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বাংলাদেশ  
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01.11.2020, 01.11.2020, 01.11.2020, 01-11-2020, 01.11.2020

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

**WRIT PETITION NO. 1834 OF 2010**

IN THE MATTER OF:

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

IN THE MATTER OF:

***Bangladesh Environment Lawyers  
Association (BELA) and others.***

- Petitioner

-vs-

***Bangladesh and others.***

- Respondents.

Ms. Syeda Rezwana Hasan, Advocate with  
Mr. Ali Mustafa Khan, Advocate

..... For the Petitioners.

Mr. Mahbubey Alam, Attorney General with  
Ms. Kazi Zinat Hoque, Deputy Attorney  
General, with

Mr. Samarendra Nath Biswas, D.A.G. with  
Md. Abul Kalam Khan Daud, A.A.G. with  
Mr. Shamsuddoha Talukder, A.A.G. with  
Most. Khairunnesa, A.A.G.

...For the respondents-government.

**Heard on 07.05.2018, 08.08.2018, 09.08.2018,  
24.10.2018 and 02.04.2019**

**Judgment on 28.08.2019.**

**Present:**

Mrs. Justice Farah Mahbub.  
and

Mr. Justice S.M. Maniruzzaman

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**Farah Mahbub, J:**

In this Rule issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned Memo No. 211(4) dated 11.04.1983, issued by the respondent Nos.6 and 7 cancelling the respective settlements under Forest Department (Annexure-I), should not be declared to have been made without lawful authority and hence, of no legal effect and also as to why the respondents should not be directed to :

- i) *Correctly identify the borders of Modhupur Sal forest as per the notification dated 02.02.1956 and 19.07.1986 and records of the reserve forest(Annexure-C-C-2 respectively).*
- ii) *Frame Rules on village forestry as required under Section 28 of the Forest Act,1927 and ensure regeneration of Modhupur Sal forest through protection and enrichment of plantation with indigenous species and with direct participation of the forest dependent people as envisaged in Section 28 of the said Act of 1927;*
- iii) *Settle the rights of the members of Garo and Kontch community who are indigenous forest dwellers of Modhupur Sal forest in accordance with Section 92 of the State Acquisition of Tenancy Act,1950 and Sections 6-19 of the Forest Act,1927;*



- iv) *Remove all unauthorized and illegal industrial/commercial entities from Modhupur Sal forest(Annexure-I);*
- v) *Stop commercial banana/pineapple plantation (without affecting the traditional cultivation of the tribal people) and other commercial plantations in Modhupur Sal forest; and*
- vi) *In the case of areas covered under social forestry agreements, undertake appropriate measures to gradually regenerate native forest in the said areas after the expiry of the existing agreements.*

Subsequently, vide order dated 19.04.2012 respondent Nos.1 and 3 were directed to compile a dossier in the light of the prayer as laid down in the writ petition furnishing details of the people, including the first dwellers etc. along with the recommendations on the means by which the forest, tree and the ecology of the vicinity can be protected. Said dossier was ultimately filed by the respondent<sup>1</sup> No.3 before this Court on 14.02.2018.

Meanwhile, vide order dated 23.08.2017 a supplementary Rule Nisi was issued calling upon the respondents to show cause as to why the impugned notification bearing No.PaBaMa(baShai) 43/2012/55 dated 15.02.2016(Annexure-XI) published in Bangladesh Gazette on 31.03.2016 under the signature of the Secretary, Ministry of Environment and Forest declaring the properties measuring 9,145.07 acres as described in it's schedule as "Reserved Forest" under Section 20 of the Forest Act, 1927 against the interest of the

forest dwelling communities, should not be declared to have been passed without lawful authority and hence, of no legal effect.

The petitioner No.1 being represented by its Executive Committee Member, Bangladesh Environmental Lawyers Association (in short, BELA) is a society of lawyers working to promote the notion of environmental justice in the country as well as protecting environmental and fundamental rights of the weaker and vulnerable segments of the populace. Being concerned about the implementation and enforcement of laws relating to protection of the environment and interested in performing the fundamental duty cast upon every citizen vide Article 21 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution ) to protect public property and conserve its riches, it has filed application under Article 102 of the Constitution along with 2(two) other petitioners who represent their respective ethnic community, for environmental protection of Madhupur Sal forest and also to ensure protection of the members of the ethnic community living in and around the said forest area within the ambit of Forest Act,1927 read with Section 92 of the State Acquisition and Tenancy Act,1950,whereupon present Rule Nisi has been issued by this Court.

Facts, in brief, are that Bangladesh hosts 4(four) different kinds of forests including tropical evergreen forests, tropical semi-ever green forests(679000 hectares), moist deciduous forests(120690



occupies around 46,000 acres, which extends from Charaljani mouja to Rasulpur mouja from north to south and from Sholakuri mouja to Mahishmara mouja from east to west. As per the assertion of the respondent No.3 total forest land in Modhupur covered under Sections 4 and 6 of the Forest Act, 1927 (in short, the Act of 1927) is 43,039.08 acres. Vide gazette notifications dated 02.02.1956 and 19.07.1984 respectively it has been stated that the admeasured land is 45,409.91 and 42,767.76 acera respectively. The moujas included within the forest areas of Modhupur are Chunia, Beribaid, Aushnara, Holdia, Mohishmara, Joinatoli, Betbari, Idilpur, Pirojpur, Ramkrishnobar, Loufola, Fulbagicha, Sholakuri, Jorangachha, Pirgachha, Arankhola, Chapaid, Gachhabari, Rasulpur and Bijoypur (Annexure-C-C-2 respectively). On 24.02.1982 the respondent No.1 declared 20.837.70 acres of forest land of Modhupur Sal forest(20.244.23 acres) and Mouktagachha(594 acres) as National Park falling within the moujas of Pirgachha, Arankhola, Chapaid, Gachhabari, Rasulpur and Bijoypur in exercise of power as provided under section 23(3) of the Bangladesh Wild Life (Preservation) Act, 1973 (Act No. XVII of 1973) (Annexure-D).

