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বাংলাদেশ
কোর্ট ফি



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82/33/19
14-01-19, 27-02-2019, 27-02-2020, 05-03-2020, 05-03-2020

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

WRIT PETITION NO 1567 OF 2014

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Bangladesh Environmental Lawyers Association
(BELA)

... Petitioner

-VERSUS-

Government of Bangladesh and others

... Respondents

Mr. Minhazul Hoque Choudhury with
Mr. Ali Mustafa Khan, Advocates

... for the Petitioner

Mr. Jamal Uddin Ahmed, Advocate

... for the Respondent No. 7

Mr. Md. Abdullah Mahmood Hasan with

Mr. Mahbubur Rahman,

Mr. Motiar Rahman, Advocates

... for the Respondent No.15

Heard on: 27.11.2018 & 11.12.2018

Judgment on: 14.01.2019

Present:

Ms. Justice Naima Haider

&

Mr. Justice Khizir Ahmed Choudhury

Naima Haider, J:

In this Application under Article 102 of the Constitution, a Rule Nisi
was issued in the following terms:

Let a Rule Nisi be issued calling upon the respondents

to show cause as to why they shall not be directed to restore

৪/ and protect the Borai river (Annexures- A, A-1 and B

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"দেশভ্রমের শপথ নিম্ন ননীতির বিলম্ব দিন"

respectively) by demarcating the same as per the CS Map and/or the correct flow protecting the same from contrary uses like leasing out for commercial fisheries or otherwise; removing/altering all harmful structures obstructing the flow of the river as mentioned in Paragraphs No. 13, 14, 19 and 21 of the writ petition and reconnecting the river with its sources, contributory water bodies and branches as mentioned in Paragraphs 7 and 9 of the writ petition and also why they shall not be directed to ensure the required environmental flow of the said river and/or pass such other or further order or orders as to this Court may seem fit and proper.

The facts in brief, are as follows: the petitioner is a society registered under the Societies Registration Act 1860. The petitioner is active since 1992 and is one of the organizations with expertise in the regulatory field of environment ecology. Since inception, the petitioner initiated series of public interest litigations, the outcomes of which have proven to be beneficial to the community. The petitioner files this writ petition to preserve Borai River.

The petitioner at the inception elaborately sets out the location and the flow of the Borai River and thereafter proceeds to set out the importance of the river. The petitioner states that Borai River plays a very critical part in maintaining the ecological balance. It is also stated that the river basin area is known for production of different crops. The production of the crops and the need to transport the crops led to the set up of local markets and enhanced the economic activities of the areas through which the Borai River flows. It is also stated that the Borai River provides water

supply to different canals and beels and contributes significantly towards supply of fishes throughout the country. Overall, the Boral River is critical towards maintaining ecological balance and also maintaining economic activities.

However, during the last 25 years, the flow of the Boral River had been interrupted in the name of development. Due to such interruptions, there has been significant reduction of the flow of water. This has resulted in significant ecological imbalance.

The respondent No.7 undertook a project being "Boral Basin Development Project" under which three sluice gates were constructed on Boral River. These sluice gates were constructed without any social impact assessment. In addition to the said sluice gates, the authorities from time to time leased out part of the Boral River under different development projects. The unplanned construction and the action of the respondents in leasing out part of the Boral River resulted in reduction of water flow in the river. In addition to the aforesaid, the respondents have allowed illegal land grabbers to occupy the Boral River which has given rise to serious ecological issues. In order to protect Boral River, certain recommendations were given, which included, among others, to demarcate Boral River in accordance with the CS maps, to take steps to free the Boral River from all types of encroachments, capital dredging, to cancel lease agreements over Boral River etc. The Ministry of Shipping also provided certain recommendations to protect Boral River.

The petitioner issued a Notice Demanding Justice upon the respondents to implement the recommendations and also to take steps to

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"সেবাশ্রমেণা শপথ ক্রি, দুর্নীতিবিদে নিষেধ ক্রি"



protect the Boral River. However, no heed was paid thereto. The petitioner, under compelling circumstances, moved this Division and obtained the instant Rule.

The learned Counsel for the petitioner, taking us through the writ petition and the documents annexed, submits that the respondents are under an obligation to protect the Boral River and the respondents have failed to do so. Therefore, this Division should intervene and necessary direction should be passed. The learned Counsel further submits that the respondents have not taken any steps to bring back the River Boral in a state that prevailed previously, which according to the learned Counsel is a violation of the statutory duties. The learned Counsel also submits that the respondents should take all steps to ensure that Boral River is protected and/or preserved in its original state. Since the protection of Boral River is in the national interest, according to the learned Counsel, the respondents should protect the Boral River from unauthorized uses, and unauthorized structures: unauthorized uses should be restricted and unauthorized structures should be demolished forthwith. The learned Counsel lastly points, by reference to his submissions, that the instant Rule should be made absolute with appropriate direction upon the respondents.

