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19.01.16, 19.01.16, 19.01.16 24.1-16 24.1-16

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No.6072 of 2010.

In the matter of: An application under Article
102 (2) (a) (i) of the Constitution of the
People's Republic of Bangladesh.

And

In the matter of:

Bangladesh Environment Lawyers Association
(BELA) and others

..... Petitioners.

Versus

Bangladesh, represented by the Secretary,
Ministry of Housing and Public Works and
others

..... Respondents

Mr. M. Iqbal Kabir, Advocate

.....for the petitioners.

No one appears

.....for the respondents

Present:

Mr. Justice A. H. M. Shamsuddin Choudhury

And

Mr. Justice Gobinda Chandra Tagore.

Heard and Judgment on 8th of June, 2011

Gobinda Chandra Tagore, J:-

The *Rule Nisi* was issued on 17th of January, 2010
in following terms:

"Let a *Rule Nisi* issue calling upon the respondent Nos. 1-6 to show
cause as to why their failure to prevent/stop illegal activities of the private
housing companies, who are members of respondent Nos. 7 and 8 and the
other persons working under them in connection with the implementation

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of their unauthorised/unapproved so-called housing projects (as mentioned in paragraphs 9, 11, 20 and 21) shall not be declared to be without lawful authority and is of no legal effect being against public interest and as to why they shall not be directed to protect and restore the flood flow Zones and the water retention ponds (as identified in the Master Plan) from the illegal earth filling and other activities of the private housing companies for their unauthorised and illegal housing projects (as mentioned in paragraphs 9,11,20 and 21) proposed, implemented or being implemented in gross violation of মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০, the Town Improvement Act, 1953 and the Master Plan prepared there under, the Environment Conservation Act, 1995 and the Rules of 1997 made thereunder, বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন নির্ধিমাধা, ২০০৪ and other applicable laws, rules and plan and/or such other or further order or orders as to this court may seem fit and proper.”

The averments placed by the petitioners are summarised below:

The petitioners are registered non-governmental organizations, namely, (1) Bangladesh Environmental Lawyers Association (BELA), (2) Ain O Salish Kendra (ASK), (3) Bangladesh Poribesh Andolon (BAPA), (4) Institute of Architects Bangladesh (IAB) and (5) Poribesh Bachaon Andolon (POBA), which are being represented by the persons duly authorized by their respective committees/boards. The petitioners are working in their respective fields to advocate for planned development of

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townships, promote safety and comfort of the City dwellers and defend their rights to a safe, secured and decent living.

Respondent No.1 is the Ministry of Housing and Public Works responsible for urban development in the specific cities and townships, and is the line Ministry of the respondent No.5. Respondent No.2 is the Ministry of Land responsible for land management of the country in the best interest of the people. Respondent No.3 is the Ministry of Environment and Forest responsible for the overall management and conservation of the environment and its various resources and is also the line Ministry of respondent No.6. Respondent No.4 is the Ministry of Information, which is responsible for the administration of all electronic and print media relating to broadcasting, telecasting and disseminating of information. Respondent No.5 is the Rajdhani Unnayan Kartipakkha (hereinafter referred to as (RAJUK) that has prepared and notified the Master Plan of the City to ensure planned development and urbanization of the City. This respondent is legally responsible for regulating land use within the City area as per the Master Plan and also for authorizing and regulating private housing projects. Respondent No.6 is the Department of Environment (hereinafter referred to as "DoE") which is the implementing agency of the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (Act No.1 of 1995) as amended in 2000 and 2002 and is entrusted with all responsibilities regarding environmental protection and conservation. Respondent Nos.7 and 8 respectively, are the presidents of Real Estate & Housing Association of Bangladesh (REHAB) and the Bangladesh Land Developers Association

By

(Signature)



(BLDA), who are the representative bodies of housing companies engaged in implementing unauthorized housing projects in violation of applicable laws, rules and plans.

The environment of the Dhaka City is being continuously endangered and threatened by various unplanned and illegal activities originating from both private and public sources. The unplanned and unauthorised development of townships and construction of buildings in and around the City are amongst the primary causes and sources of environmental degradation. Taking advantage of the reluctance of the law implementing agencies, such developments and constructions often take place in deviation from the permitted land use and in total violation of laws, rules and plans relating to urbanization and housing, resulting in violation of minimum environmental standards.