However, Modhupur Sal forest is being administered by the Forest Department under four Ranges called Charaljani/Modhupur range(5895.29 acres), Aronkhola range(4829.17 acres), Dokhla

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range(15503.29 acres), and Jatiyo Uddayan Sadar range(15073.34 acres), in total 41292.40 acres.

This natural forest of Modhupur has Sal (*Shorea robusta*) as the predominant species accounting for about 70 % of the forest species. Notable amongst the other native species of Modhupur Sal forest are ajuli, amlaki, bazna, chakra, chambal, gadila, haldu, jogini, kaika, koroi, palash, sidah jarul, sonalu, etc. which together with many other medical plants, fruit trees, vegetables, herbs, creepers are supporting the eco-system of Sal forest.

Although shrinkage of Sal forest of Modhupur has resulted in disappearance of precious wildlife including Royal Bengal Tiger, Asiatic Black Bear, Gaur, Pea Fowl, Samvar Deer and many more, the remaining patches of the forest still holds a good number of unique birds, reptiles, insects, plants and animals that are found only in a deciduous forest like this. Among these animals and birds, Capped <sup>nest</sup> Langur and Indian Pitta are notable. However, when almost all of the world's primate species are on the verge of extinction these remaining patches play an important part in the continuation of Langur species in Bangladesh and from a global perspective contribute towards primate species conservation. Pangolin is another important resident of the Sal forest. This animal thrives in the Sal forest due to the abundance of termite mounds in this type of forest, and contributes to the overall



well being of the forest by breaking the mounds open, which helps in replenishing the ground water table during rainy season.

For various reasons, the once pristine and rich Sal forest of Modhupur today stands almost denuded. According to the statistics of the Forest Department itself, the total forest cover of Modhupur Sal forest has come down from around 46,000 acres to 9,000 acres only over the last 20 years.

In this regard it has been contended that although Section 23 (3) (ii) of the Bangladesh Wildlife (Preservation) Order, 1973 now, repealed vide Section 54 of the Wildlife (Conservation and Security) Act, 2012) (Act No. XXX of 2012) prohibits "*firing any gun or doing any other act which may interfere with the breeding of any wild animal*", ironically some parts of Modhupur National Park have been converted into firing range for the Air Force in 1978 where bombing target practices are regularly conducted.

Considering the scarcity of forest land, Objective 19 of the Forest Policy, 1994 aims to regulate use of state owned reserve forest for "*non-forestry purposes*". In view of the same conversion of 10872.79 acres of Modhupur Sal forest into rubber plantation ("*rubber garden*" to be distinguished from "*forest*") indicates the inconsiderate decision of the government resulted in immense damage to the precious ecology of the said forest and its dwellers. Moreover, ignoring the provisions of Forest Act, 1927, Saw Mill (License) Rules, 1998 and

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Brick Burning (Control) Amendment Act, 2001, a significant number of industrial/ commercial operations are continuing in the protected forest area of Modhupur. Also, from record it transpires that an alarming rate of illegal felling of Sal trees are taking place from the protected area of Modhupur Sal forest (Annexure "H" and "H-1" respectively).

Accordingly, it has been contended that the Rules of Business framed under Article 55 (6) of the Constitution requires respondent No.1 to conserve, afforest and regenerate forests and protect wild birds and animals. At the same time, as per Section 2(14) of the Bangladesh Wildlife (Conservation and Security) Act, 2012 only the areas of outstanding scenic and natural beauty can be declared as national park with the primary object of protection and preservation of the scenery, flora and fauna in its natural state. Unfortunately, in the case of Modhupur Sal forest, respondent Nos.1 and 3 have utterly failed to conserve the same in its natural state and /or regenerate the same to bring back its lost pride, and have time and again opted for schemes and projects having small significance so long protection of the forests, wildlife and forest dwellers are concerned.

Moreover, plantation of non-native and commercial species of Eucalyptus, Acacia, Gamar over a huge area of the natural Sal forest under the Thana Afforestation and Nursery Project and various other social forestry programme have not at all resulted in regeneration of



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the Sal forest and protection of the native forest and its wildlife. Instead, the same has simply resulted in replacement of the vast forest area of native Sal with commercial plants causing fast disappearance of native wildlife and increased hardship of the forest dwellers. Such faulty and unlawful commercial plantation of the respondent No.3 is contrary to Article 18A of the Constitution, the right to have safe environment as well as Objective 10 of the Forest Policy, 1994 which aims to use all state owned forests of natural origin and plantations of the hills and Sal forests for producing forest resources and for bringing the same under "*profit-oriented business*".

Today, vast tracts of Modhupur Sal forest are under commercial banana and pineapple plantation where excessive use of various hormones and pesticides are causing irreparable damage to the soil of the forest and are creating serious threat towards its regeneration. Moreso, it has been alleged that in many cases, with the ending of the rotation of social forestry programmes, vast areas of Modhupur Sal forest got barren. Consequently, in connivance with and taking advantage of the malpractices of some officials of the Forest Department those areas were grabbed by some influential people for commercial banana and pineapple plantation.

With a view to reverse the process of deforestation, as contended by the petitioners, Section 28 of the Forest Act, 1927 requires the government to manage certain forests as village forests.

