



14-12-22, 14-12-22, 14-12-22, 14-12-22, 14-12-22

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

WRIT PETITION NO. 10417 OF 2021

In the matter of:

Application under article 102 of the Constitution  
of the People's Republic of Bangladesh..

And

In the matter of:

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

... Petitioner

-Versus-

Bangladesh represented by its Secretary,  
Ministry of Land, Government of the People's  
Republic of Bangladesh, Bangladesh Secretariat,  
Dhaka-1000 and others.

... Respondents

Mr. M. Ashraf Ali, Advocate

...For the petitioner

Mr. N.M. Ahasanul Haque, Advocate

....For the respondent no. 3

Mr. Mohammad Bakir Uddin Bhuiyan, Advocate

...For the respondent no. 11

Heard and Judgment on 24.11.2022.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Kazi Md. Ejarul Haque Akondo


"দেশপ্রেমের শপথ নিব, দুর্নীতিকে বিদায় দিন"



Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued calling upon the respondents to show cause as to why the orders taken by virtue of Miscellaneous Case No. 15 of 2020-2021 (Annexure-'B' and 'B-1' to the writ petition) changing 4.23 acres of *Beel>Nama* land recorded in C.S and S.A. Daag No. 936 corresponding to B.S Daag No. 3271 of No. 76, Char Rajabari Mouza (Annexure-'A' and 'A'-1' to the writ petition) of Upazilla- Bijoy Nagar, District-Brahmanbaria into 'waste land' (পতিত জমি) and purported settlement of the same in favour of respondent no. 11 for establishing a University thereon should not be declared unconstitutional, illegal and malafide and why the respondents should not be directed to restore the original land record as *Beel>Nama* and protect the same in greater public interest and/or pass such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also passed an order of injunction restraining respondent nos. 6, 8 and 10 from making settlement of 4.23 acres of *Beel>Nama* land as recorded in C.S and S.A. Daag No. 936 corresponding to B.S. Daag No. 3271 of No. 76, Char Rajabari Mouza (Annexure-'A' and 'A-1' to the writ petition) of Upazilla- Bijoy Nagar District- Brahmanbaria in favour of respondent no. 11 for setting up of "University of Brahmanbaria" as of waste land for a period of 3(three) months. The said order was lastly extended on 16.08.2022 for another 3(three) months.

  
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The salient facts leading to issuance of the rule are:

The petitioner, Bangladesh Environmental Lawyers' Association (shortly, BELA), is a society registered under the Societies Registration Act, 1860, registration No. 1457 (17) dated 18<sup>th</sup> February, 1992 being represented by a Member of its Executive Committee, Syeda Rizwana Hasan, Advocate, Supreme Court of Bangladesh duly authorized to represent BELA in all legal proceedings, cases etc. Since inception, BELA has undertaken a large number of public interest litigations wherein the beneficiaries are not only the common people but also their surrounding environment that affect people's material and spiritual well-being. That a moujza named, Char Rajabari of Upazilla- Bijoy Nagar District-Brahmanbaria there has been a wetland measuring 4.23 acres (shortly, case land) which has been recorded as *beel* in the CS and SA Daag (plot) no. 936 and subsequently as *nama* in BS Daag (plot) no. 327.

That by initiating a case being Miscellaneous Case No. 15 of 2020-2021 and thereupon vide order dated 08.12.2020, 15.12.2020 and 21.06.2021, the respondent nos. 6 and 10 converted the nature of the said *Nama* into waste land and recommended for long term settlement in favour of respondent no. 11, Registrar, University of Brahmanbaria for setting up of a University thereon basing on the internal communication made between the respondent no. 6, Deputy Commissioner, Brahmanbaria, respondent no. 8, Upazilla Nirbahi Officer, Bijoy Nagar, Brahmanbaria and respondent no. 10, Assistant Commissioner (Land), Bijoy Nagar, Brahmanbaria which has been impugned in this writ petition.

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কোর্ট ফি

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It has been stated that, such conversion of a vital wetland like *beel/nama* is totally violative of existing laws that do not allow conversion of wetlands except for unavoidable national interest and only with prior authorization of respondent no. 2 (Ministry of Environment, Forest and Climate Change) under section 6E of the Bangladesh Environment Conservation Act, 1995. It has further been stated that, in response to an application of respondent no. 11, the respondent no. 10 vide its letter dated 8<sup>th</sup> December, 2020 made recommendation to respondent no. 6 for conversion of the said *Beel/Nama* land as waste land and to make settlement of the same in favour of respondent no. 11. In view of the said proposal of respondent no. 6, to settle the said *Beel/Nama* land in favour of respondent no. 11, the respondent no. 1, Ministry of land by its letter dated 29.11.2020 asked for furnishing necessary information from respondent no. 6. It shows from the letter dated 29.11.2020 though proposal for settlement of the case land was forwarded to respondent no. 1 by respondent no. 6 but without disclosing the fact that, the said land is a wetland (*Nama*). Instead, in the proposal respondent no. 6 all along described the case land as “অকৃষি খাস জমি” which is deceitful and a deliberate omission to avoid legal procedures just to accord undue privilege to respondent no. 11. It has further been stated that, the settlement of the *Beel/Nama* land is being processed in favour of Chairman, Board of Trustees of the proposed University of Brahmanbaria who also happens to be the Member of Parliament of Brahmanbaria-3. The petitioner is thus seriously aggrieved by the unlawful act of respondent nos. 1, 6, 8, 10 and 11 of converting the nature of the

