledge about BGMEA's bareness of title and the illegality as to the construction of the building.

Sheikh Md. Zakir Hossain, J:

I agree.

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

Writ Petition No. 10703 of 2011
With
Writ Petition No. 10947 of 2011

IN THE MATTER OF:
Bangladesh Environmental Lawyers Association (BELA)

...Petitioner

In Writ Petition No. 10703 of 2011

AND
Abdul Hafiz

...Petitioner

In Writ Petition No. 10947 of 2011

-Vs-

Bangladesh and others

....Respondents

In both the writ petitions

Mr. M. Iqbal Kabir with
Mr. Md. Khairul Alam, Advocates
...For the petitioner

In Writ Petition No. 10703 of 2011 and the added respondent No. 6 in Writ Petition No. 10947 of 2011
Mr. A.J. Mohammad Ali, Senior Advocate
With
Mr. Ruhul Quddus Lazol, Advocate
...For the petitioner
In Writ Petition No. 10947 of 2011

Mr. Md. Al-Amin Sarker, D.A.G with
Mr. Md. Zakir Hossain Ripon, A.A.G
....For the respondents

In both the Writ Petitions

Present:
Mr. Justice Mirza Hussain Haider
And
Mr. Justice Kazi Md. Erajjul Haque Akondo

Heard on : 08.11.2012, 12.11.2012, 15.11.2012 and 28.11.2012 and

Judgment on: The 5th December, 2012

Kazi Md. Erajul Haque Akondo, J.: Since the subject matters of both the Rules, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, are same and more or less between the same parties, both the Rules are heard together and disposed of by this single judgment.

In Writ Petition No. 10703 of 2011, Bangladesh Environmental Lawyers Association (BELA), as petitioner obtained the Rule Nisi calling upon the respondents to show cause as to why they should not be directed to remove the bailey bridge illegally constructed over "Dawki river" at Jaflong, Sylhet, flowing through Goainghat Upazila, Under Sylhet district, in violation of the Bangladesh Environment Conservation Act, 1995 and the Rules framed thereunder in 1997,

the Mines and Minerals Resources (Control and Development) Act, 1992 and the Rules of 1968; the Bangladesh Water Development Board Act, 2000 and the Land Management Manual, 1990 and other applicable laws, Rules and Policies, and being used for the purpose of carrying excavated stones, and why direction should

not be given upon them to declared the Jaflong-Dawki river as a ecologically critical area; and/or pass such other or further order or orders as to this Court may seem fit and proper.

Along with the Rule, the petitioner also obtained a direction upon the respondents No. 7, 9 and 10 to investigate into the matter at once and to take appropriate steps accordingly, for such illegal constructions as alleged herein, within seven days and refrain all concerned from continuing with such construction for a period of three months from date, and the respondent No. 7 was directed to file compliance

of the order positively. Thereafter, the direction has been extended from time to time.

In Writ Petition No. 10947 of 2011, on the prayer of one Abdul Hafiz the Rule Nisi was issued calling upon the respondents to show cause as to why Memo No. পঅ/সিসি/জাঃপাকোঃ/৩০/২০০২ (৩য় খন্ড)/নোটিশ/২১৯৬ dated 14.12.2011 issued by the respondent No. 2 purporting to remove the bailey bridge from Dawki river (Annexure-A) shall not be declared to have been issued without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

Pending disposal of the Rule, the operation of the impugned Memo dated 14.12.2011 (Annexure-A) was also stayed for a period of 3 months from date. Thereinafter, the order of stay was extended from time to time.

The case of the petitioner, as set out in the Writ Petition No. 10703 of 2011, in short, is as follows:

> The Petitioner is Bangladesh Environment Lawyers Association (hereinafter referred to as BELA), is working since 1992 with expertise in the regulatory field of environment and ecology, and protecting public interests against environmental anarchies through public interest litigations, and the locus standi of BELA in filing this sort of writ petition has been considered in favour of BELA in the case of Dr. Mohiuddin Farooque vs. Bangladesh and others, reported in 49 DLR (AD)-1.

The petitioner states that the environment and ecology of the country are being continuously endangered and threatened by various activities originating from both public and private affairs. One of the primary causes of environmental degradation is unregulated operation of commercial activities by a few unscrupulous persons/entities at the cost of our precious and irreplaceable ecosystem and natural resources.

It is stated that Sylhet Division, situated at the north-eastern part of the country, is enriched by the greenery of hillocks, tea gardens, the flow of numerous rivers and water falls which Jaflong-Dawki river (10.75 km) is famous one, flows through the Goainghat Upazila of Sylhet district (Annexure-A). The crystal, transparent and rhythmic flow of the said River has always attracted the nature loving tourists and as a result, Jaflong area has turned into a popular tourist spot. Another significant economic contribution of this hilly river is the supply of huge volume

of stones that have turned the stone quarries of Jaflong as one of the major source of stone collection for the country.

Earlier stones were always collected manually from the stone quarries of the river Jaflong-Dawki but since 1998 the Director, Mineral Resources Development Bureau the respondent No. 8 Under the Ministry of Power, Energy and Mineral Resources, the respondent No. 4, permitted the use of hydraulic excavators in the stone quarry of Jaflong without any assessment of the environmental impact of the same. Thus Jaflong area is now within the risks of earth quake due to the presence of the Dawki fault. However, since 1998 hydraulic excavators are continuously being used unabatedly in the stone quarries of Jaflong-Dawki river causing various acute problems of the environment and ecology.

The River is also affected by arbitrary and whimsical intervention of the unscrupulous traders, who has recently constructed a bridge thereon in third part of choil khoil Mouza (*dag* no.7 of Khatian no. 1) without having any assessment of environmental impact and public consultation for the purpose of carrying excavated stones. The bridge is adversely affecting the free flow of the river and helping to increase unauthorized and illegal operation of excavators by the unscrupulous traders. The news of such illegal construction of bridge was published in the national and local medias, and the petitioner has collected photographs of the said construction. (Annexures - “B”, “B-1”, ``B-2”, “B-3” and “B-4”.)

The present petitioner earlier filed Writ Petition No. 4958 of 2009 against the Ministry of Environment and Forests and others for their failure to stop the mechanized extraction of stones and also to remove mechanized excavators from the Jaflong and Bholagonj stone quarries of the Pian, Dawki and Dhala rivers flowing through Goainghat and Companygonj Upazilas of Sylhet district, and to protect the natural eco-system of the rivers and the lives, property and livelihoods of the people living on the said areas and obtain a Rule thereon, which was made absolute on 14.01.2010 except the portion relating to the payment of compensation subject to the condition that the Ministry of Environment may frame any guidelines for mechanized extraction of stones strictly keeping the ecological system of the concerned area intact and that no other ministry shall have any say in this regard. But no such guideline has yet been framed by the Ministry of Environment for mechanized extraction of stones.