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Said provision of law further states that all provisions of the Act on reserved forest shall apply to village-forest so far as they are not inconsistent with the village forest Rules. Section 28 of the Forest Act, 1927 is quoted as under:

*" 28. Formation of village-forests-(1)The Government may assign to any village community the right of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forest so assigned shall be called village-forests.*

*(2) The Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.*

*(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests."*

Moreover, Forestry Sector Master Plan(in short, FMP), (1993-2012) identifies the following 5(five) pre-conditions for sustainable development in the forestry sector, namely:

- (a) Satisfaction of basic human needs through increases in vital commodities and services such as firewood, housing and shelter materials, animal forage, medicinal plants, soil conservation and bio-diversity;
- (b) Continued socio-economic growth with enhanced equitable distribution of benefits to rural areas and prospects of a better future for those who depend on trees and forest land;

- (c) *Participation in decision-making and benefit sharing by tree growers, forest users and others whose livelihoods depend on trees and forest;*
- (d) *Sustainable commitment of the government to systematic long-term approaches to such issues; and*
- (e) *Sustainable utilization of forest resources carrying resiliency limits accompanied by conservation of ecosystems and bio-diversity.*

FMP (1993-2012) has also developed 4 (four) main themes to achieve its objectives, namely:

- (i) *Environment management;*
- (ii) *People oriented forestry;*
- (iii) *Production directed programmes; and*
- (iv) *Institutional restructuring and development.*

The environment management provides for conservation of forests of natural origin, protected area development and community resource management. The people oriented forestry includes forestry on privately owned land, social forestry, participatory management of government controlled forest land, tree plantations on non-forest public(khas) lands and unclassed state forest(USF) in the hill tracts. The production directed programmes provide for industrial plantations, wood harvesting, and promotion of industry and technology. Finally, the institutional restructuring and development

will focus on entrepreneur-based infrastructure and maintenance, industrial support, training and transfer of technology, institutional change, research and development.

The FMP, however, admits that Sal forest areas have maximum encroachment and most of the root stock of remnant Sal forests has lost coppicing power suggesting use of plantation for re-foresting such areas. FMP, (1993-2012) observes that in most cases, the land in the remnant Sal forests is not suitable for permanent agriculture without irrigation, but with adequate protection and ending they can still respond and grow.

Modhupur Sal forest has for long been sustaining the Garo (locally known as Mandis) and Kontch inhabitants in at least 63 villages who happen to be indigenous to the said forest and for generations have been living in and around the said forest area in coherence with the forest and its ecology, in whose favour settlements were accorded by the respondent-government. As such, it has been contended that members of those communities are lawful settlers in the forest. Moreso, indigenous forest dwellers are entitled to claim rights under Sections 5, 11, 12, 14 and 15 of the Forest Act, 1927 over land, right of way, right of pasture, right over forest produce, right of water and so on in forest areas covered under Sections 4 and 6 of the said Act. But unfortunately, no step was ever taken by the respondents concern to settle the above stated rights of the indigenous forest

dwellers of the said forest. In addition, while the Garo (Mandis) and Kontch community were living in and around the said forest area by virtue of settlements in their favour, instead of settling their rights over forest under the Forest Act, 1927 respondent Nos. 6 and 7 vide Memo No. 211 (4) dated 11.04.1983 (Annexure-I) had cancelled those settlements (pattani) with direction to stop collection of revenue (now, under challenge), which goes to infringe their fundamental as well as legal rights.

In this regard it has been contended that non-settlement of the rights of the members of Garo communities has always been a contentious issue in the management of Modhupur Sal forest, which took serious turn when the respondent No.1 attempted to implement the project called "National Park Development Project" in the Sal forest between the years 2000-2004 resulted in the death of 2(two) tribal protestors(Annexure-J) Ultimately, a 12(twelve) member committee(of which the petitioner organization was a member) was formed by the respondent No.1 vide Memo No.পমব/(বশা-১)/৪২/ ২০০৪/১৯৮ (১৭) dated 13.03.2007(Annexure-K ) to develop a framework for participatory management of the said forest and also to identify the steps for sustainable regeneration of the forest within time bound action plan. Later, in the meeting of the said committee decision was taken to conduct a survey in order to a " কার্যপরিধিঃ ক) মধুপুর বনাঞ্চলের উপজাতিসহ সংশ্লিষ্টদের অংশীদারিত্বমূলক ব্যবস্থাপনা (Participatory Management) এর সার্বিক রূপরেখা প্রণয়ন; খ)

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দ্রুতগতিতে শালবন পুনরুদ্ধারের পছন্দ নিরূপণ, এ বিষয়ে সময়াবদ্ধ কর্ম পরিকল্পনা নির্ধারণ এবং টেকসই (sustainable) বনায়নের পছন্দ নিরূপণ।” Further, to improve the relationship between the forest department and the forest dwellers a Memo bearing No. পবম(বশা-১১/১৮/২০০৭(অংশ-১))/৫৪৪ dated 09.07.2007 (Annexure-K-1) was also issued from the office of respondent No.1 to “সম্পর্ক সৃষ্টির লক্ষ্যে ইতিমধ্যে স্থানীয় বন অধিদপ্তর কর্তৃক তাদের বিরুদ্ধে এ যাবৎ রঞ্জুকৃত মামলায় কোন হয়রানিমূলক ঘটনা আছে কিনা তা অনুগ্রহপূর্বক যাচাই এবং এরূপ ঘটনা থাকলে তা পর্যালোচনাপূর্বক নিষ্পত্তির জন্য নির্দেশক্রমে তাকে সবিশেষ অনুরোধ জানানো যাচ্ছে।”

Pursuant to the decision of the said committee a door to door survey was conducted by the petitioner organization and petitioner No.2, amongst 8,630 families in 63 villages in and around Modhupur Sal forest area (Modhupur, Muktagachha, Ghatail and Phulbaria mouzas) and recorded that the total land claimed by 4,129 Garo families within the said forest area remain 8,171,74 acres, while other dwellers are occupying about 5,5,47.17 acres of land within the said forest. Based on the said survey report petitioner No.2 vide letter dated 30.03.2009 (Annexure-L) addressing the respondent No.5 made a prayer for permanent settlement of the land covered under notifications dated 02.02.1956 and 19.07.1984(Annexure-C and C-1 respectively) under applicable laws in favour of the forest dwellers subject to production of documents in support of their possession “এ পরিসংখ্যানে দেখা যায়, জাতীয় উদ্যানের ভিতর ও বাইরের মোট ৬৩টি গ্রামে (মধুপুর, মুক্তাগাছা, ফুলবাড়িয়া ও ঘাটাইল) বসবাসকারী ৪,১২৯টি আদিবাসী পরিবারের মোট লোকসংখ্যা ২০,২০৫ জন যারা