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*Beel>Nama land in derogation of public interest and violating existing legal provisions and also by the failure of other respondents to prevent the same. Then the petitioner's Organization served Notice of Demand for Justice dated 19 October, 2021 upon the respondents requesting them to cancel recording of the said *Beel>Nama land into "waste land" (পতিত ভূমি) and all further proceedings for settlement of the *Beel>Nama land in favour of respondent no. 11 and to restore and protect the same in greater public interest as required by the Constitution and the applicable laws.***

Mr. M. Ashraf Ali, the learned counsel appearing for the petitioner upon taking us to the writ petition and all the annexure appended therewith at the very outset submits that, under no circumstances, can the respondents change the nature of the case land (4.23 acres) let alone to give settlement in favour of the respondent no. 11.

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To reinforce his such submission, the learned counsel then takes us to the definition of "জলাধার" (wetland) as provided in section 2 ka ka of "বাংলাদেশ পরিবেশ সংরক্ষন আইন, ১৯৯৫" and that of "প্রাকৃতিক জলাধার" provided in section 2 (cha) of "জলাধার সংরক্ষন আইন, ২০০০" and submits that, from the said definitions it clearly denotes the case land is not any "waste" land rather it is wetland and thereby under the provision of section 6 uma (৬ ৬) of the পরিবেশ সংরক্ষন আইন and that of section 5 of "জলাধার সংরক্ষন আইন, ২০০০" nature of such wetland cannot be converted into waste land and to dispose of the same by any means.

The learned counsel by referring to clause 'da' (দ) of "অকৃষি খাসজমি ব্যবস্থাপনা ও বন্দোবস্তের নীতিমালা, ১৯৯৫" (shortly, Regulations) annexed as of

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Annexure-'2' to the affidavit-in-opposition also contends that, even if any "khas land" of the government is classified as *Khal* (খাল) or *Nala* (নালা) yet, such land cannot come within the purview of any settlement but the respondent vide impugned order is going to give settlement of such wetland defying its own regulations (নীতিমালা).

The learned counsel in that regard also submits that, though the respondent no. 11 has solely relied upon different clauses of the regulations while converging the wetland (নামা) to wasteland (পতিত জমি) but nowhere in that "নীতিমালা", there has been any indication that a wetland can be converted into wasteland.

The learned counsel then referring to (ga) of clause 3.0 of the regulation where procedure of giving allotment of non-agricultural land ("অকৃষি বাসজমি ব্যবস্থাপনা ও বন্দোবস্তের নীতিমালা") has been outlined also contends that, though it has been provided therein that allotment of non-agricultural khas land can be given to any educational institution but in the said regulation particularly, in clause 'da' (দ) thereof, there has been clear embargo to give allotment of any wetland (খাল/ নালা) to any entity.

The learned counsel by referring to Annexure-'1' to the affidavit-in-opposition further contends that, the respondent no. 11 has not yet acquired any right, title and interest over the case land as no lease agreement has been executed in its favour so it holds no *locus standi* to contest the instant rule as it has not been person aggrieved.

The learned counsel by referring to the *non-obstante* clause as laid out in section 2ka and 6umo (ঙ) of "বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৮৫" also

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contends that, since there has been clear prohibition in changing the nature of wetland or silt it up so the respondents has clearly contravened the said law while passing the impugned orders. To substantiate the said submission, the learned counsel has also referred a decision in the case of *"Metro Makers and Developers Ltd-Vs- BELA and others reported in 65 DLR (AD)181* and draws our attention to paragraph nos. 146 and 166 thereof and submits that in those two paragraphs, it has also negated converting any wetland (জলাধার) into "housing project" and that of far reaching effect if such wetland is filled up and the point-in-issue in the instant writ petition is similar to the cited decision and the *ratio* is squarely applicable in the facts and circumstances of the instant case.

