

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(Special Original Jurisdiction)

IN THE MATTER OF:

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

A N D

IN THE MATTER OF:

The Town Improvement Act, 1953 (E. B. Act No. XIII of 1953), the Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995) and মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ (Act No. XXXVI of 2000).

A N D

IN THE MATTER OF:

For a direction upon the respondent Nos. 1-6 to protect the sub flood flow zone near Amin Bazar (As of Annexure 'B') from illegal earth filling by the respondent No. 7 in total disregard of the laws of the country.

IN THE MATTER OF:

Failure by the respondents to protect the Sub Flood Flow Zone near Amin Bazar (as of Annexure " B ") from illegal earth filling by the

respondent No. 7 in total disregard to the laws of the country.

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA), a society registered under the Societies Registration Act, 1860, having its office at House No. 15A, Road No. 3, Dhanmondi Residential Area, P.S. Dhanmondi, Dhaka being represented by its' Director (Programs) Syeda Rizwana Hasan, Advocate, Supreme Court.

.....- **PETITIONER**

-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.
2. The Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka
3. The Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, Ramna, Dhaka
4. Rajdhani Unnayan Kartipakkha (RAJUK), represented by its Chairman, Rajuk Bhaban, P.S. Motijheel, Dhaka.
5. The Director General, Department of Environment, Paribesh Bhaban, E-16, Sher-E-

Bangla Nagar, Agargaon, Dhaka.

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

7. The Managing Director, Metro Makers & Developers Ltd., 25/2 Green Road, Dhaka-1205.

.....**RESPONDENTS**

To

Mr. Justice Syed J R Mudassir Hussain, Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the above named Petitioner most respectfully -

S H E W E T H :

1. That the Petitioner is Bangladesh Environmental Lawyers Association, hereinafter referred to as BELA, a society registered under the Societies Registration Act, 1860, Registration No. 1457 (17) dated 18th February, 1992 being represented by its' Director (Program) Ms. Syeda Rizwana Hasan who has been duly authorised by a resolution of the Executive Committee of BELA dated 30 June, 2001 to represent BELA in all proceedings, cases etc. and as such is competent to represent BELA.

2. That BELA has been active since 1992 as one of the organizations with expertise in the regulatory field of environment and ecology. For the last ten 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 affects 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 judgments to its credit.

3. That the respondent No. 1 is the Ministry of Housing and Public Works which is responsible, *inter alia*, for urban development in specific cities and townships, and is the line Ministry of the respondent No. 4. The respondent No. 2 is the Ministry of Land that is responsible for land management of the country in the best interest of the people. The respondent No. 3 is the Ministry of Environment and Forest that is responsible for the management

and conservation of environment and its various resources and is also the line ministry of respondent No. 5. The respondent No. 4 is the Rajdhani Unnayan Kartipakkha (hereinafter referred to as "RAJUK") created under the Town Improvement Act, 1953 as amended by Act No. XXIX of 1987 which has been authorised and entrusted with the responsibilities, among others, to adopt a Master Plan, prepare lay out plans in accordance with that Master Plan, allot plots, approve building construction, recreational and other civic facilities, infrastructure plans for the Dhaka City. The said respondent is legally responsible to identify the various uses of land within the City. The respondent No. 5 is the Department of Environment (hereinafter referred to as "DoE") which is the implementing agency of the Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995) as amended in 2000 and 2002 and is entrusted with all responsibilities regarding environmental protection and conservation. The respondent No. 6 is the Deputy Commissioner of Dhaka and is responsible for local administration of the districts including management and reformation of public land, rivers and wetlands. The respondent No. 7 is a private limited company engaged in real estate business and is engaged in illegal filling up of the sub-flood flow near Aminbazar, Savar (as of Annexure "B") for developing therein a so-called Modhumoti Model Town.

4. That the environment of the Dhaka City is being continuously endangered and threatened by various unplanned and illegal activities originating from both private and public sources. The unplanned and unauthorised development of township and construction of buildings in and around the Dhaka City are amongst the primary causes and sources of environmental degradation. Taking advantage of the reluctance of the law implementing agencies, such developments and constructions often take place in deviation from the land use as designated under relevant laws resulting in violation of minimum environmental standards.