It is further alleged that soon after the said judgment, the mechanized extraction of stones was stopped for the time being, but the same has started again which the respondents have failed to prevent. The respondents have also failed to stop the

illegal construction of bridge over the Jaflong-Dawki river construct for the purposes of carrying excavated stones and in the circumstances, the petitioner served a notice upon the respondents demanding Justice, on 08.12.2011, asking them to remove the bridge from over the river Jaflong-Dawki (Annexure-C), but the respondents did not respond to the notice till the date of filing this Writ Petition No. 10703 of 2011. Hence this Rule has been obtained.

The Rule was issued upon the respondents and as per direction of this Court, the respondent No. 7, the Deputy Commissioner, Sylhet, filed an affidavit of compliance contending that as per direction of this Court a six-member committee was formed (Annexure-1) on 20.12.2011 to investigate into the matter and to take action in order to stop illegal construction work of the bridge and other structures on the Jaflong-Dawki river. Thereafter, the committee visited the area on 21.12.2011, and saw a temporarily built bailey bridge of about 50 feet long with 320 feet approach road on both sides, which is being used for carrying excavated stones over the river by mini-trucks. After investigation, the committee came to know that the bridge was constructed there only 10 days ago. The committee on the basis of information, collected through visit, discussion and upon collection opinions of the local people, stone labours, tourists along with other professionals, prepared a report on 21.12.2011, (Annexure-1(a) and submitted the same to the respondent No. 7, who thereafter held a meeting on the matter in presence of the related district level officials including the law enforcing agency on 22.12.2011, and got the said investigation report approved (Annexure-1(b) and 1(c).

The respondent No. 7 also circulated a public notice on 22.12.2011, banning any construction or any structural intervention on or about the Jaflong-Dawki river as per direction of this court, which was published in the local daily newspaper “the Daily Uttor Purbo” and “the Daily Shabus Sylhet” on 23.12.2011 (Annexure-1 (d), 1(e) and 1(f). The respondent No.7 vide public notice dated 22.12.2011, instructed the local police and the other law enforcers to ensure execution of the order of this Court, and the Upazila Nirbahi Officer, Goainghat was also asked to monitor the situation of Jaflong area and to submit a report. Accordingly a report was submitted to the respondent No. 7 (Annexure-1) 1(g), 1(h) and 1(i) containing that no further extension or construction has done over the Jaflong-Dawki river.
The case of the petitioner in Writ Petition No. 10947 of 2011 briefly runs as follows:

> The petitioner is the General Secretary of Jaflong-Ballaghat Pathor Baboshahi Samobaya Somity Ltd. Goainghat, Sylhet being registration No. 46/99-2000 dated 09.03.2000, (hereinafter referred to as samity) which is related with the stone carrying business at Jaflong-Ballaghat, and

obtained permission from the Upazila Nirbahi Officer, Goainghat, Sylhet to construct a temporary bailey bridge over the river Dawki at its own cost vide Memo no. উনিঅকা/গোঘাট-২০০১/বেঃ ব্রী/২০৯(২) dated 19.02.2001 (Annexure-B).

As per the above permission, the petitioner's samity has been carrying stones in every dry season by constructing a temporary bailey bridge over river Dawki at its own cost without resisting the natural water flow of the river and removing the same before rainy season. But on 10.12.2011, some officials of the respondent No. 2 along with officials of the respondent No.5 directed the petitioner's samity not to carry stones over the bailey bridge, and as such the petitioner made a representation to the respondent No. 3, the Deputy Commissioner, Sylhet, stating the relevant facts but got no response, and thereafter the respondent No. 2, the Director of the Directorate of Environment, Sylhet Division, by issuing the impugned Memo dated 14.12.2011 (Annexure-A) directed the petitioner to remove the bailey bridge stating that the bridge along with the approach road which has been constructed over river Dawki without the permission of the government is harmful for the natural flow of the river, and the activities of the petitioner is contrary to the provision of section 6 uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010).

The local Chairman of No.3 Purba Jaflong Union Parishad Goainghat, Sylhet issued a certificate on 10.12.2011 stating that the local stone dealers construct temporary bailey bridge over river Dawki every year in dry season to carry stones by truck, and it does not resist the water flow of Dawki river (Annexure-C).

On receiving the impugned memo dated 14.12.2011, (Annexure-A) the petitioner served a notice upon the respondents on 19.12.2011, demanding justice but got no response. Hence this Rule was issued.

The Rule was issued upon the respondents, and the respondent No.2, the Director, Directorate of Environment, Sylhet Division, filed an affidavit-in-opposition denying the material allegations made in the writ petition and contending, inter-alia, that the petitioner did not follow the process before construction of the temporary bailey bridge over the river Dawki, which caused obstruction to the natural flow of the river. The petitioner ought to have filed an application to the proper authority, that is to say, the Department of Environment, Sylhet Division Office, but he did not take permission from the proper authority before constructing the bridge. Construction of dam/approach road over the river means filling of earth/stand on the bed of the river. The respondent No. 4, the Superintendent of Police, Sylhet, has got no lawful authority to permit anybody to

construct any dam or bridge over the river. The petitioner has constructed the bailey bridge along with dam/approach road over the river without obtaining any environmental clearance from the respondent No. 2, and the construction is creating obstruction not only to natural flow of the river but also to the environment of the area, and as such the Rule should be discharged.

The respondent No. 3, the Deputy Commissioner, Sylhet, also filed an affidavit-in-opposition denying the material allegations made in the writ petition and contending, inter-alia, that "Jaflong-Ballaghat Pathor Baboshaye Multipurpose Samabaya Samity Ltd." Sylhet, filed an application (Annexure-1) to the respondent No. 3 on 03.12.2000, for permission to construct a temporary bailey bridge over the river Piyain at its own cost, and remove the same after 3-4 months and accordingly, the samity was permitted to construct the bridge, as prayed for, by the respondent No. 5, the Upazila Nirbahi officer, Goainghat, Sylhet, vide memo dated 19.12.2001, Annexure-1(a) on conditions as contemplated in the said memo. Subsequently the said samity again filed an application on 23.12.2001 (Annexure-1 (b) to the respondent No. 5 praying for constructing a temporary bailey bridge over the river Piyain for 3-4 months in the season, and accordingly, permission was given vide memo dated 09.02.2002, Annexure-1(c). Thereafter, no such permission was obtained by anybody from the respondents to constructed the same illegally, and hence the said illegally constructed bailey bridge is required to be removed by the said samity at its own cost and risks, and in the circumstances, the respondent No. 3 prayed for discharging the Rule in Writ Petition No. 10947 of 2011 with costs.