Although the Town Improvement Act, 1953, the Master Plan of the City prepared thereunder, the বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪ (hereinafter referred to as the said Rules of 2004) and the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০, (hereinafter referred to as the said Act of 2000) identify and aim to regulate land use in consideration of the greater public interest, all these laws are being grossly violated by the so-called housing companies in implementing their housing projects that do not have the required approval or authorization from the statutory agencies.

Rule 3 of the said Rules of 2004 requires that all proponents of private housing have to register themselves with respondent No. 5, while,



rule 6 makes it obligatory to obtain approval of respondent No.5 for all ongoing and new housing projects within the area covered by the Master Plan. The said two rules run as follows:

“ বিধি ৩। উদ্যোক্তা নিবন্ধীকরণ- (১) মহাপরিকল্পনাভুক্ত এলাকায় কোন বেসরকারী আবাসিক প্রকল্পের উদ্যোক্তাকে এই বিধিমালার বিধানাবলী অনুযায়ী কর্তৃপক্ষের নিকট হইতে নিবন্ধিত হইতে হইবে।”

বিধি ৬। বেসরকারী আবাসিক প্রকল্প অনুমোদনের সাধারণ শর্তাবলী- বিধি ৭, ৮, ৯ এবং ১০ এ উল্লিখিত শর্তাবলী সাপেক্ষে এবং নিম্নবর্ণিত সাধারণ শর্তাবলী অনুযায়ী বেসরকারী আবাসিক প্রকল্পের অনুমোদন প্রদান করা হইবে এবং উদ্যোক্তাকে অবশ্যই উক্ত শর্তাবলী মানিয়া চলিতে হইবে, যথা:-

- (ক) অনুমোদিত চূড়ান্ত লে-আউট প্ল্যান এবং উন্নয়ন পরিকল্পনা অনুযায়ী সর্বোচ্চ ১০ (দশ) বৎসরের মধ্যে প্রকল্পের পূর্ণাঙ্গ উন্নয়ন যথাসমভাবে সমাপ্তকরণ;
- (খ) অনুমোদিত লে-আউট প্ল্যানের কপি সর্বদা প্রকল্পের সাইট অফিসে সংরক্ষণকরণ এবং উহা সংশ্লিষ্ট সংস্থাসমূহের ক্ষমতাপ্রাপ্ত কর্মকর্তাকে পরিদর্শনকালে তাৎক্ষণিকভাবে প্রদর্শন;
- (গ) অনুমোদিত লে-আউট প্ল্যান এবং সংশ্লিষ্ট অন্যান্য নকশাসমূহ কর্তৃপক্ষ বা ফেডারাত কমিটির অনুমোদন ব্যতিরেকে কোন প্রকার পরিবর্তন বা পরিবর্ধন করা যাইবে না;
- (ঘ) অনুমোদিত প্রকল্পের অধীনে কর্তৃপক্ষ বা ফেডারাত কমিটি অনুমোদন ব্যতীত কোন নতুন এলাকা অন্তর্ভুক্ত করা যাইবে না;
- (ঙ) প্রকল্প এলাকার ভূমির উচ্চতা বন্যার পানি প্রবাহ সীমার উপর (Highest Flood Level) এর উপরে রাখার জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ;
- (চ) প্রকল্প এলাকার কোন খাল, বিল, নদী, নালা বা অন্য কোন জলাশয় থাকিলে উহার পানি প্রবাহে বিঘ্ন সৃষ্টি না করিয়া প্রবাহিত পানি যাহাতে প্রকল্পের শেষ প্রান্ত হইয়া ফেডারাত খাল, বিল, নদী নালা বা জলাধার পর্যন্ত প্রবাহিত হইতে পারে, উহা নিশ্চিতকরণ;
- (ছ) বিভিন্ন ইউটিলাইটি সার্ভিসের উন্নয়নের সহিত সংশ্লিষ্ট সংস্থা বা ফেডারাত প্রতিষ্ঠানের পরামর্শ ও নির্দেশনা অনুযায়ী প্রকল্পের বাস্তবায়ন;
- (জ) প্রকল্প বাস্তবায়নের সময় পাশ্চাত্য এলাকায় যাহাতে কোন ধরনের জলাবদ্ধতা সৃষ্টি বা পরিবেশের ভারসাম্য নষ্ট না হয় উহা নিশ্চিতকরণ;
- (ঝ) প্রতি বৎসরের ৩১ জানুয়ারী এর মধ্যে প্রকল্প এলাকার পূর্ববর্তী বৎসরে বরাদ্দকৃত বা ফেডারাত বিক্রিত সকল ধরনের প্লটের তালিকা, প্লট হস্তান্তর ও রেজিস্ট্রেশনের বিবরণী কর্তৃপক্ষের নিকট দাখিল;