5. That the Master Plan (hereinafter referred to as the said Plan) of the City as prepared by the respondent No. 4 has identified few areas within the jurisdiction of the said respondent No. 4 as *flood plains, rivers and water bodies/ sub flood flow zones*. The intent of earmarking certain areas as flood plains/ sub flood flow zones is to protect the safety, health and welfare of the common people from negative environmental impacts within waterways and to protect and preserve natural drainage systems to ensure their continued and proper functioning.

6. That according to the Master Plan, any unauthorized interference with the flood plains/sub flood flow zones will have devastating environmental

effect and hence the said Plan in clear terms prohibited land development for residential, commercial and industrial development, including raising the level of land through land filling in the flood flow zones/sub flood flow zones. According to the Master Plan the flood plain areas should be enabled to function properly as flood plains/sub flood flow zones and maintain their basic rural nature. True copy of the relevant part of the Master Plan describing the flood plains/sub flood flow zones is annexed hereto and marked as **Annexure “ A” & “A-1”**.

7. That while identifying the land use pattern for the City, the said Master Plan has categorized the various areas of the City into 19 (nineteen) Spatial Planning Zones (SPZs). The SPZ 17 (seventeen) comprises the area between the Savar-Dhamsona in the west and the present Dhaka established area in the east. According to the Master Plan, the zone is low lying, across the Turag and its khal and is designated as a flood plain/sub flood flow zone area. True copy of the relevant part of the Master Plan describing the SPZ 17 is annexed hereto and marked as **Annexure “B”, “B-1” & “B-2”**.

8. That under SPZ seventeen, the Master Plan has specifically referred to the Amin Bazar area under Savar Police Station as part of flood flow

zone. According to the Master Plan (as of Annexure “B”), there have been many private development schemes, especially in the Amin bazar area on the south of Dhaka-Aricha road which will have considerable negative effect on environment. The Master Plan recommends that the area should be enabled to function properly as flood plain area and a basic rural/pisciculture zone and that conversion of land from rural to urban should be regulated strictly in this zone. Since some of the so-called private development schemes have approval from RAJUK, the Master Plan recommends that all development permits issued for the development of housing should be withdrawn and that no new one is needed to maintain the nature of the zone.

9. That the flood flow zone/ sub flood flow zone as identified in SPZ 17 comprises mouza Bilamalia and Baliarpur under Savar Police Station (hereinafter referred to as the said Area). The said Area is located on the south of Dhaka-Aricha Road and is at the west of the Amin Bazar Bridge.

10. That according to the Town Improvement Act, 1953 once a Master Plan is approved, the same shall guide all future developments and hence any unauthorized deviation from the said Master Plan is liable to be declared unlawful, against public interest and without any legal effect.

11. That in addition to the restrictions imposed in the Master Plan, Section 5 of the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০ (hereinafter referred to as the Act 2000) also prohibits change of the nature of any land that has been earmarked as a natural reservoir including flood flow zones. Pursuant to section 8 of the Act 2000 any person who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka 50,000 or both. Section 8 (2) further provides that the relevant authority may, inter alia, direct the person who changes the character of such land to destroy such construction.

12. That section 7 of the Environment Conservation Act, 1995 (Act I of 1995) has empowered the Respondent No. 3 to direct any person responsible for causing damage to the ecosystem for adopting corrective measures.

13. That despite clear prohibition in the Master Plan against changing the rural nature of the flood plains/flood flow zones and the other legal prohibitions, the respondent No. 7 has started filling up substantial part of the sub flood flow zone in SPZ17 to implement an unauthorised Project in

the name and style of “Modhumoti Model Town” (hereafter referred to as the said Project). The said respondent, through regular newspaper advertisements, has been offering to sell housing plots in the said Project. True copies of the advertisements given by respondent No. 7 are annexed hereto and marked as **Annexure “C”**.

14. That available document suggest that the application of the respondent no. 7 for approving its proposed Modhumoti Model Town Project was rejected by the respondent no. 4 vide its letter meno no. Rajuk/na:pa:/6-161(aa-2nd)105-.stha dated 29 July 2003 on the ground that the said project area falls under the sub-folld flow zone. Earlier the respondent no. 7 was directed by the respondent no.4 vide its letter memo no. Rajuk/na:pa:/6-161 (angsha-2) 37 stha dated 10 March 2002 to refrain from earth filling in the project site. True copies of the said letter issued by the respondent no 4 are annexed hereto and marked as **Annexure “D” & “D-1”**.