The learned counsel has also referred another decision reported in 29 BLD (HCD) 479 and contends that, it has been settled therein that, the area and nature of the land will be determined as per the C.S recording and in the instant case, the record of the case land has been prepared in both C.S and S.A record as *beel* (বিল) and in subsequent record, it has been recorded as *Nama* (নামা) land so from those three consecutive recordings, it manifests that, the case land is wetland through where water is flowed having no scope to change the classification of the case land as of wasteland.

Giving reference to the "জাতীয় নদী রক্ষা কমিশন আইন" ২০০৩, the learned counsel finally submits that, in the entire statute, no authority has ever been provided to the "commission" recommending (by its letter dated 03.11.2021 so supplied by the learned counsel for the respondent no. 3) to

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give permanent settlement to anybody else herein to the respondent no. 11 and by such act it clearly transgresses its noble objectives of preserving the wetlands for which the statute has been enacted something is opposed to its own function as stipulated in section 12 of the Ain. With such submission, the learned counsel finally prays for make the rule absolute.

On the flipside, Mr. Mohammad Bakir Uddin Bhuiyan, the learned counsel appearing for the respondent no. 11 very robustly opposes the contention taken by the learned counsel for the petitioner and contends that, under no circumstances, can the term "*Nama*" construe as any "জলাশয়" or wetland rather in course of time "*beel* land" has become fallow or waste land and the respondents has rightly changed the nature of the land through the impugned miscellaneous proceeding and took steps for giving allotment in favour of the respondent no. 11.

The learned counsel by controverting the assertion of the learned counsel for the petitioner in regard to the definition of "জলাধার" and "প্রাকৃতিক জলাধার" further contends that, in those two definitions there has been no mention of the term "*Nama*" so there has been no scope to take into account of the said definition.

At this, when we pose a question to the learned counsel for the said respondent then under what provision of law the nature of the case land has been changed, the learned counsel then referred section 143 of State Acquisition and Tenancy Act (briefly, SA&T Act) and submits that, by virtue of that very provision the respondents have changed the nature of the case land through the Miscellaneous case.

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The learned counsel by refuting the submission advanced by the learned counsel for the petitioner as regards to the applicability of 10 directives appeared in paragraph no. 58 of the decision reported in 29 BLD (HCD) 479 also contends that, those 10 different directives cannot be applicable in the facts and circumstances of the instant case as they have no nexus with the facts of the instant case.

The learned counsel then by referring to clause 3.0 (ga) of “অকৃষি খাসজমি ব্যবস্থাপনা ও বন্দোবস্তের নীতিমালা, ১৯৯৫” (Regulation) (Annexur-‘2’ to the affidavit-in-opposition) also contends that, by that provision authority has been given to the respondents allot non-agricultural khas land to any educational institution, so the respondents have committed no illegality by giving allotment of the case land in favour of the respondent no. 11 for expanding education for the greater interest of the nation.

The learned counsel next contends that, the case land is located offhear about 3 kilometer away from river, Titas having no scope to find the case land as wetland through which rain water can be flowed.

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The learned counsel lastly contends that, no provision either “পরিবেশ সংরক্ষন আইন-১৯৯৫” or “জলাধার আইন-২০০০” is applicable in disposing of the instant rule and hence the rule is liable to be discharged.

On the contrary, Mr. N.M. Ahasanul Haque, the learned counsel appearing for the respondent no. 3 by supplying us a copy of the letter issued by it in faovur of the respondent no. 1 that is, the Secretary Ministry of Land dated 03.10.2021 just contends that, upon physical inspection, the commission found the case land was submerged by the water and even the same is not located within the territorial jurisdiction

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of any Pourashova and then submits that, since the case land is wetland so there has been no scope on the part of the respondent nos. 6, 8, and 10 to change the nature of the same.

We have considered the submission so placed by the learned counsel for the petitioner, that of the respondent nos. 11 and 3 at length and also perused the writ petition affidavit-in-opposition and the documents appended therewith.

Only point involved in adjudicating the instant rule is, whether the respondent through Miscellaneous Case can change the nature of the case land. Though from the proceedings of the Miscellaneous Case annexed as of Annexure-'B' and 'B-1' to the writ petition, we find on the basis of the report submitted by respondent no. 10 (Annexure-'C' to the writ petition) finally the respondent no. 6 recommended to give allotment of the case land vide order dated 15.12.2020 and 21.06.2021 (Annexure-'B' and 'B-1' to the writ petition) converting 'Nama' land as 'waste' land allegedly finding that the nature of the land has changed by natural course but nothing sort of any provision of any law has been referred in arriving at such decision. From the proceeding of Miscellaneous Case, we further find that, an enquiry was conducted to find whether the case land is waste land or wetland and merely on the basis of the report submitted by the union land Assistant officer, Majlishpur, it has been found that, the case land has become waste land in natural courses and solely relying upon the said report and downplaying any law to be applicable therein, the respondent no. 6, the Deputy Commissioner recommended to give allotment of the same to respondent no. 11 finding it "পতিত জমি" quoting

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“অকৃষি খাসজমি ব্যবস্থাপনা ও বন্দোবস্তের নীতিমালা” as the basis of his finding even though it does not have any application to that effect. So, it is the classic case how respondent no. 6 has done excesses trivialize the greater interest of the public and policy of the government to preserve the wetlands, the life line of our navigation bowing down to petty interest.