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- (ঞ) অনুমোদিত লে-আউট প্ল্যান মোতাবেক নাগরিক সুযোগ-সুবিধাদির জন্য চিহ্নিত ও সংরক্ষিত কোন জমি কোন অবস্থায় সংকুচিত করিয়া আবাসিক বা অনাবাসিক প্রুটে পরিবর্তন করে বরাদ্দ দেওয়া যাইবে না এবং প্রকল্পের উন্নয়ন কার্য সমাপ্তির পর উহা স্থানীয় সরকার বা ক্ষেত্রমত পৌর কর্তৃপক্ষ বা স্থানীয় জনকল্যাণ সমিতির নিকট রক্ষণাবেক্ষণের জন্য হস্তান্তর করিতে হইবে;
- (ট) বিভিন্ন ইউটিলিটি সার্ভিস এর রক্ষণাবেক্ষণের জন্য সংরক্ষিত জায়গা সংশ্লিষ্ট সংস্থার নিয়ম-নীতি অনুসরণে হস্তান্তর যা সেই সকল বরাদ্দ ও হস্তান্তরপত্রের অনুলিপি কর্তৃপক্ষেও নিকট প্রদান;
- (ঠ) প্রকল্প এলাকার উন্নয়নের সময় পানি এবং বিদ্যুৎ সরবরাহ সুবিধা ব্যবস্থা থাকিলে উদ্যোক্তার নিজস্ব খরচে অন্তর্বর্তীকালীন পানি এবং বিদ্যুৎ সরবরাহের ব্যবস্থাকরণ;
- (ড) অনুমোদিত লে-আউট অনুসারে প্রকল্পভুক্ত সকল সড়ক ও সেতুর নির্মাণ কাজ রিটুমিনাস কার্পেটিং পর্যন্ত যথাযথভাবে সম্পন্ন করিয়া উহা স্থানীয় সরকার বা ক্ষেত্রমত পৌর কর্তৃপক্ষের নিকট হস্তান্তর করিতে হইবে;
- (ঢ) প্রকল্প এলাকা ঢাকা সিটি কর্পোরেশন ও ঢাকা ওয়াসার আওতার বাহিরে হইলে সেক্ষেত্রে উদ্যোক্তাদের নিজস্ব খরচে Waste & Sewerage Treatment Plant, Composting Plant ইত্যাদি নিমার্ণের ব্যবস্থাকরণ;
- (ণ) প্রকল্পে নির্মিতব্য যেকোন ধরনের ইমারতের নকশা (উদ্যোক্তা প্রতিষ্ঠানের নিজস্ব স্থাপনের ক্ষেত্রেও) The Building Construction Act, 1952 (E.B Act, II of 1953) এবং প্রচলিত ইমারত নির্মাণ বিধিমালা অনুসারে অনুমোদন গ্রহণ করিয়া সরকার কর্তৃক অনুমোদিত বিল্ডিং কোড অনুযায়ী প্রকল্পের বাস্তবায়ন এবং ইমারত নিমার্ণকরণ;
- (ত) বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ (১৯৯৫ সনের ১নং আইন) এবং উহার অধীন প্রণীত বিধিমালা অনুসারে কর্তৃপক্ষের নিকট নিয়মিত প্রকল্পের পরিবেশগত সমীক্ষা প্রতিবেদন (Environmental Impact Assessment) দাখিলকরণ।

Many housing companies, without obtaining approval of their so-called housing projects as required under the said Rules of 2004, are regularly publishing advertisements in various media and in various forms for selling plots in their unauthorized housing projects. In addition to the extremely misleading and deceitful advertisements that are being published/played in print and electronic media, these housing companies

are also encouraging buyers to invest in their projects through advertisements in the project websites and by arranging fairs both in the country as well as abroad.