15. That the petitioner is aggrieved by the fact that despite clear legal mandate, the respondents have failed to restore the sub flood flow zone in and around Amin Bazar, Savar comprising mouzas Bilamalia and Baliarpur from unlawful filling up by the respondent No. 7 for developing unauthorised

township therein.

16. That while the respondent No. 7 was continuing with land filling in the sub flood flow zone near Amin Bazar for implementing the said Project and was giving newspaper advertisement for selling housing plots of that Project, a cautionary notice from the office of the respondent No. 4 was published in the leading dailies dated 9 December, 2003 warning the general people not to buy any plot/land in the said housing Project. The said notice in clear terms stated that since the area being developed by the respondent No. 7 in the name of Modhumoti Model Town is within the sub flood flow zone, there is no scope for the respondent No. 4 to approve the lay out plan of the Project. True copy of the cautionary notice of the respondent No. 4 is annexed hereto and marked as **Annexure "E"**.

17. That immediately after publication of the above notice (as of annexure "C") the petitioner carried out a field survey that revealed that the respondent No. 7 has been continuing with their illegal activities of earth filling against which the respondent No.1 and 4 have failed to take any preventive measure. Being convinced from the field visit and review of documents that the respondent No. 7 was filling up the sub flood flow zone of Savar and that the other respondents failed to prevent the same, the

petitioner on 27 December, 2003 served a Notice of Demand for Justice upon the respondents requesting them to immediately prevent/stop earth filling of the said area and take appropriate measures to restore the area to its original condition. True copy of the Notice of Demand for Justice served by the petitioner upon the respondents is annexed hereto and marked as **Annexure "F"**.

18. That the respondent no. 7 vide its letter dated 6 January 2004 replied to the petitioners' Notice of Demand for Justice. In its reply dated 6 January, 2004 the respondent No. 7 claimed that it was continuing with earth filling in the Amin Bazar area by virtue of a stay order obtained from the Hon'ble High Court in Writ Petition No. 5103 of 2003 against the respondent No. 4. True copy of the letter dated 6.1.2004 is annexed hereto and marked as **Annexure "G"**.

19. That subsequently, the respondent No. 4 also replied to the Notice of Demand for Justice of the Petitioner vide its letter memo being RAJUK/67/2003/6031shta dated 10 March, 2004. In the said letter, the respondent No. 4 informed the petitioner that the interim order of stay by the High Court Division was stayed by the Appellate Division vide an order dated 19 November'03 in connection with Civil Petition No. 1573/2003.

True copy of the said reply of the Respondent No. 4 dated 10 March 2004 is annexed hereto and marked as **Annexure "H"**.

20. That despite such stay order from the Appellate Division that virtually stayed land filling by the respondent No. 7 for the implementation of the unauthorized township in the said area, the said respondent is regularly giving newspaper advertisement for selling housing plots of the Project to the general people against which the respondents have failed to take any appropriate action.

21. That it is humbly submitted that filling up of sub flood flow zone near Amin Bazar by the respondent No. 7 to implement its own Project is contrary to all applicable laws of the country regarding urban development, planning and environmental protection. For its own commercial gain, the respondent No. 7 proceeding with the implementation of the said Project, callously flouting all legal requirements against which the other respondents have miserably failed to administer law and protect public interest and as such the project taken by the respondent No. 7 is liable to be declared unauthorised and to have been taken without lawful authority and is of no legal effect.

22. That it is humbly submitted that the other respondents, having specific statutory obligation with regard to town planning and protection of environment, have failed to exercise their lawful authorities in preventing the respondent No. 7 from unlawfully filling up the sub flood flow zone near Amin Bazar. Such failure on the part of the statutory agencies would not only encourage further violation of laws, but shall also adversely affect the legitimate rights of the city dwellers to get protection against negative environmental impacts and as such the respondents are required to be directed to protect the sub flood flow zone in accordance with law.

23. That it is most respectfully submitted that such disregard to laws and legal provisions and failure to ensure proper implementation of laws have caused enough damage to the environment of the City adversely affecting the right to life and associated environmental rights of the City dwellers and as such the respondents No. 1-6 are required to be directed to protect the sub flood flow zone in accordance with law.