We note that the respondent No.15 was added as a party to the proceeding. The main contention of the respondent No.15 is that it has purchased land on various dates but due to pendency of the Rule, the respondents have not been mutating the land in favour of the added respondent No.15. The learned Counsel for the respondent No.15 takes us through the pleadings and tried to impress this Division that the land purchased do not fall within the Boral River and therefore, there is no



reason why the respondents should not be mutating the land in its favour. The relevant annexures showing the location of the lands and the type of lands have been produced before us in support of the argument. The learned Counsel further submits that the legality of possession should be determined by competent authority and not by reference to any published news. The learned Counsel further submits that the respondent No.15 is in favour of protection of the Borai River, as its flow is necessary for business operations, but the learned Counsel submits that this Division should pass a direction to the effect that unless there is encroachment, determined by competent authority, the respondents should be careful in treating possession as "encroached possession". The learned Counsel submits that the right to property is a "fundamental right" that cannot be curtailed without due process of law. The learned Counsel after making elaborate submissions on the need to protect the River Borai, submits that this Division should direct the respondents to be mindful of the fact that lawful possession is not to be disturbed or no steps should be taken to stop operation of any establishment unless it is clearly determined by competent authority that the operation would have adverse effect on the environment.

The respondent No.7 filed an Affidavit contending that necessary steps had been taken to protect Borai River at all costs. The Affidavit rather elaborately deals with the steps taken. The learned Counsel for the st respondent No.7, taking us through the Affidavit submits that since steps had been taken to protect Borai River, there is no reason for this Division to make the Rule absolute. He submits that the instant Rule should be discharged.

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We have heard the learned Counsels at length. We have also perused the writ petition and the pleadings and the documents annexed therein.

At the inception, we would like to make it very clear that protection of Boral River is in the national interest. Unless Boral River is protected from unauthorized uses or occupants and unless steps are taken to ensure free flow of the river water, there would be significant environment hazard. Therefore, this Division considers that respondents should be directed to take all necessary steps to prevent unauthorized use of river banks and/or unauthorized use of river water. This Division also considers it necessary to direct the respondents to that the free flow of water in the Boral River is not affected. In this regard, the respondents are directed to take account of the recommendations of the Committees formed by the Government for protection of the Boral River.

While protection of rivers from illegal occupants is necessary, at the same time, we cannot keep our eyes shut to the constitutional right to property. Our Constitution makes "right to property" a constitutional right and the executives are bound by our Constitution to refrain from taking any steps that would affect such rights. We note from the documents annexed by the added respondent No.15 that they have made significant investments and also purchased the lands in question on various dates. If the land purchased by the respondent No.15 does not form part of the river then the respondents should not refuse to mutate the land in favour of the added respondent No.15. The respondents, in our view, can only refuse to mutate such land belonging to the respondent No.15 which forms a part of the River Boral upon determination by a competent authority and not by reference to any newspaper publication(s). Similarly if the operation of the



added respondent No.15 does not have adverse effect on the environment, then the respondents should not take any steps to disturb the operation of the respondent No.15. Simply put, the respondents should take steps to preserve Borai River but at the same time, must ensure that authorized occupants of the surrounding land(s) are not disturbed in any manner.

The Rule is disposed of with the aforesaid direction and observation.

Communicate the Judgment and Order at once.

Khizir Ahmed Choudhury, J.

Naima Haider

I agree

Khizir Ahmed Choudhury.

Typed by: Razi: 02.03.2020.

Read by: 02-03-2020

Exam by: [Signature]

Readied by: 02-03-2020

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05-03-2020
মুহাম্মদ মোস্তফা শিকদার
এক্সিকিউটিভ কর্মকর্তা

প্রত্যায়িত অবিকল প্রতিলিপি

[Signature]
05-03-2020

সিইসিও
কলেজিয়াল সিনিয়র কোর্ট, মহিলা কোর্ট বিলাস
(১৮-৭২ ইং সড়ক ১নং আইসিওর)
৭৬ মারামতি কক্ষা লাক

[Signature]
05-03-2020
মোঃ আবু বকর সিদ্দিক
সুপারিনটেনডেন্ট