Such advertisements for selling of plots in unauthorized housing projects are illegal as per the provisions of rule 16(3) of the said Rules of 2004 that runs as follows:

“বিধি ১৬(৩)। কর্তৃপক্ষ কর্তৃক সংশ্লিষ্ট বেসরকারী প্রকল্প অনুমোদনের পূর্বে প্রস্তাবিত প্রকল্প এলাকার কোন প্লট বা ভূমি বা ইমারত বিক্রয় বা বরাদ্দ প্রদানের জন্য কোন বিজ্ঞাপন প্রকাশ বা প্রচার কার্য পরিচালনা করা যাইবে না এবং প্রকল্প সংক্রান্ত যে কোন সাইনবোর্ড, বিজ্ঞাপন, প্রচার বা যোগাযোগপত্রে কর্তৃপক্ষ কর্তৃক প্রদত্ত অনুমোদন নম্বর উল্লেখ করিতে হইবে।”

Respondent No.5 has intermittently been publishing some cautionary notices in some dailies alerting people not to invest in the unauthorized/unapproved housing projects, but the same has not been able to draw the same level of attention against the regular, colourful and more prominent advertisements of the private housing projects. At the same time, these cautionary notices of respondent No.5 have not been able to stop the deceitful advertisements of the housing companies for selling plots in their unauthorized projects. While, the Government keeps on publishing cautionary notices against the buying of plots in unapproved and unauthorized projects, reports suggest that the fairs that are organized by housing companies are often inaugurated by responsible government officials that surely dilute the process of law enforcement and implementation against the violators.

The fact that such efforts of respondent No.5 have been ineffective in preventing the advertisement of unapproved/unauthorized and illegal

projects, which is evident from the fact that the housing companies are still advertising for selling plots in their above mentioned unauthorized housing projects.

While, the majority of these so-called housing projects has no approval as required under the said Rules of 2004, in many a case, these projects are being implemented in the wetlands clearly frustrating the objectives and sanctions of the Town Improvement Act, 1953, the Master Plan of the City prepared thereunder and the said Act of 2000 and thereby undermining the legal authority and mandates of respondent Nos. 1, 2, 3, 5 and 6.

The Master Plan of the City as prepared by respondent No.5 has identified a few areas within its jurisdiction as flood plains, rivers and water bodies/sub-flood flow zones, water retention ponds *et cetera*. As per the Master Plan, Flood Flow Zone (main) means "the Zone(s) consisting of the area of the floodway as delineated on the Structure Plan, Urban area Plan or any detailed Area Plan". Similarly for the purposes of the Master Plan, Flow Zone (sub) means "the portion of the floodplain outside of the main floodway as delineated on the Structure Plain". Water retention pond means "an open body of water accumulating in a naturally occurring low area that has been designated in a Structure Plan, Urban Area Plan or detailed Ara Plan for the collection and temporary storage of storm water falling in a peak rainfall period for later discharge into receiving bodies of water through natural drainage or by pumping".

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Different mouzas including the 418 mouzas mentioned in the Writ Petition have been identified in the Master Plan as flood flow zones and water retention ponds.

The intent of earmarking certain areas as flood flow zones/water retention ponds is to protect the safety, health and welfare of the common people from negative environmental impacts within the waterways and to protect and preserve natural drainage systems to ensure their continued and proper functioning.

According to the Master Plan, any unauthorized interference with the flood plains/sub-flood flow zones will have devastating environmental effect and hence, the said Plan in clear terms prohibited land development for residential, commercial and industrial development, including raising the level of land through land filling in the flood flow zones/sub flood flow zones. According to the Master Plan the flood plain areas should be enabled to function properly as flood plains/sub-flood flow zones and maintain their basic rural nature.

According to the Town Improvement Act, 1953, once a Master Plan is approved, the same shall guide all future developments and hence, any unauthorized deviation from the Master Plan is liable to be declared unlawful, against public interest and without any legal effect. Any person who uses any land deviating from the Master Plan shall be punishable with fine, which may extend to one thousand Taka with a further fine which may extend to one hundred Taka for each day after the first during which such contravention continues.