On an application, the Bangladesh Environmental Lawyers association (BELA) added itself as respondent No. 6 in the Writ Petition No. 10947 of 2011.

The added respondent No. 6, BELA, by filing an affidavit-in-opposition denied the averments made in the writ petition contending, inter-alia, that the Writ Petition No. 10947 of 2011 is not maintainable as the submissions and grounds taken by the petitioner are vague, unspecified and based on conjecture and surmise. The petitioner constructed the said bailey bridge without obtaining any permission from the authority and without having any environment clearance certificate and environmental impact assessment as required under the Environmental Conservation Act, 1995 and the Rules made thereunder. Laws does not allow anyone to do any activities without complying with the provisions of the Bangladesh Environmental Conservation Act, 1995, and as such the respondent No. 2 has rightly passed the impugned order asking the petitioner to remove the bailey bridge as well as the dam/approach road constructed over the

river Dawki connecting the bailey bridge and the banks of the river (Annexure-A). Hence that the said respondent prayed for discharging the Rule.

It is to be mentioned here that the petitioner of Writ Petition No. 10947 of 2011 did not enter appearance in the Writ Petition No. 10703 of 2011.

At the outset, Mr. M. Iqbal Kabir, the learned Advocate appearing on behalf of the BELA, the petitioner in Writ Petition No. 10703 of 2011 and the respondent No. 6 in Writ Petition No. 10947 of 2011, contends that "Jaflong-Ballaghat Pathor Baboshahi Samobaya Samity Ltd." Goainghat, Sylhet, constructed the bailey bridge in question along with the dam/approach road over the river Jaflong-Dawki without obtaining any permission or environmental clearance from the authority concerned, which is adversely affecting the crystal, transparent and rhythmic flow of water and damaging the environment and ecology of the river and surroundings and as such the Director, Directorate of Environment, Sylhet Division, rightly passed the impugned order asking the said sality to remove the bailey bridge along with the approach road/dam at once.

He further contends that the Samity constructed 300 feet long dam/approach road on the bed of the river by filling earth/sand to connect both the banks of the said river with the 50 feet long bailey bridge and thereby the samity narrowed down the said 400 feet wide river into only 50-0 feet water flow and changed the nature and character of the river causing obstruction to the natural flow of water and thereby damaging the environment and ecology of the area violating the provisions of section 6 Uma and 12 of the Bangladesh Environmental Conservation Act, 1995. The samity is not supposed to get environmental clearance under Rule-7 and schedule -1 of the Environment Conservation Rules, 1997 as the bridge and the dam/approach road, as constructed, fall under the "red" category of establishment.

He next submits that the Director General of Department of Environment (Respondent No. 6 to the writ petition No.10703 of 2011), as per section 7 of the said Act of 1995, is responsible to take measures against the activities that may cause damage to ecosystem, while the Director General of Bangladesh Water Development Board, (Respondent No. 5 to the said writ petition), according to the provision of sections 5 and 6 of the Bangladesh Water Development Board Act, 2000 is responsible for regulating the free flows of all rivers and protecting the river banks and towns, markets and other important public places from river erosion, but in this case both the aforesaid respondents have failed to discharge their respective duties and responsibilities in regulating the free flows of the river

as well as protecting the banks of the river Dawki and thereby maintaining the ecosystem of the area.

He further submits that the Deputy Commissioner, Sylhet, who is the custodian of all rivers flowing through the Sylhet district under the provisions of Land Management Manual, 1990 also failed to prevent the encroachment over the said river and to remove the unauthorized bailey bridge and the approach road from the river Dawki and thus the said respondent as a whole deliberately failed in preventing such illegal and destructive actions of the said samity causing irreparable damage to the precious ecology of the Dawki river and thereby denying the basic right to life of the villagers of the area guaranteed under Articles 31 and 32 of the Constitution.

Mr. M. Iqbal Kabir referring Article 18A of the constitution finally contends that it is the duty of the state to protect and improve the environment and to preserve and safe guard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens and accordingly prayed for declaring the Jaflong-Dawki rivers as “ecologically critical” area under section 5 of the Bangladesh Environmental Conservation Act, 1995(Amended in 2010) upon making the Rule absolute in Writ Petition No. 10703 of 2011 and discharging the Rule issued in Writ Petition No. 10947 of 2011.

In support of this submissions Mr. M. Iqbal Kabir took us through the sections 2, 5, 6 Uma, 7 and 12 of the Bangladesh Environmental Conservation Act, 1995 and the Rules made thereunder in 1997; sections 5 and 6 of the Bangladesh Water Development Board Act, 2000; the Land Management Manual, 1990; Articles 31, 32 and 18A of the Constitution, and relied on the decisions in the case of Bangladesh Environmental Lawyers Association (BELA) vs. Government of Bangladesh and others reported in 30 BLD (HCD) 185, paragraph Nos. 27 and 30; BELA vs. Bangladesh reported in 7 Law Guardian (HCD) 118, paragraph Nos. 56, 57, 58 & 59 and Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and others reported in 62 DLR (HCD)463, paragraph Nos. 29, 30, 31, 32 & 33 and the judgment passed by this Court in Writ Petition No. 3503 of 2003 (Human Rights and Peace for Bangladesh & others vs. Bangladesh & others).

Conversely, in Writ Petition No. 10947 of 2011 Mr. A. J. Mohammad Ali, the learned Senior Advocate appearing on behalf of the petitioner, (who did not enter appearance in Writ Petition No. 10703 of 2011), submits that the petitioner did not fill earth and make any dam/approach road in constructing the bailey bridge over the river Dawki by obstructing the free flow of the water and changing the nature and character of the river, and thereby damaging the environment and

ecology of the area, and as such the activities of the petitioner does not fall within the mischief of section 6Uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010), but the respondent No. 2, the Director, Directorate of Environment, Sylhet Division, most illegally issued the impugned order (Annexure-A) without appreciating that the bailey bridge was constructed temporarily, over the river for the dry seasons only, with the permission of the respondent No. 4, the Superintendent of Police, Sylhet.

He further submits that petitioner's samity is carrying excavated stones over the bailey bridge for quite a long period, and more then 50 thousands workers are working there, and as such they acquired a legal right and legitimate exceptions to continue their livelihood. The respondents issued the impugned memo with a malafied intention to deprive the petitioner's samity from continuing with their business, and also to deprive the local workers from their livelihood.