24. That it is stated that taking advantage of the reluctance of the respondent No.4 and the other respondents and also in gross violation of the order of the Appellate Division, the respondent No. 7 has almost completed the filling up of the sub flood flow zone of Savar near Amin

Bazar. This is evident from the fact that in a recent newspaper advertisement dated 1 June, 2004 the respondent No. 7 has committed to hand over plots in some part of the so-called Modhumoti Model Town by June, 2004, where the fact remains that the legality of the said project is under judicial scrutiny. Copy of the paper clipping annexed hereto and marked as **Annexure "I"**.

25. That it is submitted that the respondent No. 4 has utterly failed in preventing the respondent No. 7 from filling up the sub flood flow zone of Savar near Amin Bazar for implementing its unauthorized Project, which if materialized will be at the cost of environment and ecology of the City causing devastating floods severely detrimental to the greater public interest of the city dwellers.

26 That it is further submitted that the respondent No. 3 which is the statutory agency responsible for the conservation of the country's environment has failed to take recourse to the Environment Conservation Act, 1995 in preventing the unlawful activities of the respondent No. 7. It is also submitted that the Respondent No.1 being legally responsible for the acts of the Respondent No. 4 has failed to require it to act vigorously in preventing the unlawful efforts of the respondent No. 7.

27. That it is submitted that the flagrant violation/non-implementation of the laws by the respondents undermine rule of law and jeopardize peoples fundamental right to life as guaranteed under Articles 31 and 32 of the Constitution.

28. That the Petitioners humbly submit that the conservation and improvement of the environment are vital for the survival and well being of men and it is the statutory duty of the respondents to protect environment and to save it from degradation.

29. That it is stated that the Petitioner being the leading environmental organization in the country takes great interest in ensuring sound environment through proper observance of law by all concerned. The violation of the various legal provisions by the respondents and their failure in performing legal duties and obligations have made the Petitioner feel aggrieved and hence the Petitioner has filed this Writ Petition before the Hon'ble Court to ensure observance of law and uphold public interest.

30. That since this application is filed in public interest, the petitioner, not being in possession of all original documents, begs permission to file

photocopies as Annexures.

31. That the Petition is filed *bona fide*, in public interest to protect the City dwellers from the direct negative impacts of the unlawful acts and omissions of the respondents including diverting flooding as a result of flooding of natural drainage of water and the reliefs sought for herein, if granted, shall be effective, efficacious and complete.

32. That having no other adequate efficacious remedy the Petitioner begs to move your Lordships, on the following, amongst others:

: G R O U N D S :

I. For that the filling up of the sub flood zone in Savar, Amin Bazar by the respondent No. 7 for implementing its unauthorised Project titled Modhumoti Model Town grossly violates the provisions of Town Improvement Act, 1953, the Master Plan of the City prepared under the said Act, the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০ and the Environment Conservation Act, 1995 and hence the said Project is liable to declared illegal, without lawful authority and having no legal effect;

II. For that the respondent No. 7 is proceeding with the implementation of its unauthorized Project taking advantage of the reluctance/failure of the respondent No. 4 in implementing মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০, the Town Improvement Act and the Master Plan and hence the respondent No.4 should be directed to carry out its legal obligation in restoring the sub flood flow zone in its original condition, so as to avoid potentially devastating floods is and around Dhaka City.

III. For that failure on the part of the respondent No.4 to require the respondent No. 7 to restore the said sub flood flow zone to its original position tantamount to defying the legal requirements inasmuch as the respondent No. 4 did not take any remedial measure to rectify such illegal acts.

IV. For that the regular advertisement given in the dailies by the respondent No. 7 claiming to hand over plots/offering plots for sale of the said Project is aimed at frustrating the judicial procedure and hence the said respondent be directed to refrain from proceeding

with all activities in connection with implementation of the said Project till judicial scrutiny determines the legality of the same;

V. For that the respondents have utterly failed to exercise their lawful authority and the Respondent No. 3 which is the statutory agency responsible for the conservation of the country's environment has failed to enforce the provisions of the Environment Conservation Act, 1995. The Respondent No.1 being legally responsible for the acts of the Respondent No.4 have failed to require it to act vigorously in upholding public interest.