In addition to the restrictions imposed by the Master Plan, Section 5 of the মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০ (hereinafter referred to as the Act of 2000) also prohibits change of the nature of any land that has been earmarked as a natural water-reservoir including flood flow zones. The definition of wetlands as given in the said Act of 2000 is inclusive of flood flow zones and runs as follows:

“ প্রাকৃতিক জলাধার” অর্থ নদী, খাল, বিল, দীঘি, বঙ্গ বা জলাশয় হিসাবে মাটির প্লাবনে চিহ্নিত বা সরকার, স্থানীয় সরকার বা কোন সংস্থা কর্তৃক, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, বন্যা প্রবাহ এলাকা হিসাবে ঘোষিত কোন জায়গা এবং সলল পানি এবং বৃষ্টির পানি ধারণ করে এমন কোন ভূমিও এর অন্তর্ভুক্ত হবে;”

Pursuant to section 8 of the Act of 2000 any person, who acts in contravention of the Act is liable to imprisonment not exceeding 5 years or a fine not exceeding Taka-50,000 or both. Section 8(2) further provides that the relevant authority may, *inter alia*, direct the person, who changes the character of such land to destroy such construction.

Despite clear prohibition in the Master Plan against changing the rural nature of the flood flow zones/water retention ponds and the legal prohibitions in Act of 2000, the flood flow zones and the water retention ponds of the City are being continuously filled up by the private housing companies for their unauthorized/unapproved and illegal projects mentioned in paragraph 20 of the Writ Petition.

A recent field visit undertaken by the petitioners revealed the fact that illegal and unauthorized filling up of the flood flow zones and the



water retention ponds are still going on unabatedly. Advertisements were found placed in the water by the housing companies of their unauthorized housing projects named "তেপান্তর", "শাহজালাল সিটি", "নিউ উত্তরা মডেল টাউন", "উত্তরণ", "বিশ্বাস লেক সিটি", "আশুলিয়া মডেল টাউন", "বসুমতি আবাসিক প্রকল্প", "চৌধুরী গার্ডেন সিটি", "আমিন মোহাম্মদ ল্যান্ডস ডেভেলপ লিঃ" and so on.

Such illegal and unauthorized filling up of the flood flow zones and the water retention ponds have created havoc in the City of 12 million that gets flooded and marooned even with regular rain of two consecutive days. Such is the degree of the water logging that in the years 2004 and 2009 even the two Prime Ministers could not attend their offices, while, the Secretariat, the highest policy making platform, was only accessible through boats. Such water loggings do not cripple the urban life only, they bring in unbearable sufferings for the lower income groups as their huts get washed away and contaminate their surrounding environment even further. While, the situation is getting critical with Dhaka it is losing approximately 19, 134 sq.ft of wetland in Beraid, 7161 sq.ft of wetland in Baghair and 2446 sq.ft of wetland in Ashulia every day. But the severity of the problem has not drawn adequate attention of the Government for appropriate remedies and enforcement actions.

Despite the clear legal mandate, the respondents have failed to stop advertisements of unauthorised/unapproved housing projects and to protect and restore the flood flow zones and the water retention ponds.

The petitioners, being aggrieved by the failure of the respondents in preventing the illegal activities of the private housing companies in

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advertising in various modes and means for their unapproved/unauthorized and illegal projects and in protecting the flood zones/water retention ponds from illegal earth filling for such projects, served Notice demanding Justice dated 5 November, 2006 and 22 July, 2010 upon the respondents requesting them to immediately prevent/stop earth filling in the flood flow zones and water retention ponds and to take measures for stopping advertisements of authorized/unapproved and illegal housing projects. But none of the respondents responded to the petitioners' notice.

Having no other adequate efficacious remedy, the petitioners move the Writ Petition in the public interest and obtained the *Rule Nisi* along with an interim order of direction on respondent Nos.1-6 to take effective measures in preventing the members of respondent Nos.7 and 8 and the other persons working under them from advertising for, and earth filling and selling plots in the unauthorized private housing projects as mentioned in paragraphs 9, 11, 20 and 21 of the Writ Petition.