He lastly, submits that the government is earning more then 2 core taka every year from stone business of Jaflong, but the respondents issued the impugned memo directing the petitioner to remove the dam/approach road and the bailey bridge from the river Dawki without giving any opportunity to the petitioner of being heard, which is contrary to the principle of natural justice, and as such the Rule should be made absolute.

Mr. Md. Al-Amin Sarker, the learned Deputy Attorney General appearing for the other respondents in both the writ petitions, submits that the petitioner's samity most illegally constructed the 50 feet long bailey bridge along with 300 feet approach road connecting the bridge and the banks of the river on both the sides of the said bridge over the river Dawki without obtaining any permission from the authority concerned and also without obtaining any environmental clearance certificate, which as such is causing obstructions to the natural flows of the river, as such the respondents rightly issued the impugned order asking to remove the bridge along with the dam/approach road. But, the learned Deputy Attorney General find it difficult to make any submission opposing the Rule in Writ Petition No. 10703 of 2011; Rather relying upon the contentions of the affidavit-of-compliance filed by the respondent No. 7, the Deputy Commissioner, Sylhet in Writ Petition No. 10703 of 2011 he clarified the position of the respondents and thus submits that no right, vested or otherwise has been accrued upon anybody on the basis of the illegal construction of the bailey bridge in question without obtaining the environment clearance certificate as well as permission from the appropriate authority.

He next submits that the permission, if any, obtained from the Superintendent of Police, Sylhet is not a valid permission as the said Police Super is not the appropriate authority to give such permission. Thus he submits that the Rule in Writ Petition No. 10947 of 2011 should be discharged with cost and the Rule issued in Writ Petition No. 10703 of 2011 should be made absolute.

We have pursued the writ petitions, affidavits-in-opposition, affidavit of compliance along with all the annexure appended hereto and the laws and the decisions as referred to by the parties.

It is apparent from Annexure-B to the Writ Petition No. 10947 of 2011 that the petitioner's samity obtained a permission, as per it's prayer, from the respondent No. 5, the Upazila Nirbahi Officer. Goainghat, Sylhet on 19.02.2001, to construct a bailey bridge for carrying excavated stones from Jaflong quarries and collecting tolls from the persons who uses the said bailey bridge. And this year, the bailey bridge is question was constructed with the permission of the respondent No. 4, the Superintendent of Police, Sylhet as appears from paraghaph-13 to the above writ petition, (Who of course does not have any authority to give such Permission) and on the other hand, it appears from Annexure-C to the above writ petition that the local Union Parishad Chairman by issuing a certificate, certified that petitioner's samity constructs temporary bailey bridge over the river Dawki every year in dry season, like this year, to carry stones through truck, and as to his knowledge, natural flow of the river does not affect for construction of such bridge.

On the other hand, it appears from the Annexures-1, 1(a), 1(b) and 1(c) to the affidavit-in-opposition, submitted by the Deputy Commissioner, Sylhet, the respondent No. 3, in the Petition No. 10947 of 2011, which has not been controverted by the writ petitioner, that the petitioner's samity for the 1st time filed and application to the Deputy Commissioner, Sylhet on 03.12.2000, praying for constructing a temporary bailey bridge over the river Piyain at their own cost to carry the excavated stones from the quarries through truck and removing the same after 3-4 months, and accordingly the samity was permitted to construct the said bridge by the Upazila Nirbahi Officer, Goainghat, Sylhet vide memo dated 19.02.2001 (Annexure-B), and then the petitioner's samity was further permitted by the Upazila Nirbahi Officer, Goainghat, Sylhet vide memo dated 09.02.2002, to construct the temporary bailey bridge over river Piyain for 3-4 months and thereafter, the respondents never gave such permission to the petitioner till filing of the writ petition, but the petitioner's samity constructed 50 feet long bailey bridge along with 300 feet approach road connecting the bridge and the banks of the river on both the sides of the said bridge this year over the river Dawki in 3rd

part of Choil Khoil Mouza, Dag No. 7 of Khatian No. 1 with the permission of the Superintendent of Police, Sylhet, narrowing the 400 feet wide river into only 50-60 feet water flow, which is illegal as the Superintendent of Police, Sylhet is not the authority to permit anybody to constructed such bridge at the place mentioned above, and the local Union Parishad Chairman is also nobody to issue such certificate (Annexure-C).

The petitioner's samity constructed the bailey bridge over the river Dawki by making more than 300 feet dam/approach road on the bed of the river by filing earth/sand and thereby narrowed down the free flow water of the 400 feet width river into 50-60 feet, which has not been denied by the writ petitioner samity and thereby the petitioner has changed the nature and character of the river, causing obstruction to the natural flow of water, and damaging the environment and ecology of the area violating the provision of section 6Uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010) which reads as:

> "৬ ঙ। জলাধার সম্পর্কিত বাধা-নিষেধ। আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, জলাধার হিসাবে চিহ্নিত জায়গা ভরাট বা অন্য কোন ভাবে শ্রেণী পরিবর্তন করা যাইবে না।
>
> তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থ অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে জলাধার সম্পর্কিত বাধা-নিষেধ শিথিল করা যাইতে পারে।"

Now, we are to see whether the river falls within the meaning of 'Jaladhar' (জলাধার). As per section 2 (ka ka) of the Bangladesh Environment Conservation Act, 1995 'Jaladhar' (Rjvavi) includes river, which runs as under-

> "2। সংজ্ঞা। বিষয় অথবা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে এই আইনে,
> .....
> (কক) "জলাধার" অর্থ নদী, খাল, বিল, হাওড়, বাওড়, দিঘী, পুকুর, ঝর্ণা বা জলাশয় হিসাবে সরকারী ভূমি রেকর্ডে চিহ্নিত ভূমি বা সরকার, স্থানীয় সরকার বা সরকারী কোন সংস্থা কর্তৃক সরকারী গেজেটে প্রজ্ঞাপন দ্বারা ঘোষিত কোন জলাভূমি, বন্যা প্রবাহ এলাকা, সলল পানি ও বৃষ্টির পানি ধারণ করে এমন কোন ভূমি;

.....

The petitioner constructed the bailey bridge without permission of the authority concerned and without obtaining environmental clearance certificate from the Directorate of Bangladesh Environment as required under the provision of section 12 of the said Act, 1995, which is quoted below-

"১২। পরিবেশগত ছাড়পত্র। (১) মহাপরিচালকের নিকট হইতে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, পরিবেশগত ছাড়পত্র ব্যতিরেকে কোন এলাকায় কোন শিল্প প্রতিষ্ঠান স্থাপন বা প্রকল্প গ্রহণ করা যাইবে না।"

.....