৮,১৭,১৭৪শতাংশ অর্থাৎ ৮,১৭১.৭৪ একর ভূমি ব্যবহার করছে। (বিস্তারিত তথ্যের জন্য সংযুক্তি-১)

আদিবাসীদের দাবীকৃত ভূমির মালিকানা/দখল সংক্রান্ত জটিলতা নিরসনের লক্ষে জয়েনশাহী আদিবাসী উন্নয়ন পরিষদ এসকল ভূমি দাবীকৃতদের মধ্যে চিরস্থায়ী বন্দোবস্তের প্রস্তাব করছে। এখানে উল্লেখ্য যে, আদিবাসীদের দাবীকৃত এ সকল ভূমির মালিকানা/দখলের স্বপক্ষে প্রমাণাদি হিসেবে ভূমি রেকর্ডের পাশাপাশি বিভিন্ন শুমারী, ডেটার লিস্ট, পাসপোর্ট, মামলার তথ্যাদি, ঐতিহাসিক গবেষণা ইত্যাদি মালিকানা/দখলের স্বপক্ষে উপস্থাপন করা যায়”, but with no response.

Further, it has been contended that although the respondent government twice attempted to declare the said forest as reserved forest but it could not finalize the process for declaration of reserved forest under Section 20 of the Act, 1927 due to the fact that it failed in settling the claims of the tribal forest dwellers under Sections 4-19 of the Act, 1927. However, instead of initiating settlement of the rights of the forest dwellers a report of the Forest Department(1997) has stated that out of 45,565.18 acres of the forest land of Modhupur Sal forest, a total 21,217.35 acres have been encroached upon by 2,195 Garo families(with 11,830 members) and 6014 Bengali families (with 37,910 members).

Such uncertainty over tenure has on one hand, rendered Garo and Kontch community more vulnerable and on the other creating a scope of misuse of power by some unscrupulous officials of the Forest Department; thus, leading to exploitation and mismanagement of the

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forest, its resources and riches at the cost of protection of the forest, the forest dwellers and of course, the greater public and national interest.

Also, it has been contended that the role of the government and the Forest Department in managing and protecting the said forest are contradictory to their legal mandates and policy commitments as given under the said Act and also the FMP. Even, on the face of the ever deteriorating state of the said forest the government and the Forest Department are not resorting to the legal provisions for settling the rights of the forest dwellers once for all nor are they adopting to legally recognized management notions like "*village forestry*" or regeneration of natural forest. In the absence of transparent and time bound initiatives of the government to demarcate the boundaries of the forest, settle the rights of the forest dwellers, regenerate the forest with native species and protect its valued wildlife with the active and meaningful participation of the forest dwellers as envisaged in section 28 of the Act, 1927 the glory of the said forest is degrading very fast.

In this regard it has been averred that the neighbouring countries like India and Nepal have made significant progress in bringing back their lost native forests by involving forest dependant people in the decision making and management process. While Nepal has brought back 90% of its lost forest in a span of 15 years by adopting to a management approach called "*community forestry*" (which is similar

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to what Section 28 of the Forest Act proposes). India has also accepted similar practice in States like Orissa and others while in Uttaranchal, forests are increasingly being managed by the village community under the Van Panchayat Rules, 2005 framed under Section 28 of the same Forest Act, 1927. Neighbouring India has also enacted Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 with the objective to recognize and vest in forest dwellers the forest rights and occupation in forest land who have been residing in such forests for generations.

In the supplementary affidavit filed by the petitioners it has been stated, *inter alia*, that from *National Biodiversity Strategy and Action Plan of Bangladesh (2016-2021)*; and a study titled "*Forest Cover Mapping and Mouza Digitalization for Modhupur Sal Forest National Park*" (April, 2018) jointly done by Centre for Environmental and Geographic Information Service(CEGIS) and Troyee Associates at the behest of the petitioner No.1 shows that the Sal forest within the study area(Arankhola, Gachabari, Chapaid and Pirgachha moujas) has reduced from 89.1% to 16.5% over the period from 1914/1915 to 2016; whereas, the same has reduced from 18.2% to 16.5% over the period from 2003 to 2016. In Arankhola mouja, the Sal forest has reduced from 94.3% to 30.9% over the period from 1914/1915 to 2017. It has reduced from 34.5% to 30.9% in the said mouja between 2003 to 2017. Conversely, plantation has increased in Arankhola

mouja from 15.6% to 18.1% between the years 2003-2017. At the same time, although there was Sal forest in 1914/1915 in Bijoypur(10.7%), Chapaid (51.6%), and Gachabari (26.6%), the same has totally disappeared (Annexures-X-12-X12A respectively).

Further, it has been stated, *inter alia*, that on the face of denial of presence of Garo community in Modhupur Sal forest as well as denial of their right to land and other forest rights in the process of issuing the impugned gazette notification dated 31.03.2016 (Annexure-X-1) the petitioners have produced lists of Garo community residing in 13(thirteen) villages situated in Arankhola mouja namely Gairal, Joloi, Telki, Shadhupara, Jalabada, Kakraguni, Beduria, Joenagachha, Bondoria, Kejai, Ponamari, Amlitoal and Gachhabari with supporting maps showing exact spots where the listed Garo families are residing within the said mouja (Annexure-X-3 series).

However, while the Rule Nisi was pending the respondent No.1 published a gazette notification dated 31.03.2016 (Annexure-X1) purporting to declare 9,145 acres as "Reserved Forest" under Section 20 of the Forest Act, 1927. This area of 9,145 acres is included in the 13,248 acres covered under notification dated 19.07.1984 (Annexure-"C-1") and have been calculated excluding the area under the control of Air Force (318.60 acres) in Beribaidh moujas as firing range.



In this regard it has been stated that said notification dated 31.03.2016 (which is now, under challenge) has been issued 32 years after the issuance of the extremely contentious notification dated 19.07.1984 without settling the rights of the ethnic community as per Sections 6-19 of the Forest Act, 1927 and is an attempt to frustrate the Rule and avoid judicial consideration and sanction regarding settlement of rights of the forest dwellers prior to bringing the disputed area under the exclusive control of the Forest Department by declaring the area as "*Reserved Forest*" under Section 20 of the Forest Act, 1927.

