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 NO. 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. 1689/09
-Versus-	:	
Bangladesh Environmental Lawyers Association (BELA) and others	:	**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. 1689/09
	:	
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 Nos. 8-52 **(Added Respondents)**	:	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 Nos. 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. 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.
Respondent Nos. 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)**		Mr. A. F. M. Mesbahuddin, Senior Advocate, instructed by Mr. Md. Nawab Ali, Advocate-on-Record.
For the Respondent No. 1-3 **(In C.A. No. 255/09)**		Not represented
		Not represented
Date of Hearing	:	24.01.2012,31.01.2012, 1.02.2012, 07.02.2012, 08.02,2012, 14.02.2012, 15.02.2012, 29.02.2012, 07.03.2012 and 07.08.2012

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 -Aquaculture & fisheries -Brick fields -Roads/Railways/Utility ROW -Farm dwellings -Ferry ghats & jetties -Flood management structures -Institutions -Public uses & structures -Recreation facilities, outdoor -Religious uses & structures -Repair shops, minor -Ship & boat servicing -Utility installations Type A		-Dwellings, farm -Dwellings, minimal housing -Dwellings, single/multi-family -Explosives manufacture & storage -Industrial Class 2 -Petrol/service stations -Offices/Services **PLAN REVIEW REQUIRED** -Golf courses -Prisons -Terminals: Train, Bus, Freight -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 Vs. Bates.12 Q.B.D. 79): “as wide as possible” (per Chitty J., Beckett Vs. 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 Vs. 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 Vs. Winton, C.C.A. Tenn., 131 F.2d 780, 782. One or some (indefinitely). Slegel Vs. 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 Vs. 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 Vs. 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 "স্ট্রাকচার 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 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.

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. Vs. 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 SPZ173.

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 Vs. Bangladesh, 49 DLR(AD)1 and Sharif Nurul Ambia Vs. 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 Vs. 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 Vs. 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 Vs. Union Territory of Delhi, AIR 1981 SC 746. In Charan Lal Sahu Vs. Union of India, AIR 1990 SC 273 & 1480, and in Subash Kumar Vs. 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 Vs. 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 Vs. 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 Vs. 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 Rizwana 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/নঃপঃ/৬-১৬১/৬৪৩-স্থাঃ তারিখঃ 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/নঃপঃ/৬-১৬১/৬৪৩-স্থাঃ তারিখঃ 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 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 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, 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 মন্ত্রনালয়
শাখা-৮
বিজ্ঞপ্তি

তারিখ ঃ ২৮শে ডিসেম্বর,১৯৯৬।

নং শাখা (৮)-৪৯৮/৯৩/৩৯৪ সরকার কর্তৃক রাজধানী উন্নয়ন কর্তৃপক্ষের নিয়ন্ত্রনাধীন এলাকা সম্প্রসারণ করার ফলে সাভার থানার প্রায় সমগ্র এলাকা বর্তমানে রাজধানী উন্নয়ন কর্তৃপক্ষের আওতায় আসিয়াছে। উক্ত এলাকার পরিকল্পিত উন্নয়নের লক্ষে ১৯৯০ সালে রাজধানী উন্নয়ন কর্তৃপক্ষ একটি খসড়া মহা-পরিকল্পনা প্রণয়ন করিয়া ১৯৫৩ সালের টাউন ইমপ্রেভমেন্ট এ্যাক্টের ৭৩ ধারা অনুযায়ী উক্ত প্ল্যান জনগণকে অবহিত করিয়া তাহাদের নিকট হইতে আপত্তি ও মতামত গ্রহনের জন্য এতদসংক্রান্ত নোটিশ সংবাদপত্রে প্রকাশ করে এবং জনসাধারনের নিকট হইতে প্রাপ্ত আপত্তি ও মতামত মহা-পরিকল্পনা সংশোধন করিয়া একটি চুড়ান্ত মহা-পরিকল্পনা খসড়া প্রণয়ন করিয়াছে। এই গেজেট প্রকাশিত মাষ্টার প্ল্যান বা উহার কোন অংশের উপর কাহারো কোন আপত্তি থাকিলে তাহা ১৯৫৩ সালের টাউন ইমপ্রুভমেন্ট এ্যাক্ট এর ৭৩(৪) ধারা অনুযায়ী প্রকাশিত এই গেজেটে বিজ্ঞপ্তি প্রকাশের ৬০ দিনের মধ্যে সরকারের নিকট দাখিল করিতে পারিবেন। মাষ্টার প্ল্যানের বিস্তারিত বিবরণসহ নকশা সর্ব সাধারনের অবগতির জন্য এতদসংগে মুদ্রণ করা হইল। এই বিজ্ঞপ্তি প্রকাশের পর হইতে এই মাষ্টার প্ল্যানের অন্তর্ভূক্ত এলাকায় যে কোন ধরনের উন্নয়ন ও নির্মান কাজ এই মাষ্টার প্ল্যান অনুসারে এবং যথাযথ কর্তৃপক্ষের অনুমোদন ক্রমে সম্পন্ন করিতে হইবে। এতদসংগে উল্লেখিত এলাকার মাষ্টার প্ল্যান অনুসারে এবং যথাযথ নিম্নে কর্তৃপক্ষের অনুমোদন ক্রমে সম্পন্ন করিতে হইবে। এতদসংগে উল্লেখিত এলাকার মাষ্টার প্যানের নকশা প্রকাশ করা হইল এবং নিম্নে মাষ্টার প্ল্যানের অন্তর্ভূক্ত এলাকার বিবরন প্রদান করা হইল।