Again, as per Rule 7(1) (2) read with Schedule-1 (Gha) of the Environment Conservation Rules, 1997, the construction of bridge or bailey bridge along with the dam/approach roads falls within read category which requires to obtain clearance certificate from the Director General of the Department of Environment upon assessing environment impact which has not been done in respect of constructing the bailey bridge over the river Dawki by the petitioner of Writ Petition No. 10947 of 2011, rather the said construction has created obstruction on natural flow of water of the river.

For violating the section 12 as to obtaining prior permission from the Department of Environment, it has been provided in serial No. 8 of the table of section 15(1) of the said Act of 1995 the sentence up to 3 years with fine can be awarded to the offender. This issue has been elaborately discussed in the case of Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh reported in 7 law Guardian (HCD) 118, paragraph Nos. 56, 57, 58 & 59 as referred to.

In view of the above, we do not find any illegality in passing the impugned order (Annexure-A) dated 14.12.2011 in Writ Petition No. 10947 of 2011, issued by the Director, Directorate of Environment, Sylhet Division, the respondent No. 2, who is the legal authority to give such environmental clearance, and to relax 'জলাধার সম্পর্কিত বাধা-নিষেধ' as per the mandate of section 6 Uma of the Bangladesh Environment Conservation Act, 1995 (Amended in 2010) for indispensable national interest.

The petitioner of Writ Petition No. 10947 of 2011 did not controvert the contents of the affidavits-in-opposition filed by the respondents No. 2, 3 and 6 by filing any affidavit-in-reply.

For the reasons and discussion made hereinabove, we do not find any force in the submissions of the learned Advocate for the petitioner, and as such there is no reason to interfere with the impugned order challenged in Writ Petition No. 10947 of 2011.

On the other hand, complying with the order of this Court, the respondent No. 7, the Deputy Commissioner, Sylhet filed an affidavit-of-compliance in Writ Petition No. 10703 of 2011 annexing the investigation report, Annexure-1 (a) and the approval of the investigation report, Annexure- 1(c), but the contents of the said two investigation reports are totally contradictory and conflicting with the contents of his affidavit-in-opposition, subsequently filed in Writ Petition No. 10947 of 2011, which is not at all desirable from the responsible officer like the respondent. However, we take notice of the annexure 1(a) and 1(c), which was originally filed in compliance of this Court's order upon holding proper enquiry through a high-powered committee.

In the light of the above, now, let us see whether the bailey bridge and the approach road/dam as constructed over the river Jaflong-Dawki is affecting the environment and natural ecosystem of the river, and the lives, property and livelihoods of the people living in and around the areas adjacent to the river, and whether the said river deserves to be declared as an "ecologically critical area" under section 5 of the Bangladesh Environment Conservation Act, 1995 which reads as under-

> "৫। পরিবেশগত সংকটাপন্ন এলাকা ঘোষণা।- (১) সরকার যদি এই মর্মে সন্তুষ্ট হয় যে, পরিবেশের অবক্ষয়ের কারণে কোন এলাকার প্রতিবেশগত ব্যবস্থা (Eco-system) সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বা হইবার আশংকা রহিয়াছে তাহা হইলে সরকার, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, উক্ত এলাকাকে পরিবেশগত সংকটাপন্ন এলাকা (ecologically critical area) ঘোষণা করিতে পারিবে এবং অবিলম্বে উক্ত সংকটাপন্ন অবস্থা হইতে উত্তোরণের জন্য প্রয়োজনীয় পদক্ষেপ গ্রহণ করিবে।
>
> (২) উপ-ধারা (১) এর অধীন প্রদত্ত সকল প্রজ্ঞাপনে সংশি- ষ্ট এলাকার সীমানা ও মানচিত্রসহ আইনগত বর্ণনার উলে- খ থাকিবে এবং এই সকল মানচিত্র ও আইনগত বর্ণনা সংশি□ষ্ট এলাকাতে প্রদর্শিত হইবে এবং তাহা উক্ত এলাকার দালিলিক বর্ণনা হিসাবে বিবেচিত হইবে।
>
> (৩) কোন এলাকাকে প্রতিবেশগত সংকটাপন্ন এলাকা ঘোষণার পর সরকার সংশি- ষ্ট এলাকার জন্য ব্যবস্থাপনা পরিকল্পনা গ্রহণ করিবে।
>
> (৪) প্রতিবেশগত সংকটাপন্ন বলিয়া ঘোষিত এলাকায় কোন কোন ক্ষতিকর কর্ম বা প্রক্রিয়া চালু রাখা বা শুর" করা যাইবে না তাহা সরকার উপ-ধারা (১) এ উলি- খিত প্রজ্ঞাপনে নির্দিষ্ট করিয়া দিবে।"

Mr. M. Iqbal Kabir is support of his submission cited a judgment of this Court passed in Writ Petition No. 3503 of 2009 (Human Rights and Peace for Bangladesh & others vs. Bangladesh & others), wherein the illegal encroachment

and grabbing of the rivers Buriganga, Turag, Balu and Shitalakkha by the unscrupulous persons was challenged, and the Court directed the Secretary, Ministry of Environment to declare the rivers Buriganga, Turag, Balu and Shitalakkha and its adjacent areas as "ecologically critical area" holding:

……

"অতএব, নির্ধারিত সময়ের মধ্যে বুড়িগঙ্গা, তুরাগ, বালু এবং শীতলক্ষ্যা নদীগুলির সীমানা নির্ধারণপূর্বক এই সম্বন্ধে প্রতিবেদন ১৫-১২-২০০৯ এর মধ্যে অত্র আদালতে দাখিল করিতে হইবে। ৩০-১১-২০১০ তারিখের মধ্যে সীমানা পিলার স্থাপন, নদীগুলি হইতে সকল প্রকার দখল ও স্থাপনা অপসারণ এবং Walk-way বা বৃক্ষরোপণ সম্পন্ন করতঃ প্রতিবাদীগণকে ১৫-১২-২০১০ তারিখের মধ্যে অত্র আদালতে প্রতিবেদন দাখিল করিতে হইবে।

এখানে উলে-খ্য যে, বর্তমানে ৪টি জেলায় সংশি-ষ্ট নদীগুলির অভ্যন্ড়রে অবৈধ দখলদার কর্তৃক নির্মিত ও নির্মানাধীন সকল স্থাপনা অপসারণের যে কার্যক্রম চলিতেছে তাহা অব্যাহতভাবে চলিতে থাকিবে। আরও উলে-খ্য যে, নদী অভ্যন্ড়রে অবৈধ স্থাপনা অপসারণের ব্যাপারে কোনর"প ব্যতিক্রম চলিবে না। অবৈধ স্থাপনা তাহা যাহাই হউক না কেন এবং তিনি যত বড় শক্তিশালীই হউক না কেন বা তিনি যে গোষ্ঠীরই হউন না কেন, বৈষম্যহীন এবং ব্যতিক্রম ছাড়া তাহা অপসারণ করিতে হইবে।