VI. For that the unlawful acts of the respondent No. 7 and the failure of the other respondents to cause necessary and appropriate action to be taken by respondent No. 4 have resulted in violation of environmental and other rights of the City dwellers as guaranteed by Articles 27, 31, 32 and 42 of the Constitution, and hence appropriate orders and directions from this Hon'ble Court are necessary.

Wherefore the petitioner pray for the following relief's:

(a) Issue a Rule Nisi calling upon the respondents No.

1-6 to show cause as to why they should not be directed to protect the sub flood flow zone, near Amin bazar (As of annexure “ B”) from illegal earth filling by the respondent No. 7, in showing total disregard to law of the country and as to why it shall not be declared that the project of Modhumoti Model Town of the respondent No. 7 is an unauthorised project as it has been taken in violation of the the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষন আইন, ২০০০, the Town Improvement Act, 1953 and the Master Plan prepared thereunder, the Environment Conservation Act, 1995 and against public interest, and as such of no legal effect and without any lawful authority and also why the respondents shall not be directed to restore the area in its original condition

b) Pending hearing of the Rule direct that status quo be maintained regarding the implementation of the

Project and pass an interim order of injunction against the Respondent No. 7 preventing it from carrying out any further earth filling or any other activity in furtherance of the implementation of the Project including advertisement for selling of plot in the said Modhumoti Model Town;

c) Direct the respondent No. 4 to immediately demarcate the sub flow flood zone under the SPZ 17 of the Master Plan and place a boundary map of the same at the site to avoid any further encroachment;

(d) To direct the Respondent No. 1-6 transmit the record to this Hon'ble Court to dealt in accordance with law.

e) After perusing the cause shown, if any, and hearing the parties make the Rule absolute;

f) Award cost in favour of the petitioner; and/or

g) Pass such other or further order or orders as Your Lordships may deemed fit and proper be also granted.

And for this act of kindness your Petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Syeda Rizwana Hasan, wife of Abu Bakar Siddique of House No.15/A, Road No. 3, Dhanmondi Residential Area, P.S. Dhanmondi, District-Dhaka, aged about 36 years, by faith Muslim, by profession lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:

1. That I am the Director (Program) and member of the Executive Committee of the Bangladesh Environmental Lawyers Association (BELA). By a resolution of the Executive Committee of BELA I have been duly authorised to represent BELA and swear affidavit on its behalf, and as such I am fully conversant with the facts and circumstances of the case.
2. That the statements made in paragraphs 1-20, 25 and 29 -31.of the petition are correct and true to the best of my knowledge which I verily belief to be true, and rest are submission made before this Hon'ble Court.

Prepared in my office.

(Md. Iqbal Kabir)

Advocate

(Syeda Rizwana Hasan)

Deponent

The deponent is known to me and identified by me.

Solemnly affirmed before me
by the said deponent on this
the day of August, 2004

(Md. Iqbal Kabir)

Advocate.

at A.M.

**COMMISSIONER OF AFFIDAVITS
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA**

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

(Special Original Jurisdiction)

WRIT PETITION NO. OF 2004

IN THE MATTER OF :

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

A N D

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association (BELA) being represented by Syeda Rizwana Hasan.

...PETITIONERS

-Versus-

Bangladesh, represented by the Secretary,

Ministry of Housing and Public Works,
Government of Peoples Republic of
Bangladesh and others

...**RESPONDENTS**

Through
Salauddin Ahmed
Obaidul Hasan Shaheen
Syeda Rizwana Hasan
M. Iqbal Kabir
Advocates for the Petitioner
Bangladesh Environmental Lawyers Association (BELA)
House # 15/A, Road #3, Dhanmondi
Dhaka

NOTICE

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(Special Original Jurisdiction)

WRIT PETITION NO. _____ OF 2004

IN THE MATTER OF :

Bangladesh Environmental Lawyers
Association (BELA)

...PETITIONERS

-Versus-

Bangladesh and others

...RESPONDENTS

The Attorney General
Supreme Court of Bangladesh
Dhaka

Dear Sir,

Please take notice that on behalf of Bangladesh Environmental Lawyers Association (BELA), an application has been filed under Article 102 of the Constitution, a copy of which is enclosed herewith. The application will be moved before the appropriate Division Bench of the High Court Division of the Supreme Court of Bangladesh.

Given on this the day of August, 2004.

Yours faithfully,

Md. Iqbal Kabir
Advocate