While the forest dwellers and other conscientious citizens demanded cancellation of the gazette notification, which has been issued without following the legal process and to the detriment of the forest dwelling and dependent communities, a survey by the petitioners reveal that at least 5,998 people are now exposed to the risk of eviction. Hence, the application.

Respondent Nos. 2,3 and 10 entered appearance by filing separate sets of affidavit in opposition stating, *inter-alia*, more or less on similar stand that according to F.A.O. Classification Forest and other wooded land together constitutes 1442X289=17310 sqm, which is about 12% of the total land mass. However, the government has meanwhile introduced Social Forestry Rules, 2004 under section 28A of the Forest Act, 1927 and that participatory forestry has been in

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force since 1987-88 under Upazilla Forestation and Nursery Development Project, which was ended in 1995. Subsequently, extended social forestry project was implemented for the following 2(two) years. Forestry Section Project was implemented in Modhupur Sal forest and was ended in 2005-2006 because of the natural cause, i.e., the soil became unsuitable for the normal generation of Sal; thus, created hundreds of vacant spaces. Moreover, anthropogenic cause is also responsible for poor regeneration, but unlike other Sal forest, Modhupur is most vulnerable due to better fertility status, which attracts the farmer for crop cultivation. As a result, growing population started encroaching the area both for housing and cropping for livelihood. According to Sal Forest Inventory Report, 2001 Sal forest area is found to be 41130 hectares in Dhaka, Tangail and Mymensingh Division.

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It has also been stated that the government is actively considering to develop Modhupur Sal forest and to find out the sorrows and agonies of the forest dwellers and with this end in view, the Forestry Sector Master Plan (FMP)(1993-2012)has been undertaken to implement those objectives for the sustainable development of the forestry sector.

Further, it has been stated that at the beginning there was no Garo community in Modhupur Sal forest area. Subsequently, said community along with others started to live in and around the said

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area. Also, it has been stated that Garo community has no right and title over forest land, yet they have been incorporated as participant under social forestry projects and they are being financially benefitted under those projects.

Also, it has been stated that after abolition of zamindari system the natural forest of Aronkhola mouza was vested with Forest Department i.e. respondent No.3 on 15.09.1951 vide gazette notification No.9636. Subsequently, the then government under Section 3(2) of the East Bengal State Acquisition and Tenancy Act, 1950 acquired a total land of Aronkhola mouza by gazette notification No.5012 dated 18.04.1952 and that said land was vested with the said respondent. Since then the respondent No.3 has been managing and possessing the aforesaid forest area. Later, the government in exercise of power as conferred under Section 4 of the Forest Act, 1927 had declared above mentioned land as protected forest vide gazette notification No.9082 dated 05.02.1955.

With a view to declare the above mentioned forest as reserved forest the respondent government duly appointed Deputy Commissioner, Tangail as Forest Settlement Officer. Accordingly, the Forest Settlement Officer circulated notification under Section 6 of the Forest Act, 1927 which was published in the 6<sup>th</sup> Volume of Bangladesh Gazette dated 19.07.1984. In that notification said officer invited all interested persons to submit objection in his office within 6(six)

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months from the date of publication. The petitioners neither submitted any objection thereof before the said authority nor any appeal has been preferred under Section 17 of the Forest Act, 1927 to the Divisional Commissioner Dhaka. Ultimately, complying with all the provisions under Act, 1927 the respondent concern declared total 9,145 acres out of 13,248 acres of forest land of Aronkhola mouza as reserved forest under Section 20 of the said Act, 1927 vide gazette notification dated 15.02.2016.

Ms. Syeda Rezwana Hasan, the learned Advocate with Mr. Ali Mustafa Khan, the learned Advocate appearing for the petitioners submits that from a plain reading of the dossier, submitted by the respondent No.3 in compliance of the direction given by this Hon'ble Court, it is apparent that various projects and schemes have been undertaken by the respondent No.3 in Modhupur Sal forest resulted in

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She also submits that plantation of exotic and commercial species of eucalyptus, acacia as well as banana and pineapple plantation in the national park area of Modhupur Sal forest is derogatory to the forest eco-system and violative of the provisions of

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Forest Act, 1927, Wildlife Preservation Act, 1973, the Forest Policy and also the suggested regeneration measures of the FMP(1993-2012).

In this connection referring to Annexure-X-7 series to the supplementary affidavit she submits that the Forest Department, respondent No.3 under various projects with different names is continuing with afforestation programs with foreign species in the protected areas of Modhupur Sal Forest, which is extremely destructive for the ecology of the forest, its wildlife and the forest dwellers.

In addition, she submits, the said Department has neither annexed the Sal forest inventory report nor has it produced any records to show the amount of area in Modhupur Sal Forest that still has natural forest cover. At the same time, contradicting the assertions of the Forest Department that the total Sal forest is 41130 hectares, the NFA report,2007 of respondent No.3 has shown that total Sal forest area in the country is 34000 hectares only (Annexure-X-6).

She also submits that Forest Act, 1927 has no provision on the duties and responsibilities of the Forest Department and that the entire forest administration is being run without any specific law on conversion and on the basis of a faulty policy document and a colonial law that targeted generation of revenue as the purpose of forest administration. The present precarious condition of the Sal forest



clearly evidences the failure of the respondent in protecting the natural forest and the forest dependent communities.

Under the circumstances, she contends that if required steps are not taken by the respondent No.1 on a priority basis to protect Modhupur Sal forest, the last remaining patch of the once vast Sal forest shall also completely disappear with the forest dwellers losing their homes and livelihood and the nation losing a proud legacy and an irreplaceable natural treasure.