এইখানে আরও উলে-খ্য যে, এই রীট মোকাদ্দমায় বর্ণিত ৪টি নদীর প্রতিটিরই প্রতিবেশ ব্যবস্থা মনুষ্য সৃষ্টি স্থাপনা নির্মাণ, দখল এবং বিভিন্ন শিল্প কল-কারখানা হইতে নিক্ষেপিত বর্জ্য দ্বারা এই চরম জঘন্যতম অবস্থায় পতিত হইয়াছে।

বিজ্ঞ এ্যাডভোকেটগণের বক্তব্য, আদালতের উপস্থাপিত সংবাদপত্রসমূহে প্রকাশিত সচিত্র প্রতিবেদন দৃষ্টে প্রতীয়মান হইতেছে যে, সংশি-ষ্ট নদী সমূহের পানি, প্রাণীকূল, উদ্ভিদসহ তীরভূমিতে বসবাসকারী নাগরিক গোষ্ঠী ভয়াবহ পরিবেশ দূষণগ্রস্থ অবস্থায় দুঃসহ জীবন-যাপন করিতেছে। তাহাদের স্বাস্থ্য ও জীবন মারাত্মক সংকটাপন্ন অবস্থায় রহিয়াছে। এই প্রেক্ষাপটে বাংলাদেশ পরিবেশ সংরক্ষণ আইন ১৯৯৫ এর ৫ ধারা অনুসারে উপরে বর্ণিত ৪ (চার)টি নদী ও সংলগ্ন এলাকাকে 'প্রতিবেশগত সংকটাপন্ন এলাকা' ঘোষণা করিবার সকল উপাদান বিদ্যমান রহিয়াছে।

তাছাড়া নদীর পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমন এবং সংরক্ষণ ও উন্নয়ন সম্পর্কে উপরোক্ত আইনের ১৩ ধারা অনুসারে নির্দেশিকা প্রণয়ন ও বাংলাদেশ গেজেটে সরকারী প্রজ্ঞাপন হিসেবে জারী করাও অবশ্য কর্তব্য।

এমতাবস্থায়, সংশি-ষ্ট নদীগুলির এলাকায় প্রতিবেশ ব্যবস্থা চরম সংকটাপন্ন অবস্থায় উপনীত হইয়াছে বিধায় উক্ত ৪টি নদী এলাকাকে অবিলম্বে প্রতিবেশ সংকটাপন্ন এলাকা বা

ecologically critical area ঘোষণা করিবার জন্য পরিবেশ মন্ত্রণালয়ের সচিবকে নির্দেশ প্রদান করা হইল। একইসাথে নদীর সংরক্ষণ বিষয়ে পরিবেশ সংরক্ষণ আইনের ১৩ ধারা অনুসারে নির্দেশিকা প্রণয়নের নির্দেশ প্রদান করা হইল।

.....

As per the above direction, the Ministry of Environment and Forest declared the rivers Buriganga, Turag, Balu and Shitalakkha as ecologically critical area, and prepared an environment guideline on 20.01.2011, and the same was published in the Bangladesh Gazette in its additional issue on 03.02.2011.

In the said cited judgment of Writ Petition No. 3503 of 2009, this Court also defined the river under-

এ প্রসঙ্গে নদী বা নদী এলাকা বলিতে কি বুঝায় তাহা সর্ব প্রথম আইনগতভাবে ধারনা লওয়া প্রয়োজন।
তদানিন্তন Inland Water Transport Authority Rules, 1959, G Inland Water - এর সংজ্ঞা নিম্নরূপ-

> "Inland Water" means any canal, river, lake or any other navigable water in Bangladesh
>
> এ প্রসঙ্গে The Port Rules, 1966 এ ব্যক্ত নিম্নলিখিত বিধিগুলি প্রনিধানযোগ্যঃ
>
> > "bed of navigable water way" is that portion of the soil and sub-soil which is habitually covered by the waters of a navigable waterway and extends to the high water-mark on both banks of a navigable waterway. It includes any area defined hereinafter as foreshore.
> >
> > "foreshore" means that sub-soil which lies between the high-water-mark and low- water-mark.
> >
> > "high-water-mark" means a line drawn through the highest points reached by ordinary spring tides at any season of the year.
> >
> > "low-water-mark" means a line drawn through the lowest points reached by ordinary spring tides at any season of the year.

> "banks" means a land which confines the water of a water-way in its channel or bed in its channel or bed in its whole width and extends above high-water-mark.

প্রাথমিকভাবে নদী বলিতে উপরের সংজ্ঞানুসারে নদীগর্ভ ও নদীর তীর (bank) পর্যন্ত স্থানকে বুঝাইবে।"

Thus since Jaflong-Dawki river is flowing through the area nearing the India-Bangladesh border, and as per the said definition of river and the discussions made above, it is seen that the bailey bridge and its connecting dam/approach road have been constructed covering the entire river from one bank up to the other and thereby narrowing down the 400 feet natural water flow of the river into 50-60 feet resulting the river almost dead in the dry season affecting its crystal, transparent and thythmic flow of water, and thereby damaging the environment and ecology of the river as well as its adjacent areas, and due to illegal extraction of stones from the river bed, the river is losing its ecological balance and out of which, sandy land is rising on the river bed every year damaging its navigability and eroding its bank mostly in Bangladesh side during flood, and in the situation Bangladesh is losing land every year, which is not desirable and the same must be stopped. The Jaflong-Dawki river area is one of the most attractive sight seeing places of our country, and as such a good number of tourist visit Jaflong and Dawki river every year, but now-a-days the tourists are facing much trouble there as they cannot travel by boat to see the natural beauty of the river and the Jaflong zero point due to illegal construction of the bailey bridge with approach road over the river, and mechanized extraction of stones by creating horrific noise, black smoke and dust.