(ক) প্ল্যান এলাকার সীমানা ঃ-

পূর্বে মিরপুর ব্রীজ হইতে পশ্চিমে ঢাকা-আরিচা সড়কের দুই পার্শ্বে প্রায় অর্ধ মাইল করিয়া সাভার গণস্বাস্থ্য কেন্দ্র ও উওরে আনবিক শক্তি কমিশন পর্যন্ত।

(খ) মাষ্টার প্ল্যানে অন্তর্ভূক্ত মৌজা সমূহ ঃ

রাষ্ট্রপতির আদেশক্রম
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 অন্তর্ভূক্ত এলাকায় যে কোন ধরনের উন্নয়ন ও নির্মান 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 :

স্বারক নং-রাজউক/নঃ প্রঃ/৬-১৬৯/৬৪৩-স্থাঃ
প্রেরক ঃ জাকির হোসেন
নগর পরিকল্পনাবিদ (পরিচালক)
রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।

প্রাপক ঃ জনাব মোঃ শওকত আলী খান
চীপ টাউন প্ল্যানার/এলপিও
ডি, এম, ভি, পি
রাজউক প্রজেক্ট ম্যানেজমেন্ট এন্ড কো-অর্ডিনেশন সেল
এনেক্স ভবন, ৬ষ্ট তলা, রাজউক, ঢাকা-১০০০।

বিষয় ঃ ষ্ট্রাকচার প্ল্যান, মাষ্টার প্ল্যান ও ডিটেইল এরিয়া প্ল্যান প্রণয়ন সাভার এলাকায় গৃহীত সরকারী ও বেসরকারী উল্লেখযোগ্য ও প্রতিশ্রুতি প্রকল্প সমূহ অন্তর্ভূক্তি ও বিবেচনা প্রসংগে।

উপরোক্ত বিষয়ের আলোকে আপনার সদয় অবগতির জন্য সাভার এলাকায় সরকারী ও বেসরকারী পর্যায়ে গৃহীত উল্লেখযোগ্য ও প্রতিশ্রুতি প্রকল্প সমূহের 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 অনুর্ভূক্ত করিয়া বিবেচনা করিতে বিশেষভাবে অনুরোধ জানানো যাইতেছে।

সংযুক্ত ঃ বর্ণনামতে (প্রকল্পসমূহের তালিকা ও ম্যাপ)।

স্বাঃ/

(জাকির হোসেন)
নগর পরিকল্পনাবিদ (পরিচালক)
রাজধানী উন্নয়ন কর্তৃপক্ষ, ঢাকা।
তারিখ ঃ
স্বারক নং-রাজউক/নঃপ্রঃ
অনুলিপি ঃ

এ, এফ, এম, জাহাঙ্গীর, 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 দক্ষিন পার্শ্বের বিলামালিয়া মৌজার জে, এল নং-৭৪১-এ একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের জন্য তাহাদের কোম্পানী কর্তৃক ক্রয়কৃত সম্পত্তিতে ভূমি উন্নয়ন করার অনুমুতি দেয়া গেল। ইহা মেট্রো মেকার্স এন্ড ডেভেলপারস লিঃ কর্তৃক দাখিলকৃত প্রকল্পটির বাস্তবায়নের জন্য "Development permit" হিসাবে গন্য 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।