She further goes to submit that all the available historical documents suggests that Garo community has been living in the Sal forest for centuries and much before the forest was brought under the Court of Wards in 1879, for which they were even given "pattan" by the Rulers. In this regard, she goes to contend that the Forest Policy itself has committed to impart land ownership to tribal forest dwellers through forest settlement process (Declaration 20). As such, she submits that the denial of the legal rights of the members of the ethnic community amounts to violation and undermining the provisions of Sections 5, 11, 12, 14 and 15 of the Forest Act, 1927 and also the commitments made under the Forest Policy, 1994. At the same time, the arbitrary attempts in declaring the forest reserve and barring access thereto of the indigenous forest dwellers have caused immense damage to the precious forest eco-system.



She further goes to argue that the petitioners have challenged the legality of the impugned notification dated 31.03.2016(Annexure-XI) as the same has been issued without following due process of law and without settling the rights of the forest dwellers. In this connection drawing attention to Annexure-L of the writ petition she submits that the claims of the forest dwellers were duly submitted to the Deputy Commissioner, Tangail but those were not at all considered while issuing the impugned notification dated 15.02.2016 nor did the office of the Deputy Commissioner, Tangail inquire into their rights although it is a historical fact that Modhupur Sal forest in Tangail is inhabited by the Garo community from time immemorial.

It is regrettable, she submits that the respondent government and the Forest Department consider the forest dwellers as illegal occupiers of forests and hence, are reluctant to legally recognize and adopt the Village Common Forest(VCF) model which is being solely managed by the indigenous communities in Chittagong Hill Tracts and proved to be very effective in protecting natural forests. She accordingly submits that the successful efforts of neighbouring countries in bringing their lost forests back by resorting to progressive

..... and by recognizing the legitimate rights of the



27 and the recommended management actions of the FMP(1993-2012).

She further submits that in the election manifesto the ruling party expressly committed to take measures towards recognition of land and other forest rights of the forest dwellers. But despite making express commitment no measure as yet has been taken to that effect.

Accordingly, she submits that the petitioners are interested in ensuring sustainable management of public properties through proper observance of law and legal requirements by all concerned. As such, she prays for a direction upon the respondent government to frame Rules to facilitate the management of existing reserve forests as village forest under Section 28 of the Forest Act, 1927. In fortifying her arguments on "*village forestry*" she submits that the concept of village forest does not require de-reserving nor does it require handing over of the forest land. It only envisages stronger roles for the communities to be done under strict supervision and following the Rules of the government only.

Mr. Mahbubey Alam, the learned Attorney General appearing with Ms. Kazi Zinat Haq, the learned Deputy Attorney General on behalf of the respondents submits that as per provision of Section 28 of the Forest Act, 1927 village forests can be formed only in reserved forest; the petitioners, however, on one side are raising objection on forest reservation, but at the same time they are advocating in favour

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of village forests, which is totally contradictory. Moreover, he submits, if the reserved forest of Modhupur is handed over to the villagers the remaining Sal forests will rapidly be converted into agricultural land and other class of land; in addition, encroachment will take place over night. As a result, ecological characters of Sal forest will be changed to an irreparable situation.

He further submits that in 2004 the government framed Social Forestry Rules, 2004 as per provision of Section 28A of the Forest Act, 1927 and pursuant thereto Modhupur Sal forest is being jointly managed and protected with the active participation of the local forest dependent people including representatives from the ethnic communities under the cover of co-management. In addition, the Forest Department has taken appropriate measure to regenerate native Sal forest under social forestry agreements.

So far the impugned gazette notification dated 31.03.2016 is concerned he submits that after complying with Sections 6-19 of the Forest Act, 1927 said notification has been published in gazette under Section 20 of the said Act 1927. He also submits that the petitioners in the instant writ petition have admitted that previous notification has been published in 1984 under Section 6 of the Forest Act, 1927 i.e; 32 years before publication of the present gazette notification. But they did not raise any objection at that time because they had no right, title and possession in forest land. As such, after expiry of 32 years they

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have no legal right to challenge the legality of the present notification, which is the chronological consequence of the gazette notification bearing No. 9636 dated 15.09.1951. Hence, he submits that the prayer of the petitioners to that effect falls through.

He further goes to submit that the respondents are discharging their duties keeping harmony with the Constitution of the People's Republic of Bangladesh and the Forest Act, 1927. But with a view to obstruct environment and forest policy of the government, the petitioners have filed the present writ petition. Hence, it is liable to be discharged as being not maintainable.

Instant writ petition is, in fact, based on two folds; firstly, the petitioners are seeking direction upon the respondents concern to frame Rules under Section 28 of the Forest Act, 1927 in order to form <sup>৩৩</sup> "village forest" with a view to protect and ensure regeneration of <sup>৩০৬</sup> Madhupur Sal forest through enrichment of plantation with indigenous species along with active participation of the Department of Forest; and secondly, to settle the rights of the members of Garo and Kontch community, being indigenous forest dwellers of Madhupur Sal forest under Sections 6-9 of the Forest Act, 1927 read with Section 92 of the State Acquisition of Tenancy Act, 1950.

Madupur Sal forest popularly known as "Madhupur Garh" is located in middle part of Bangladesh on the Tangail - Maymensingh highway and about 57 Km north of Tangail town and 35 Km apart

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from Mymensingh town in south direction and is located approximately at 24°45'00" North Latitude and 90°05'00" East Longitude. Madhupur Sal forest is surrounded by North -East: Bijoypur, North- West : Chandpur, South- East : Garo bazar, South - West : Kamarchala.

Before 1950, "Madhupur Garh" was administered by the Natore Zaminder named Jogesh Chandra Roy. However, according to British Indian Constitutional Act, 1935, there are 5 (five) regions (Thana) namely, Kalmakanda, Sreebardi, Haluagat, Nalitabari, and Dewangonj which were marked as Garo inhabitant area except Madhupur Garh.

At present, Madhupur forests consist of an area of 45,565.18 acres within 14 mouzas. For the purpose of bio-diversity conservation, the Government of the People's Republic of Bangladesh declared an area of 8,436 hectares (20,837.23 acres) namely Madhupur National Park vide gazette notification dated 24.02.1982 under the Bangladesh Wildlife (Preservation) Amendment Act, 1947. Out of which 20,244.23 acres are lying within Madhupur Upazila of Tangail district and 593.00 acres under Muktagacha Upazila of Mymensingh district. It is under the territorial jurisdiction of Tangail Forest Department covering 4 Ranges and 10 Beats.