Mr. M. Iqbal Kabir referred to the case of Bangladesh Environmental Lawyers Association (BELA) vs. Government of Bangladesh and others reported in 30 BLD (HCD) 185, paragraphs-27 and 30 wherein on a similar question it was held:

> "Ecology is the study of relationship among living organisms and between living organisms and their environment. Ecology is also the study of ecosystems. Ecosystems describe the web or network of relations among organisms at different scales of organization. Since ecology refers to any form of biodiversity, ecological research everything from tiny bacteria's role in nutrient recycling to the effects of tropical rain forest in the Earth's atmosphere. A recent research under the aegis of World Bank reveals that five sectors have been identified as most relevant to Bangladesh in relation

to climate change impact; coastal resources, fresh water resources, agriculture, eco-system and biodiversity and human health. From these sectors, coastal resources are most impacted by climate change, whereas ecosystem may be most endangered. The area of Jaflong remains exposed to earthquake because of the presence of Dawki fault. No environmental clearance was ever accorded to 50 excavator machines operating in Jaflong stone quarry creating horrific noise and air pollution with loud noise, black smoke and dust. Indiscriminate extraction of stones from below the riverbeds by mechanized method not only destroys organisms living there but also destroys the environment. Protection of environment is linked to our survival. In an international conference held in December 2009 in Copenhagen, capital of Denmark, attended by almost all the heads of the states across the world underscored the need for protection of environment. In that International Conference Bangladesh was designated as the most venerable country on account of environmental pollution. In such a situation protection of ecology and environment is of paramount importance. (Para-27)

It is important to note that development and protection of the environment are not enemies. If without degrading the environment by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development. A balance has to be struck. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If any activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. (Para-30)"

Mr. M. Iqbal Kabir also referred to us the case of Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and others reported in 62 DLR (HCD) 463, paragraph Nos.29,30,31,32 &33 and 30 wherein it was held:

"(29) Now we turn to see the relevant provisions of law relating to responsibilities and duties of the respondents regarding maintenance of the River and environment and ecology of the area.

(30) Section 2 of the Bangladesh Paribesh Sangraksman Ain, 1995 (hereinafter referred to as the Ain) has defined the terms of 'দূষণ' (pollution), 'পরিবেশ' (environment) and 'পরিবেশ সংরক্ষণ' (conservation of environment) which read as under:

> ২। সংজ্ঞা-বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে এই আইনে,
>
> .....
>
> খ) "দূষণ" অর্থ বায়ু, পানি বা মাটির তাপ, স্বাদ, গন্ধ, ঘনত্ব বা উহাদের অন্যান্য বৈশিষ্ট্যের পরিবর্তনসহ বায়ু, পানি বা মাটির দূষিতকরণ বা উহাদের ভৌতিক, রাসায়নিক বা জৈবিক গুণাবলীসমূহের পরিবর্তন, অথবা বায়ু, পানি বা মাটি বা পরিবেশের অন্য কোন উপাদানের মধ্যে তরল, গ্যাসীয়, কঠিন, তেজস্ক্রিয় বা অন্য কোন পদার্থের নির্গমনের মাধ্যমে বায়ু, পানি, মাটি, গবাদিপশু, বন্যপ্রাণী, পাখী, মৎস্য, গাছপালা বা অন্য সব ধরনের জীবনসহ জনস্বাস্থ্যের প্রতি ও গৃহকর্ম, বাণিজ্য, শিল্প, কৃষি, বিনোদন বা অন্যান্য ব্যবহারিক ক্ষেত্রে ক্ষতিকারক, অহিতকর বা ধ্বংসাত্মক কার্য;
>
> .....
>
> (ঘ) "পরিবেশ" অর্থ পানি, বায়ু, মাটি ও ভৌত সম্পদ ও ইহাদের মধ্যে বিদ্যমান পারস্পরিক সম্পর্কসহ ইহাদের সহিত মানুষ, অন্যান্য প্রাণী, উদ্ভিদ ও অনুজীবের বিদ্যমান পারস্পরিক সম্পর্ক;
>
> .....
>
> (চ) "পরিবেশ সংরক্ষণ" অর্থ পরিবেশের বিভিন্ন উপাদানের গুনগত ও পরিমাণগত মান উন্নয়ন এবং গুনগত ও পরিমাণগত মানের অবনতি রোধ;
>
> .....
>
> Sections 2ka, 4 and 7 of the Ain run as under:
> "২ক। আইনের প্রাধান্য। আপাততঃ বলবৎ অন্য আইনের ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইন, বিধি ও আইনের অধীন প্রদত্ত নির্দেশ কার্যকর থাকিবে।

৪। মহাপরিচালকের ক্ষমতা ও কার্যাবলী। -(১) এই আইনের বিধান সাপেক্ষে, পরিবেশ সংরক্ষণ, পরিবেশগত মান উন্নয়ন এবং পরিবেশ দূষণ নিয়ন্ত্রণ ও প্রশমনের উদ্দেশ্যে মহাপরিচলক তৎতকর্তৃক সমীচীন ও প্রয়োজনীয় বলিয়া বিবেচিত সকল কার্যক্রম গ্রহণ করিতে পারিবেন এবং এই আইনের অধীন তাহার দায়িত্ব সম্পাদনের উদ্দেশ্যে যে কোন ব্যক্তিকে প্রয়োজনীয় লিখিত নির্দেশ দিতে পারিবেন।

.....

৭। প্রতিবেশ ব্যবস্থার ক্ষতির ব্যাপারে ব্যবস্থা গ্রহণ।-(১) মহাপরিচালকের নিকট যদি প্রতীয়মান হয় যে, কোন ব্যক্তির কাজ করা বা না করা প্রত্যক্ষ বা পরোক্ষভাবে প্রতিবেশ ব্যবস্থা বা কোন ব্যক্তি বা গোষ্ঠীর ক্ষতিসাধন করিতেছে বা করিয়াছে, 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 এইরূপ নির্দেশ পালনে বাধ্য থাকিবেন।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত নির্দেশ অনুসারে নির্দেশ প্রাপ্ত ব্যক্তি ক্ষতিপূরণ প্রদান না করিলে মহাপরিচালক যথাযথ এখতিয়ার সম্পন্ন আদালতে ক্ষতিপূরণের মামলা বা উক্ত নির্দেশ পালনে ব্যর্থতার জন্য ফৌজদারী মামলা বা উভয় প্রকার মামলা দায়ের করিতে পারিবেন।

.....”

(31) From the above quoted provisions of 2ka, 4 and 7 of the Ain, 1995 it is clear that respondent No.5, Director General, Department of Environment is the appropriate and competent authority under the law on the matters relating to environment of surrounding areas of the River. Section 4 of the Ain has conferred wide power upon the respondent No. 5 take all actions, as he deems fit and necessary for conservation of environment, improvement of environment and controlling of environment pollution, and to issue necessary direction in writing upon any person for discharging his duties under the Ain. Section 7 of the Ain, empowers respondent No. 5 to take both punitive as well as preventive measures and actions including filling of civil suits and criminal cases of damages and compensation against acts that has caused or is causing or many cause damages to ecosystems.