Further, from the decision cited by the learned counsel for the petitioner reported in 65 DLR (AD) 181, we also find substance in it as it has been settled therein that, no wetland can be converted into wasteland rather such wetland should be preserved. So, the *ratio* settled in the said decision is squarely applicable in the facts and circumstances of the instant case as well. Though the learned counsel for the respondent no. 11 submitted that the decision relied upon by the learned counsel for the petitioner reported in 29 BLD (HCD) 479 to be not applicable in the instant case. However, we find from paragraph no. 58 of the cited decision that, as many as 10 different directives have been laid out in preserving our four rivers from encroachment that surrounded Dhaka City. However, in broader sense, we also find the said directives applicable in the facts and circumstances of the instant case as well so far as it relates to the nature of land and transforming it.

On top of that, if the nature of any wetland is allowed to change to satisfy for someones vested interest and allotted to any entity defying law in that event, in near future, there will have no existence of any নদী, নাল, খাল, বিল for which “পরিবেশ সংরক্ষন আইন-১৯৯৫”, “জলাধার আইন-২০০০” as well as finally “জাতীয় নদী রক্ষা কমিশন আইন” ২০০৩ have been enacted to save the

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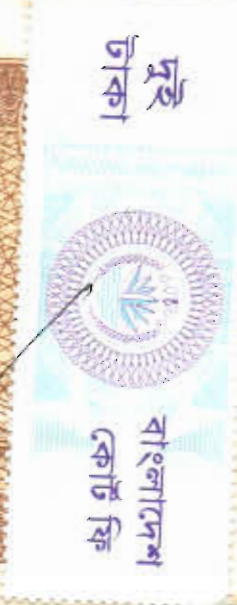
wetlands of our country. Then again, the learned counsel for the respondent no. 11 has claimed that, the nature of the case land has been changed basing on the provision of section 143 of the State Acquisition and Tenancy Act but we find it to be totally absurd proposition as from a bare reading of the section we find it speaks otherwise.

Last but essentially not the least, our common sense dictates, there is no difference between “নামা” and “বাল্লা” land as both carry same meaning which dictates wetland and there is no earthly reason to convert the same by exerting any authority let alone any law to that effect in place. In view of what we discussed above, we find ample substance in the submission advanced by the learned counsel for the petitioner and find considerable merit in the rule as well.

As a result, the rule is made absolute however without any order as to costs.

The impugned orders taken by virtue of Miscellaneous Case No. 15 of 2020-2021 (Annexure-‘B’ and ‘B-1’ to the writ petition) changing 4.23 acres of *Beel/Nama* land as recorded in C.S and S.A. Daag No. 936 corresponding to B.S Daag No. 3271 of No. 76 Char Rajabari Mouza (Annexure-‘A’ and ‘A-1’ to the writ petition) of Upazilla- Bijoy Nagar District- Brahmanbaria into “waste land” and the purported settlement of the same in favour of respondent no. 11 for establishing a University thereon is thus declared to have passed without lawful authority and of no legal effect and the proceeding and all the orders passed in Miscellaneous Case No. 15 of 2020-2021 as well as further action taken by virtue of the said case is thus struck down.

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The respondents are thus directed to restore the case land in its original state as "nama" land forthwith.

The order of injunction granted at the time of issuance of the rule however stands recalled and vacated.

Communicate the copy of this judgment to the respondents right away.

Kazi Md. Ejarul Haque Akondo, J.

Md. Mozibur Rahman Miah.

I agree

Kazi Md. Ejarul Haque Akondo.

Typed by: ~~Al Bazi~~: 14.12.2022.

Read by: ~~Al Bazi~~ 14-12-22

Exam. by: ~~Al Bazi~~ 14.12.22

Readied by: ~~Al Bazi~~ 14.12.22

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14-12-22  
মোহাম্মদ মাহমুদুল হক ভূঞা  
প্রশাসনিক কর্মকর্তা

14-12-22  
দিলীপ কুমার সূত্রধর  
সুপারিনটেন্ডেন্ট

১৪-১২-২২  
সিনিয়র সেক্রেটারী  
বাংলাদেশ জুডিশিয়াল কোর্ট, অতিরিক্ত বিচার  
১৮-৭২ ইং সালের ১ম অফিসের  
৯৬, পল্লভারত কলকাতা গ্রাউন্ড