বিষয় ঃ আমাদের কোম্পানী কর্তৃক বেসরকারী উদ্যোগে ঢাকা-আরিচা মহাসড়ক সংলগ্ন এলাকায় একটি আধূনিক ও পরিকল্পিত আবাসিক শহত প্রতিষ্ঠাকল্পে প্রস্তাবিত এলাকাটিকে বৃহত্তর ঢাকা শহরের প্রস্তাবিত মাষ্টার প্ল্যানে 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 রোডের পাশ্ববর্তী বিলামালিয়া মৌজায় একটি আধূনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের লক্ষ্যে এক মহুতী উদ্যোগ হাতে নিয়াছে। প্রস্তাবিত প্রকল্পটি ঢাকায় আমিন বাজার হইতে প্রায় ১ কিঃ মিঃ পশ্চিমে কম বেশী ১৬০০ বিঘা জমির উপর প্রতিষ্ঠিত হইবে। প্রস্তাবিত প্রকল্পটির ভুমির মৌজা ম্যাপ আপনার সদয় অবগতির ও প্রয়োজনীয় ব্যবস্থা গ্রহনের জন্য এতদসংগে সংযুক্ত করা হইল।

প্রকল্পটি বাস্তবায়নকল্পে ইতিমধ্যে কোম্পানী ১০০ বিঘা জমি খরিদ করিয়াছে এবং ক্রয়ের জন্য আরও ২০০ বিঘা 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 শুক্ত করিবে এবং যথা সময়ে প্রকল্পের লেআউট প্ল্যান রাজউক এ দাখিল পূর্বক অনুমোদন নিয়ে পযায়ক্রমে সম্ভাব্য গ্রাহকদের নিকট প্লট বিক্রির ব্যবস্থা গ্রহণ করা হইবে।

দেশের বিদ্যমান আবাসিক সমস্যা সমাধানের বেসরকারী উদ্যোগে আমাদের কোম্পানী কর্তৃক গ্রহনকৃত এই তড়িৎ পদক্ষেপ আপনার প্রতিষ্ঠানের নিকট হইতে প্রয়োজনীয় পরামর্শ, সহযোগিতা নিশ্চিত করিয়া ও আমাদের প্রকল্পের প্রস্তাবিত এলাকাটিকে ঢাকা শহরের ভবিষ্যৎ মাষ্টার প্ল্যানে সংযোজন ও সমন্বয় সাধনের ব্যবস্থা গ্রহন করিয়া বাধিত করিবেন।

বিনীত নিবেদক,
মেট্রো মেকার্স এন্ড ডেভেলপার্স লিঃ
এর পক্ষে
(এ, এফ, এম জাহাংগীর)
পরিচালক ।

সংযুক্ত ঃ-
ভূমির মৌজা ম্যাপ দুই কপি।
অনুলিপি প্রেরণ করা হইলঃ-
নগর পরিকল্পনাবিদ, রাজধানী উন্নয়ন কর্তৃপক্ষ
রাজউক ভবন, ঢাকা-সদয় অবগতি ও প্রয়োজনীয় ব্যবস্থা গ্রহনের 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:

অনুলিপি ঃ

এ, এফ, এম, জাহাঙ্গীর, 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 দক্ষিন পার্শ্বের বিলামালিয়া মৌজার জে, এল নং-৭৪১-এ একটি আধুনিক ও পরিকল্পিত আবাসিক প্রকল্প বাস্তবায়নের জন্য তাহাদের কোম্পানী কর্তৃক ক্রয়কৃত সম্পত্তিতে ভূমি উন্নয়ন করার অনুমুতি দেয়া গেল। ইহা মেট্রো 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 of বেসরকারী 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 ÔPÕ and ÔRÕ 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 নিশ্চিতকরন;

(জ) প্রকল্প বাস্তবায়নের সময় পাশ্ববর্তী এলাকায় যাহাতে কোন ধরনের জলাবদ্ধতা সৃষ্টি বা পরিবেশের ভারসাম্য নষ্ট হয় উহা নিশ্চিতকরণ ;

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-‘PÕ of section 2 of the Ain as under:

> (চ) “প্রাকৃতিক জলাধার” 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 ভূমি ও ইহার অন্তর্ভূক্ত হইবে; (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 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 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 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 respondent No.4 to respondent No.1. Appropriate action should also be taken by 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. 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.