(32) Sections 5 and 6 of the Bangladesh Pani Unnayan Board Ain, 2000 run as under:

“৫। বোর্ডের ক্ষমতা ও দায়িত্ব।-(১) এই আইনের বিধানাবলী সাপেক্ষে, পানি সম্পদের উন্নয়ন ও দক্ষ ব্যবস্থাপনা এবং ধারা ৬-এ বর্ণিত কার্যাবলী সম্পাদনের লক্ষ্যে বোর্ড সমগ্র বাংলাদেশ অথবা উহা যে কোন অংশে কার্যক্রম গ্রহণ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন ক্ষমতা ও দায়িত্বের সামগ্রিকতাকে ক্ষুন্ন না করিয়া, বোর্ডের নিম্নবর্ণিত ক্ষমতা ও দায়িত্ব থাকিবে, যথাঃ

(ক) কোন ব্যক্তির আইনসংগত অধিকার ক্ষুন্ন না করিয়া, সরকারের পূর্বানুমোদনক্রমে, সকল নদী, জলপথ ও ভূ-গর্ভস্থ পানিস্ড়রের পানি প্রবাহ নিয়ন্ত্রণ,

.....

৬। বোর্ডের কার্যাবলী। -(১) সরকার কর্তৃক গৃহীত জাতীয় পানি নীতি ও জাতীয় পানি মহাপরিকল্পনার আলোকে এবং এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, বোর্ড নিম্নবর্ণিত কার্যাবলী সম্পাদন এবং তদুদ্দেশ্যে প্রয়োজনীয় প্রকল্প প্রণয়ন, বাস্ড়বায়ন পরিচালনা, রক্ষণাবেক্ষণ ও মুল্যায়ন সংক্রান্ত যাবতীয় কার্যক্রম গ্রহণ করিতে পারিবে, যথাঃ

কাঠামোগত কার্যাবলী-

(ক) নদী ও নদী অববাহিকা নিয়ন্ত্রণ ও উন্নয়ন এবং বন্যা নিয়ন্ত্রণ, পানি নিষ্কাশন, সেচ ও খরা প্রতিরোধের লক্ষ্যে জলাধার, ব্যারেজ, বাঁধ, রেগুলেটর বা অন্য যে কোন অবকাঠামো নির্মাণ;

.....

(ঘ) নদীর তীর সংরক্ষণ এবং নদী ভাঙ্গন হইতে সম্ভাব্য ক্ষেত্রে শহর, বাজার, হাট এবং ঐতিহাসিক জাতীয় জনগুরুত্বপূর্ণ স্থানসমূহ সংরক্ষণ;

.....

(33) It appears from the provisions of Section 5 and 6 of the Bangladesh Pani Unnayan Board Ain, 2000 that respondent No. 4 Director General of Bangladesh Water Development Board is responsible for regulating the flows of all rivers and also for protecting riverbanks and towns, markets and other important historic and public sites from river erosion. As per the notification Annexure-G, the inter ministerial committee headed by respondent No. 1 shall finalize the leasing of the Balu Mohals while respondent No. 6, Deputy Commissioner, Sunamgonj shall execute the lease Agreement. Admittedly, in the instant case no such leasing of the Fazilpur Sand Quarry has been made since 2007. As per the Land Management Manual, 1990, respondent No. 6 is the custodian of the River and as such, he is liable to prevent encroachment over the River and unauthorized extractive activities therein."

The above decisions as well as the other judgments referred by Mr. M. Iqbal Kabir are very much relevant in the instant writ petition.

In view of the above, it appears that the respondents like the Director General, Department of Environment; the Director General, Bangladesh Water Development and the Deputy Commissioner, Sylhet have totally failed to discharged their respective duties and responsibilities entrusted upon them under the laws in accordance with law in regulating free flow of the said river and protecting its banks from river erosion, and preventing encroachment over the river and unregulated extraction of stones thereof, and for conservation and improvement of environment of the river and its adjacent areas and also in controlling the environment pollution thereof in order to maintain ecosystem of the said area.

As per the mandate of Articles 31, 32 and 42 of the Constitution, the respondents are duty bound to ensure the right to protection of law, to life and to property of the people living in and around the area of Jaflong-Dawki river, and reading Article 18A of the Constitution, a newly inserted provision, it appears that it is the duty of the state to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetland, forest and wildlife for the present and future citizens.

In the light of the above decisions and foregoing discussion and findings, we find force in the submissions of the learned advocate appearing for the BELA, and as such we are inclined to direct the respondents to declare Jaflong-Dawki river and its adjacent areas as 'Ecologically Critical Area' and thereby directed the respondents to do all the needful in accordance with law including to remove the bailey bridge along with its approach road/dam as constructed over the river Jafling-Dawki flowing though Goainghat Upazila of Sylhet district.

The secretary, Ministry of Environment and Forest is hereby directed to frame guidelines, if not framed a yet, for restricting mechanized extraction of stones keeping the ecology of the area intact in the light of the Judgment of this Court passed in Writ Petition No. 4958 of 2009 earlier on January 14, 2010 as mentioned above.

In the result, the Rule issued in Writ Petition No. 10947 of 2011 is discharged, and the other Rule issued in Writ Petition No. 10703 of 2011 is hereby made absolute.

The Writ Petition No. 10703 of 2011 shall be treated as continuous mandamus upon the respondents.

The respondents are directed to (I) remove the unauthorized bailey bridge and its approach road/dam as constructed over the river Jaflong-Dawki within 15 days of receipt of the Judgment of this Court, and not to allow any such construction or encroachment in future over the said river, (ii) to declare the Jaflong-Dawki river (I.D.No.111) as "Ecologically Critical Area" under section 5 of the Bangladesh Environment conservation Act, 1995, (iii) to frame environment guideline under section 13 of the said Act, within the said period of time, (iv) to publish the same in the Bangladesh Gazette within the next 15 days and (v) to file compliance thereof within subsequent 7 days.

The petitioner of Writ Petition No. 10703 of 2011 is at liberty to come before this Court in future for any violation of the above directions given upon the respondents or for any attempt of violation of the directions.

Let the direction given at the time of issuance of the Rule in Writ Petition No. 10703 of 2011 be vacated, and the stay granted earlier by this Court in Writ Petition No. 10947 of 2011 is hereby also vacated.

Communicate the judgment to the respondent accordingly.

K.M.E.H.Akondo.
Mirza Hussain Haider, j:
I agree
M.H.Haider.