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Madhupur Sal forest is a tropical, moist and deciduous type of forest present in low land and flood plain area. It is famous for its



lofty Sal (*Shorea robusta*) trees associated with holdu, horitoki, bohera, gadila, kanchan, mahua, kadam, jarul and other kinds of flora. This area is a breeding ground of spotted deer, barking deer, monkey, wild fox, capped monkey, fishing cat, large indian cat, indian crested porcupine, tacky, gecko, common garden lizard and some species of native and migratory bird, which assists to maintain ecological stability.

Since long back Modhupur Sal forest was rich in diversified plants and wildlife. Said state of nature has drastically changed due to encroachment, illegal felling and conversion of forest land into agricultural, banana and pineapple cultivation.

As has been claimed by the respondent No. 3 in its dossier dated 19.01.2012 filed before this Court on 14.02.2018 that within the encroachment area of Madhupur Sal forest about five thousand families of Garo/ Mandhis, Konch tribals and two thousand families of other than ethnic community are residing there covering an area of 16118.88 acres.

In the said dossier it has also been stated that Madupur Sal forest has experienced several natural and man made hazards which has accelerated degeneration/degradation of ecosystem. Conversion of forest land into agro field, households, illegal felling of Sal trees for piling and fuel wood, extraction of other forest produces for daily



consumption are the main element of forest destruction. Moreover, hunting/shooting and poaching causes severe damage to the wild lives.

In the said dossier, however, the respondent No.3 i.e., Forest Department has enumerated the steps so far have been taken towards protection of Madhupur Sal forest, Tangail, which are quoted herein below:-

1. In order to distinct Madhupur forest area, Tangail Forest Department has taken initiatives to complete reservation procedure as per Section 20 of the Forest Act, 1927 with the assistance of the office of District Commissioner, Tangail covering 9145.07 acres of Arankhola mouza;

2. Through social forestry programme derived from Section 28 of the Forest Act, 1927 around 1600 local and ethnic people were engaged for raising 4000 acres of plantation and around TK. 26,63,573.10/= has been distributed amongst the beneficiaries;

3. Till the date of filing dossier before this Court on 14.02.2018 no ethnic community has been evicted from their habitat at Madhupur Garh.

4. Around 2470 acres encroached area (papaya and banana grown field) has been brought under plantation with indigenous species;

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5. Motivation and training programme have been undertaken for the forest dependent local and ethnic people around 1400 for forest protection and environmental upgradation;

6. After giving training on technical assistance TK. 10,000/= per person has been distributed amongst 800 local and ethnic people for handicrafts and small entrepreneurship;

7. For domestic animal and the development of compost plant Tk.11,000/= per family has been distributed amongst 4300 local and ethnic families;

8. 200 seedling fruits and tree species have been distributed amongst 5000 forest dependent local and ethnic family for house hold plantation in order to minimize forest dependency as well as for environmental development;

9. Single environment friendly woven (Bandu Chula) have been distributed amongst 5000 local ethnic families for less fuel wood consumption ;

10. In order to prevent forest fire in dry seasons (2012-2015) 1200 local and ethnic people were appointed on monthly basis;

11. For patrolling forest area in order to prevent forest offense weakly allowance of TK. 200/= 300/= with uniform have been offered to 800 local an ethnic people.

In view of the assertions of the respective contending parties it is now an admitted fact that today, a large portion of forest land in

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Madhupur has been denuded or encroached upon or taken over for commercial production of pineapple or banana or for industrial plantation of rubber or exotic species (as because they affect the soil quality of the forest). Agriculture activities like cash crops activities, corn producing activities and others including cattle ranching, fire (which is occurred intentionally due to illegal human induced activities), collection of wood from the forest being used by Saw Mills for the use of development activities followed by brick field are accelerating deforestation of Madhupur Sal forest and thus, is heading towards destruction of its bio-diversity.

From the dossier, submitted by the respondent No.3, it appears that said authority has taken some initiatives, as quoted above, for protection and preservation of Madhupur Sal forest, but the same lacks adoption of legally recognized management programme under section 28(1) of the Forest Act, 1927 like village forestry nor does it state whether steps have been taken to correctly identify the borders of Madhupur Sal forest stating the plots, area of land and boundary of the said forest with their legal status [i.e which plots are reserve and which are within Modhupur National Park as per notification dated 02.02.1956 and 19.07.1984 (Annexure-C and C-1 respectively)] in compliance of the direction so given by this Court vide order dated 19.01.2012, nor there is any reflection of furnishing details of the people, including the first dwellers.

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It also does not state the impact of adopting projects of social forestry leading to destruction of biodiversity as well as expansion of commercial economy. Also, no report has been submitted on behalf of the respondent Nos. 1,3,5,6 and 10 with regard to the records of settlement of the forest dwelling community of Madhupur Sal forest. Again, said dossier does not state what legal steps they have taken within the fold of law towards settlement of the ethnic group living in and around the said forest area since the respondent government is recognizing the fact that those people are in possession in and around the said area and that no ethnic community has been evicted from their habitat at Madhupur Garh.

Be that as it may, said dossier filed by the respondent No.3 cannot be termed as comprehensive dossier towards protection and preservation of Madhupur Sal forest.

The petitioners have challenged the impugned Memo No. 211(4) dated 11.04.1983 cancelling the respective settlements(pattani) under Forest Department(Annexure-I) and gazette notification dated 31.03.2016(Annexure-XI) declaring certain forest area of Modhupur Sal forest as reserved forest on the contention that the same have been issued without settling the rights of the forest dwellers i.e., ethnic groups over land, way, pasture, forest produce, water and so on in forest area of Madhupur Sal forest under Sections 4 and 6 read with Sections 5,11,12,14 and 15 of the Forest Act,1927. In this regard, it

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has been categorically asserted in the writ petition that the ethnic groups living in and around the said forest area were accorded settlements(pattan) by the respondent-government. However, in view of Memo No. 7891/ S.A. dated 07.12.1982 issued by the respondent No.6, the Additional Deputy Commissioner (Revenue), Tangail, , the respondent No.7 vide Memo No. 211(4) dated 11.04.1983(Annexure-I) gave direction upon the Tahshilder concern to amend Register Nos. 8 and 12 upon cancelling the settlement cases covering the respective moujas as described therein and accordingly, to stop collection of revenue(which is under challenge in the instant writ petition).