However, even, after issuance of the *Rule Nisi* and the interim direction, few other companies not listed in the Writ Petition continued earth filling, advertising for and selling of plots in their unapproved/unauthorised projects within the areas covered by the Master Plan. This Court by order dated 17.01.2011 passed on an application filed by the petitioners, directing the respondents to remove all signboards/billboards and other advertising means containing the names or other descriptions of any unapproved/unauthorised housing projects including those mentioned in paragraphs 9, 11, 20 and 21 of the Writ



Petition, and paragraph 4 of that application, 'to stop all sorts of advertisements, selling of plots or collection of money for such plots, to prevent earth filling in such projects, to display visible and legible notices on the sites stating clearly the prohibition on earth filling and to submit reports on compliance with the order before this Court by 23rd February 2011.

Mr. M. Iqbal Kabir, learned Advocate appearing for the petitioners, submits that filling up of the flood flow zones and water retention ponds by the housing companies for their unauthorized and unapproved housing projects is contrary to all applicable laws of the country regarding urban development, planning and environmental protection and thus, for their own commercial gain, the housing companies, most of which are members of respondent Nos.7 and 8 are flouting with all legal requirements against which the other respondents have miserably failed to administer law and protect the public interest.

Then, the learned Advocate for the petitioners submits that the respondents are under specific statutory obligations with regard to the town planning and protection of the environment, but they have failed to exercise their lawful authorities in preventing the advertisements of unapproved, unauthorized and illegal private housing projects, which are not only resulting in deceiving the plot purchasers but also leading to haphazard and unplanned urbanization at the cost of the environment and ecology and the same would cause severe water logging and devastating floods to the grievous detriment of the greater interest of the city dwellers.

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The learned Advocate for the petitioners further submits that the conservation and improvement of the environment are vital for the survival and well being of men and the flagrant violations/non-implementations of the relevant laws by the respondents undermine the rule of law and jeopardize peoples' fundamental right to life as guaranteed under Articles 31 and 32 of the Constitution and as such the respondent Nos. 7 and 8 and their numbers may be directed to refrain from doing all the activities relating to the unapproved housing projects, including the advertisements and earth filling for such unapproved projects which they are not permitted by law to do, and also to restore them to the original positions of the flood-flow zones, water retention ponds and wetlands which they are required by law to do.

It transpires from the record of the Writ Petition that the notice of the *Rule Nisi* was properly served on the respondents, but none of them filed any Affidavit-in-Opposition in rebuttal of the allegations and averments made in the Writ Petition.

However, in the facts and circumstances of the Writ Petition, the learned Deputy Attorney General with the learned Assistant Attorney General finds difficulties to verbally controvert the statements and allegations made in the Writ Petition.

We have perused the Writ Petition and heard the learned Advocate for the petitioner and the learned Deputy Attorney General along with the



In the Writ Petition, the petitioners have made the averments that some members of respondent Nos.7 and 8 have undertaken various housing projects described in paragraphs 9, 11, 20 and 21 of the Writ Petition and in paragraph 4 of the application for direction without any approval from the concerned authorities. They are implementing those housing projects by earth filling in the floodplains - Flood Flow Zones and Sub-Flood Flow Zones, rivers, natural water reservoirs, water retention ponds and so forth. Upon a recent field visit the petitioners found that such earth filling is still going on unabatedly. Even, advertisements were found placed in the water by the housing companies of their unauthorized housing projects named "তেপান্তর", "শাহজালাল সিটি", "নিউ উত্তরা মডেল টাউন", "উত্তরণ", "বিশ্বাস লেক সিটি", "আওলিয়া মডেল টাউন", "বসুমতি আবাসিক প্রকল্প", "চৌধুরী পার্ভেন সিটি", "আমিন মোহাম্মদ ল্যান্ডস ডেভেলপ লিঃ" and so on. The situation is getting so critical that Dhaka is losing approximately 19134 sq.ft of wetland only in Beraid, 7161 sq.ft of wetland in Baghair and 2446 sq.ft of wetland in Ashulia every day. By such unplanned and unapproved earth filling the natural drainage systems of Dhaka City and its surrounding areas are being damaged and destroyed. Consequently, Dhaka City gets water logged, flooded and marooned even with regular rain for two consecutive days. Such water loggings do not

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cripple the urban life only, they bring in unbearable sufferings for the lower income groups as their huts get washed away and contaminate their surrounding environment even further. Thus, such unplanned and unauthorized housing projects have caused serious damage to the environment of the City adversely affecting the right to life and associated environmental rights of the city dwellers.

It has been further stated in the Writ Petition that many housing companies, even without obtaining approval of their so-called housing projects are regularly publishing advertisements in various forms in various media for selling plots in such unauthorized housing projects. In addition to the extremely misleading and deceitful advertisements, these housing companies are also inducing buyers to invest in their projects through advertisements in the project websites and by arranging fares both in home and abroad.

The statements of facts made by the petitioners have not been controverted by any respondents by filing any affidavit-in-opposition. It is a settled principle of law that if any averment made in the Writ Petition is not controverted, the Court is to proceed as if such averment has been admitted by the respondents. Therefore, the averments made in the Writ



Petition being not controverted by the respondents the same are deemed to have been admitted by them.

Section 3 of the Building Construction Act, 1952 imposes restriction on construction or reconstruction, addition or alteration to any building, or excavation or re-excavation of any tank within the area to which this Act applies, without the previous sanction of an Authorised Officer. If the existing use of any land or building does not conform the scheme of land utilisation indicated in the Master Plan, Sections 3A, 3B, 5, 6 and 7 empower an Authorised Officer or the Building Construction Committee, as the case may be, to direct, by an order in writing, the owner, occupier or the person in charge of the land or building to discontinue such use, to remove or dismantle or vacate such building and to fill up the tank. The contravention of the provision of section 3 or the failure to comply with the directions given under sections 3B, 4 or 5(1) and, designing or approving or implementing a building construction plan and constructing a building in contravention to any provision of the Bangladesh Building Code made under section 18A and the rules made under section 18, entail punishment under section 12 of the Act with imprisonment for a term which may extend to seven years, or with fine not less than Taka fifty thousand or with

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both and, on an application, the Court may also direct the convict to remove or dismantle the building or fill up the tank, as the case may be, within the time fixed.

Section 73(1) of the Town Improvement Act, 1953 stipulates that a Master Plan is to be prepared by the Kartripaksha for the area within its jurisdiction indicating the manner in which it proposes that land should be used, whether by carrying out the development thereon or otherwise and the stages by which any such development should be carried out. Section 74(1) propounds that once the Master Plan is prepared 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. Section 74(3) dictates that all future developments and constructions, both public and private, shall be in conformity with the Master Plan or with the amendment thereof.

The Master Plan of Dhaka City prepared by respondent No.5 has identified a few areas within its jurisdiction as flood plains, rivers and water bodies/sub-flood flow zones, water retention ponds *et cetera* with the intention to protect the safety, health and welfare of the common people from negative environmental impacts within the waterways and to protect

and preserve natural drainage systems to ensure their continued and proper functioning.

The Master Plan in clear terms prohibits land development for residential, commercial and industrial development, including raising the level of land through earth filling in the flood flow zones/sub flood flow zones in order to let them remain functional and maintain their basic rural nature.

Section 5 of Act of 2000 (মহানগরী, বিভাগীয় শহর ও জেলা শহরের পৌর এলাকাসহ দেশের সকল পৌর এলাকার খেলার মাঠ, উন্মুক্ত স্থান, উদ্যান এবং প্রাকৃতিক জলাধার সংরক্ষণ আইন, ২০০০) stipulates that save and except as provided in this Act, the nature of any land earmarked as a playground, open space, park and natural water reservoir cannot be changed or such land cannot be used otherwise. However, under sections 6 and 7 of the Act, the concerned authority, on an application filed duly for changing the nature of any such land, may approve such changing upon consideration as to whether thereby the purposes and objectives of the Master Plan would be frustrated and if so, the extent thereof, and the extent of the harmful effect thereof on the environment of the concerned locality or whether the local residents would be otherwise prejudiced thereby. Section 8(1) provides that if any person contravenes any provision of the Act shall be liable to imprisonment not exceeding 5 years or a fine not exceeding Taka-50,000 or both. Section 8(2) further provides that if any person changes the nature of any such land in contravention of the provisions of section 5, the concerned authority may, *inter alia*, prevent the person from changing the nature of such land

and may direct the person to demolish the unauthorized construction made thereon.