From record, in particular from Annexure-K to the writ petition it appears that a committee of 12(twelve) members including the petitioner organization along with the Upazilla Nirbahi Officer, Madhupur as the Convenor was formed by the respondent No.1 vide Memo No. পবম/(বশা-১)৪২/২০০৪/১৯৮ dated 12.03.2007 with the Deputy Commissioner, Tangail as Advisor to be assisted by the Divisional Forest Officer, Tangail for the purpose of:

“ কার্যপরিধিঃ ক) মধুপুর বনাঞ্চলের উপজাতিসহ সংশ্লিষ্টদের অংশীদারিত্বমূলক ব্যবস্থাপনা (Participatory Management) এর সার্বিক রূপরেখা প্রণয়ন;

খ) দ্রুতগতিতে শালবন পুনরুদ্ধারের পস্থা নিরূপণ, এ বিষয়ে সময়াবদ্ধ কর্ম পরিকল্পনা নির্ধারণ এবং টেকসই (sustainable) বনায়নের পস্থা নিরূপণ। ” with direction to submit report within next 15 days. Unfortunately, there is no update



from the respondent concern to that effect, nor the right of settlement of the ethnic group living in and around the said forest has been resolved till date within the fold of law.

In this connection, the contention of the petitioners is\*that meanwhile the petitioner organization along with petitioner No.2 conducted a door to door survey amongst 8630 families in 63 villages in and around the said forest and recorded the land so claimed by the respective ethnic groups situated within the said forest area (Annexure-X-13 to the supplementary affidavit). Said report has been duly submitted before the respondents concerned for assistance and consideration, but again there was response. In other words, though Forest Department took some initiatives towards resolving the issue in question with a view to protection and preservation of Modhupur Sal forest with the participation of the local and ethnic community residing in and around the said forest area, but for reasons best known to the said respondent the process never reached its finality within the fold of law. At the same time, the petitioners have also failed to show from documents that pursuant to gazette notification dated 19.07.1984 interested persons belonging to the respective ethnic community had submitted objections within the prescribed period and/or preferred appeal, as the case may be. Under the stated facts and circumstances, the impugned Memo dated 11.04.1983(Annexure-I) and gazette

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notification dated 31.03.2016 (Annexure-XI) cannot be termed to have been issued without lawful authority.

Article 18A of the Constitution of the People's Republic of Bangladesh provides as follows: –

*“ 18A. The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens. ”*

In view of the right to have safe environment, as guaranteed under the said provision of the Constitution now time has come on the part of the respondent No.1 to discharge its obligation as per Rules of Business framed under Article 55(6) of the Constitution People's Republic of Bangladesh to frame Rules under Section 28(2) of the Forest Act,1927 to conserve, afforest and re-generate Madhupur Sal forest and also for protection and preservation of its flora and fauna in its natural states with active participation of the forest dependant people living in and around the said forest area.

Further, Article 23A of the Constitution stipulates as under:

*“ The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities. ”*

Considering the above provision of the Constitution the respondent No.1 is required to settle the issue of settlement of the forest dwellers in particular the ethnic communities, once for all, living in and around the said forest area, within the frame of law.

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In that view of the matter a direction is hereby given upon the respondent No.1, Ministry of Environment and Forest, Bangladesh Secretariat, Dhaka to form a high powered committee along with the petitioners within a period of 1(one) month from the date of receipt of the copy of the judgment and order. This committee shall submit a comprehensive report, amongst others, on the following issues within a period of 6(six) months of its formation, before the said respondent for its consideration.

The respective issues, amongst others, are as under :

1. *To identify the forest area of Madhupur Sal forest as reserved forest vide notification dated 02.02.1956 and 19.07.1984 (Annexure-C and C-1 respectively to the writ petition);*
2. *To formulate master plans /policies for a long term conservation of forest resources;*
3. *To take steps for conducting a door to door survey amongst the forest dependent people in particular the ethnic communities living in and around the forest area of Modhupur Sal forest in order settle the issue of their settlement in accordance with law;*
4. *To involve the ethnic groups along with the local people residing in and around the said forest in protecting and preservation of the said forest, also in preventing exploitation of forest resources as well as destruction of bio-diversity;*

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5. To take measures for stopping plantation of exotic species which are harmful to the original species of the said forest;
6. To look for alternative use of pesticides and hormones in the existing bananas and pineapple plantation which are harmless for soil fertility;
7. To take measures for improvement in the income and livelihood of the forest dependent people living in and around the said forest area;
8. The effects and impacts of the projects of social forestry; and
9. To initiate projects for active participation of the ethnic group as well as local people in the respective forestry programme.

On receipt of the said report the respondent No.1 is accordingly directed to frame Rules under Section 28 of the Forest Act,1927, at an earliest.

With the above observations and direction this Rule is accordingly disposed of without any order as to costs.

Communicate the judgment and order to the respondents concern at once

S. M. Maniruzzaman, J.

I agree

Farah Mahbub

S. M. Maniruzzaman.

প্রত্যায়িত অবিকল প্রতিলিপি

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01-11-2020

সহকারী রেজিস্ট্রার  
বাংলাদেশ কৃষি মন্ত্রণালয়, কৃষিক্ষেত্র বিভাগ  
১৮-শ্রী হৈমলোকা স্ট্রীট, আইসিবি  
১১৩ ধাকাসিয়া, ঢাকা-১১০০

01-11-2020

মোঃ আব্দুল বাকর সিদ্দিক

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দেশপ্রেমের মূল্যবোধকে পুনর্জীবিত করার লক্ষ্যে