Under Rule 6 of the said Rules of 2004 (বেসরকারী আবাসিক প্রকল্পের ভূমি উন্নয়ন বিধিমালা, ২০০৪) it is obligatory to obtain approval of the concerned authorities for all ongoing and new housing projects within the areas covered by the Master Plan prepared under the Town Improvement Act, 1953. Rule 6 stipulates that the approval for any such housing project shall be accorded on the specific conditions mentioned in Rules 7, 8, 9 and 10 and on the general conditions enumerated under Rule 6. The general conditions provide amongst others that the water flow shall have to be ensured through and up to the canal, beel, river, drain or water reservoir within the project area; the project shall be implemented and the building shall be constructed as per the Building Code after obtaining the approval of the construction plan in accordance with the Building Construction Act, 1952 and the Rules made thereunder; the Environmental Impact Assessment Reports on the project shall have to be submitted regularly to the concerned authority in accordance with the বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫ and the Rules made thereunder *et cetera*.

Rule 16(3) of the said Rules of 2004 prohibits that prior to according the sanction or approval by the concerned authority for any private housing,

project no advertisement can be published or no campaign can be conducted for selling or allocating any plot, land or building in the project area. It further provides that the sanction number of the project shall have to be mentioned in the signboard, advertisement, campaign or correspondence in respect of the project.

Therefore, under the laws discussed above, none is authorised to initiate or continue any housing project and to publish any advertisement or to conduct any campaign without prior sanction or approval by the concerned authority for such project.

Nevertheless, if any person initiates or continues any such project and/or makes any advertisement or campaign thereof without prior sanction or approval, the concerned authorities that is respondent Nos.1-6 are under legal obligations to prevent such unauthorised project from being implemented, to remove or demolish the construction if any has already been made and to compel the concerned person to restore the land or building, flood plains, rivers and water bodies/sub-flood flow zones, natural water reservoir *et cetera*, as the case may be, within the project area to its original position and also to take other legal action against such person.

The allegation has also not been rebutted that respondent Nos.1-6 failed to stop initiating and continuing such unapproved/unauthorised housing projects, and earth filling and advertising for such projects, which clearly demonstrates gross negligence of the respondents in performing



their legal and public duties and evidences their reluctance in protecting the safety, health and welfare of the Dhaka City dwellers from the negative environmental impacts generated from such housing projects, and also in protecting and preserving the natural drainage systems to ensure their continued and proper functioning and thus, the unlawful acts and/or omissions of the respondents have threatened the fundamental rights of the petitioners and the local inhabitants as guaranteed under Articles 31 and 32 of the Constitution.

However, the respondents having not been aggrieved by the two interim directions they conceded the grievances of the petitioners.

In such view of the matter, we find merit in the Rule.

Accordingly, the Rule is made absolute. The interim order dated 17.01.2011 passed in the instant Writ Petition shall form part of this judgment and order.

Respondent Nos. 1-6 are directed to protect and restore the Flood Flow Zones, Sub-Flood Flow Zones, rivers, natural water reservoirs and water retention ponds identified in the Master Plan of Dhaka City to their original positions, to stop the illegal earth filling in and to remove all signboards/billboards and other advertising means containing the names or

other descriptions from the unapproved/unauthorised housing projects including those mentioned in paragraphs 9, 11, 20 and 21 of the Writ Petition, and paragraph 4 of the application upon which the interim direction dated 17.01.2011 was passed, to stop all sorts of advertisements, selling of plots or collection of money for such plots, and to display visible and legible notices on the sites stating clearly the prohibition on earth filling in such project areas.

The respondents are further directed to take immediate steps to comply with this order within 30 days from the date of the receipt of this judgment and order without fail.

Communicate this judgment and order immediately.

Gobinda Chandra Tagore

A.H.M. Shamsuddin Choudhury, J:

I agree.

S. Choudhury

Type by: Nurun Nahar
19.01.2016

Read by:

Exd. by:

Readied by:

Nurun Nahar

Nurun Nahar
19.01.16.

Salam

19.01.16

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মোঃ মনজুরুল হক খান
প্রশাসনিক কর্মকর্তা

গোবিন্দ চন্দ্র তাগোর
সহকারী রেজিস্ট্রার

মোঃ বেদুল হোসেন
সুপারিনটেন্ডেন্ট

প্রত্যয়িত অবিকল প্রতিলিপি

S. Choudhury
20/01/16

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিল্ডিং
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত