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বাংলাদেশ
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০৪/১১/১০, ০৪/১১/১০, ০৪/১১/১০, ১১/১১/১০, ১১/১১/১০

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

Writ Petition No. 1207 of 2009

In the matter of:

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

-And-

In the matter of:

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

... Petitioner.

Present:

Mr. Justice Md. Imman Ali
And

Mr. Justice Md. Abu Tariq

-Versus-

Bangladesh represented by the Secretary,
Ministry of Environment and Forest,
Bangladesh Secretariat, Dhaka and 18 others

... Respondents

Mr. Fida M. Kamal, Advocate with
Ms. Syeda Rezwana Hasan, Advocate
Mr. M. Iqbal Kabir, Advocate and
Ms. Bahreen Khandaker, Advocate

... For the Petitioner.

Mr. Shahidul Islam Khan, A.A.G.

...for the respondent No.1.

Ms. Purabi Saha, A.A.G

...for the respondent No.7

Mr. Rokanuddin Mahmud, Advocate with
Mr. Mustafizur Rahman Khan, Advocate
...for the respondent No.15

Mr. Md. Saifur Rahman, Advocate
...for the respondent No.16

Mr. Omar Sadat, Advocate

... For the respondent No. 18.

Dr. A. K. M. Ali, Advocate with

Ms. Farhana Abedin, Advocate

...for the Respondent No.19

Heard on: 10.03.10,

11.03.10, 15.03.10, 16.03.10

and Judgment on: 09.09.2010



Md. Abu Tariq, J:

The subject matter of the instant writ petition is the cutting of trees by shipbreakers from the coastal green belt of Sonaichhari, under Sitakunda U.Z of Chittagong District for the purpose of setting up of shipbreaking yards on getting the lease of Costal Belt Area land.

Rule was issued on 24th February, 2009 calling upon the respondents to show cause as to why the impugned lease agreement (Annuxure-B) and similar other agreements as executed by or on behalf of respondent Nos. 7,11 and 12 purporting to lease out lands of the coastal green belt of Sonaichhari Mouja under Sitakunda Police Station in favour of respondent Nos.15-19 for setting up of shipbreaking yards therein shall not be declared illegal, against public interest and without lawful authority.

The petitioner, BELA is an association registered under the Societies Registration Act, 1860 and recognized as one of the leading organizations with expertise in the field of environment and ecology and its work done in the arena of public interest litigation. Its reputation and achievements are well documented. BELA's locus standi to file this type of application in the form of public interest litigation has been discussed in a numbers of decisions of Supreme Court.

Respondent No.1 and 2 to this petition are the Government of Bangladesh represented by the Secretary, Ministry of Environment and Forest and Secretary, Ministry of Industries. The said Ministries have assumed all responsibilities regarding

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environmental protection and conservation and operation of Industrial activities in compliance with applicable laws. Respondents Nos.4 and 9 are respectively, the Chief Conservator of Forest and the Divisional Forest Officer of the Control Forest Department, having responsibility to undertake afforestation in the coastal areas to ensure stability of newly emerged coastal char lands and to maintain such forest area. Respondents No.5 and 10 are respectively the Director General of Department of Environment (DoE) and the Director (Chittagong Division) of the DoE with specific legal responsibility to administer the Environment Conservation Act, 1995 and the rules made thereunder.

Respondent No. 3 is Ministry of Land. Respondent No. 7 is the D.C. Chittagong while respondent No. 11 and 12 are respectively the U.N.O. and the A.C. (Land), Sitakunda who have allegedly leased out the coastal forest land vide impugned lease deeds in favour of respondent Nos.15-19 for setting up of Shipbreaking Yards without permission from proper authority. Respondent No.14 is the President of Bangladesh Ship Breakers Association whose members are involved in the operation of ship breaking.

The petitioner has mentioned number of gazette notifications and policy decisions of the government in favour of coastal afforestation, namely Memo No. 344(4)-5-136/76-L.S dated August, 1976; notification dated 22 December, 1985, No. XII/Four/13-19/84/900; Memo No. Bham/sna-8/131/95/699 (70) dated 30 October, 1986; Memo No. Ba-2/pobomo-1992/90/583 (ka)

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dated 11 January, 1990 and Memo No. PoO-Chharpatra/2169 (Ditiyo Khondo)/2007/2960 dated 24 November, 2007.

The case of the petitioner, if brief, is as follows:

The decision of the Government as noted in the abovementioned memos is to hand over newly emerged char lands for 20 years in favour of respondent No. 4 for afforestation purposes. In pursuance of the decision some lands of the Moddhya Sonaichhari Mouja, Sitakunda Police Station were handed over to the office of respondent No. 4 by virtue of memo dated 13 August, 1976 for developing coastal green belt. Since the lands were newly emerged lands and no diary survey was completed, the lands were identified through longitude and latitude. Relying on the above memos, the Department of Forest started afforestation of mangrove species particularly kewra in the lands in question. Subsequently, a memo of respondent No. 3 30 October, 1996 informed all concerned that lands notified as forest cannot be settled or leased out without opinion of respondent Nos. 1 and 3.

The purpose of the afforestation, as evidenced from the records submitted by the petitioner, are to protect the newly emerged char lands and also to protect the coastal people from the vulnerability of natural disasters.

While the legal position of the said land was such, the impugned lease agreement (Annexure-B series) and similar other agreements were executed illegally by the Respondents Nos. 7, 11 and 12 without approval from respondent No.3, claimed the petitioner. On getting such lease, respondent Nos. 15-19 started chopping down the trees of the coastal green belt,

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against which the respondent No.4 filed general dairy with the local police (Annexure "C-1", "C-2" and "C-3") against respondent Nos.15,16,17,18 and 19 but no action was taken by the police to prevent the said respondents from damaging the forest.

Under such circumstances, the petitioner served a notice demanding justice on 10.02.2009 upon the respondents to take immediate action and to stop setting up of unauthorized shipbreaking yards and chopping down trees in the costal green belt of Modhha Sonaichhari. The petition was filed when the respondents gave no reply to the said notice of the petitioner.

Respondent Nos. 1, 7,9,15,16, 18 and 19 entered appearance before the Court in order to contest the Rule and filed affidavit-in-opposition. Both the petitioner and the contesting respondents also filed numerous other supporting affidavits. Respondent No. 18 filed an application for striking out his name stating the reasons in the said application.

Mr. Fida M. Kamal Ms. Syeda Rezwana Hasan, Mr. M. Iqbal Kabir and Ms. Bahreer Khandaker appeared for the petitioner while Mr. Md. Shahidul Islam Khan, Assistant Attorney General appeared for the respondent No.1, Ms. Purabi Saha, Assistant Attorney General appeared for the respondent No.7, Mr. Rokanuddin Mahmud, Senior Counsel and Mr. Mustafizur Rahman Khan appeared for the Respondent No.15, Mr. Md. Saifur Rahman appeared for the Respondent No.16 and Dr. A. K. M. Ali with Ms. Farhana Abedin appeared for the respondent No.19.

Mr. Fida M. Kamal learned Senior Advocate appeared for the petitioner and submitted that the illegal leasing out of



coastal forest land and seashore by the respondents for setting up of shipbreaking yards therein and the chopping down of the coastal forest by the shipbreakers have made the petitioner feel aggrieved. The petitioner considers such acts of the respondents as unlawful and mala fide as the same flouts legal requirements and lawful decisions of the government and grossly undermines public interest. The purported act of leasing out of above land by government officials grossly undermines the public interest. The purported attempt of respondent Nos.7,11 and 12 to allow contrary use of forest land notified as such by virtue of notification dated 22 December, 1985 and the failure of the other respondents to prevent the same and protect the coastal green belt have made BELA aggrieved and it has thus filed the writ petition bona fide to protect the coastal green belt of Sonichhari.

The learned advocate for the petitioner submitted that the leasing out of land of the Coastal Green Belt of Sonaichhari by respondent Nos. 7,11 and 12 in favour of the respondent Nos. 15-19 for setting up of the shipbreaking yards is against public interest and without lawful authority, inasmuch as the same violates the lawful decisions of government through Memo No. 389-V-284/73/L.S. dated 9 August, 1974 Memo No. 344 (4)5-136/76-L.S. dated 23 August, 1976 gazette Notification dated 22 December 1985, No.X11/For-13-19/84/900; Memo No. Ba-2/Pobomc-192/90/583(ka)dated 11 January,1990; circular dated 30 October, 1996 and Memo and Memo being bhun/she-3/131/95/699(70). As per the government policy newly emerged char lands in the coastal areas shall remain with respondent No.4 for 20 years for

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afforestation purposes and no such land shall be leased out or settled without approval of respondent Nos.1 and 3. Despite such categorical and lawful decisions of the government, the purported leasing out of coastal forest lands by respondent Nos.7,11,12 to respondents 15-19 amounts to defiance of the lawful instructions of the relevant statutory authorities and is a clear violation of applicable laws and against public interest.

The learned Counsel further submitted that since none of the ship breaking yards of respondent Nos. 15-19 have any environmental clearance as required under the provisions of the Environment Conservation Act, 1995, the Environment Conservation Rules of 1997 made thereunder and also Memo P. C-chharpatra/2169 (ditiyo khondo)/2007/2960 dated 14th November, 2007 of respondent No. 5, the same are illegal and are liable to be declared without lawful authority.

The learned Advocates for the petitioner thus submitted that since none of the shipbreaking yards has environmental clearance the respondent Nos. 7, 11, 12, 15, 16, 17, 18 and 19 have thus purposefully defied the lawful instructions of the relevant statutory authorities which is a clear violation of applicable laws and against public interest. The impugned agreement and similar other agreements have been made without lawful authority and all actions related to and in furtherance of the same are liable to be declared without lawful authority and of no legal effect and Rule may be made absolute.

In opposing the Rule, respondent No. 1, i.e., Ministry of Environment clearly asserted in the affidavit-in-opposition

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that it has no legal provision to oversee the matter of illegal chopping of trees in the costal green belt. However, the Ministry shall take action under the provision of Bangladesh Environment Conservation Act, 1995 if the parties plan to establish shipbreaking yards in the said lands.

Respondent No. 7, i. e., the Deputy Commissioner of Chittagong, who executed lease deeds, defended the execution of the lease and submitted that there is no newly accepted khas or char land or alluvial land in Madhya Sonaichari mouja and that no land has been handed over to the Department of Forest in pursuance of Memo No. 389-V-248/7325 L. S. dated 09.08.1974, memo No. 344(4)5-136/76 L. S. dated 13.08.1976 and Memo No. SHAKHA-2/PAB/MA-192/90/583(Ka) dated 11.01.1990. The land mentioned in the writ petition have been leased out for 1(one) year in favour of the shipbreaking yards under the authority and instruction contained in Memo No. VUMA/SHA-8/KHAJABA/152/2002/445 dated 19 June, 2003.

Respondent No. 7 further asserted that in the B.S Records not a single plot of land has been recorded in the name of Department of Forest in Mouza Modhya Sonaichhari in J. L. No. 48 within the Sitakunda Upzilla. The various memos mentioned by the petitioner in no way relate to lands mentioned in the schedule of the lease agreement. The same land has been leased out for the purpose of government's revenue collection and these lands can never be used for afforestation or for any other profitable purposes of the Government.

The said respondent stated that the lands that have been leased out are diluvion lands that remain submerged under sea

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water during high tide and tied the same can never be used for afforestation (emphasis added)

Sharply contrasting the statements of respondents No. 7, respondent No. 9, i.e., the Divisional Forest Officer submitted that the Department of Forest has already implemented tree plantation on a massive scale in the lands in question and has created dense mangrove therein to reduce the velocity and intensity of cyclone, tornado and tidal bore to maintain ecological balance and to protect coastal people from the onslaughts of natural disasters. While the afforestation was undertaken by virtue of the memos (7 April, 1977/24 and other memos) and notification (22 December, 1985) stated in the Writ Petition, there was also request from the local people to plant trees in the area so as to prevent land erosion and protect them from disasters.

The said respondent noted the fact that the lands in question being char lands were demarcated on the basis of Latitude and Longitude and that the said lands were also notified under Section 4 of Forest Act, 1927 to be declared as reserve forest. Thus the said land in question can in no way be leased out to private organizations or persons.

Respondent No. 15, i.e., the proprietor of F&F Shipping Recycling submitted that he has set up his yard on his own land and the land that has been legally leased out/licensed to him is land contiguous to his yard that remains sub-merged during high tide tidal bore. The leased out land is not part of coastal forest, does not fall within the lands that have been referred to, and are not subject to the memos dated 09.08.1974,

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11.01.1990 and 30.30.1996 mentioned by the petitioner. Hence the said memos have no impact or restriction upon the government while leasing out the side land.

The said respondent further asserted that there was no tree on the land that was leased to him and he did not chop down any trees. It was further the claim of the respondent that no clearance/authorization is required for his yard.

Respondent No.16 adopted the legal arguments made by respondent No.15 and submitted that the respondents, at the instigation of the petitioner, were disturbing lawful business and by filing false cases, were harassing him which amounts to violation of his fundamental right.

Respondent No. 19 also adopted the submissions made by the respondent Nos. 15 and 16.

Respondent No.18 filed an application for striking out his name stating that he has no interest whatsoever over the aforesaid yard and his name and address has been inserted mistakenly in the Writ Petition. There is no official record to suggest that he was also allotted plot in the lands in question. The petitioner did not oppose the application and we, after hearing the lawyers of both sides, were inclined to allow the application for striking out the name of respondent No.18.

Almost all the respondents who are shipbreakers and have been given lease of the lands in question submitted that they have applied for issuance of environmental clearances and that the same are pending before the competent authority, i.e. respondent No.5. They are lessees and lawful allottees of land

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which is also evident from the affidavit submitted by respondent No.7.

We have heard the parties, perused the petition and the affidavit and examined the impugned lease deeds (Annexure-B) and the relevant memos and circulars of the government issued from time to time.

It is unfortunate that respondent No. 5, i.e. the D.G., Department of Environment did not contest the Rule which concerns important environmental matter. It is disturbing to note that when the Department of Forest contests the Rule and tries to protect the area in question as intended reserve forests, its line ministry, i.e., respondent No.1 denies any involvement with the subject matter of the petition. Given the mandates of respondent No.1 as laid down in the Rules of Business, it is hard to accept the statement of the said respondent that it has no legal provision to oversee the matter of chopping down the trees of the coastal green belt.

While respondent No. 7 attempted to defend the impugned lease on the ground that the lands in question are diluvion or lost lands, the petitioner opposed the same submitting that the laws of the country do not permit leasing out of lost lands and that it is only when lands re-emerge that the same can be leased out. The petitioner contradicted such claims of respondent No.7 on the ground that the lands in question were all leased out on the basis of plot numbers that diluvion or lost lands would not have.

While respondent No.7 claimed to have executed the impugned lease deeds by virtue of memo dated 19 June, 2003, the

petitioner contradicted the same saying that the said memo only authorized extension of lease period and in no way authorized allocation of new lands for shipbreaking purposes.

In the instant case the petitioner organization challenged the leasing out of about 12 acres of coastal forest land to respondent Nos.15,16, 17 and 19, who are members of respondent No. 14, for setting up of shipbreaking yards. The petitioner's grievance is that such allotment is violative of the stated memos and notification and has the effect of destroying the coastal forest with unique varieties of flora and exposing the local people to the risks of land erosion and onslaughts of natural disasters.

The petitioner further contended violation by respondents Nos. 15,16,17 and 19 of the Environment Conservation Act, 1995 and the rules made thereunder in setting up their respective yards without environmental clearances. In this context, we refer to the judgment and the orders passed in Writ Petition No. 7260 of 2008 wherein the government was directed to frame rules and monitor functioning of the polluting yards by forming a high powered committee. We are inclined to say that we are not satisfied with the performance of the government and concerned authorities in tackling the acute environment problem to which the seashore is exposed. Protection of the eco-system seems to have taken a back seat.

We are to remind the government and its agencies that the directions issued by the Court are meant to be complied with and we wish to emphasize that it is the STATE to ensure such compliance. We simply express the view that let the needful be

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done within the given timeframe and the rules directed to be prepared be finalized with needed safeguards against environmental pollution and the same be published in the gazette.

It has become common practice for different business houses to create camouflage around benefits and investments to hide the negative sides of their illegal operations and evade legal sanction. This is why agencies of the respondent government are to take proper decisions instantly so that the shrude business people are brought under proper legal process. Decisions over development must properly weigh State and public interest against self interest of few business people.

We stress that our intention is not to totally prohibit the shipbreaking business, provided they conform to the applicable laws, rules and safety standards. However, we cannot allow highly risky and polluting business as that of shipbreaking to operate on our precious and irreplaceable coastal ecosystem and more so, when as per the various records of the government, they do not have minimum safety measures in place.

We hold that the impugned leases of the lands in question are bad in the eye of law and have been executed unlawfully and without lawful authority inasmuch as the lands, as claimed by respondent No. 9, form part of the land covered by the notification dated 22 December, 1985 and the same is part of the sea as it gets covered with water during high tide surges, as has been clearly and categorically stated by respondent No. 7 as well the other contesting lessees. Respondent No. 7 has no

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authority to lease out the sea-shore, instead the respondent is under legal obligation to protect the same land for the greater interest of the people and the government. The argument of respondent No. 7 that it has leased out diluvion land also does not hold much water as no law permits the leasing out of such lands that are lost. On the other hand, the failure of respondent No. 7 to show the area that the notification dated 22 December, 1985 covers and the contrary assertion of respondent No. 9 that the land in question is covered by the said notification cannot be ignored in the context of other circumstantial evidences and documents that were produced during the hearing.

Human life and property is much more precious than the immediate commercial benefits. The shipbreakers have the right to do business but that is subject to compliance with applicable rules and regulation. We are of the view that if, the government is determined to allow it to continue, then it must earmark a ZONE, AREA like EPZ, PORT Authority or place for the yards and consider locating them in areas that will have facilities to contain and safely dispose of wastes. Such zone shall be, strictly under the control and supervision of the government so that the interest of the people and the nation are not lost to commercialisation. Such prudent decision of the government to earmark an area for shipbreakers shall save our precious eco-systems and the lives and properties of millions who are dependant on such resources. The government must come forward to do this in greater public and national interest. A hazardous and polluting operation as that of shipbreaking

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cannot continue on open beaches without proper safety of the people of the coastal area as well as protection of the eco-system.

Admittedly the leased property is situated in the coastal area of Bay of Bengal and water of the sea ~~is~~ naturally flows there through its high tide and ebb-tide (Joar-Bhata). In fact such alleged land is admittedly the sea bed where the tide naturally flows in its inevitable course. We think that authority has not given any importance over this aspect, rather they have advanced to place sea bed in the hands of businessmen in the name of establishment of industries (জাহাজ বিভাজন শিল্প) Moreover, the alleged accreted land, which only stands beyond water line of the sea has already been given to the Ministry of Forest by gazette notification published in 2nd December, 1985 under Memo No. 12/-13-19/84/908 dated 22.12.1985 for the purpose of afforestation to protect the environment from pollution. A similar view was taken by the High Court in W. P. No. 887 of 2010 Neal Ali -Vs- Government of Bangladesh, represented by the Secretary, Ministry of land and others.

In this connection it has also been brought to our notice that on 30.10.1996 Ministry of Land issued a letter and circulated the same addressing all the Divisional Commissioners and Deputy Commissioners in the following language:

"বিষয়ঃ খাস ভূমি বন্দোবস্ত না করা প্রসঙ্গে।

নিম্নস্বাক্ষরকারী জানাইতেছেন যে, বনভূমি হিসাবে notification এলাকা কোন খাস জমি অথবা সরকারের বিদ্যমান বনবিভাগের প্রয়োজন এমন কোন এলাকায় সরকারের মতামত ব্যতীত কোন প্রকার বন্দোবস্ত দেওয়া যাইবে না।

এই আদেশ জনস্বার্থে কার্যকর হইবে।"

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We direct the government respondents to act upon all memos and decisions pertinent to coastal afforestation. In this era of extreme climatic events (cyclones, floods, erosions and so on) and the high risk of climate related disasters to which the country is exposed to as one of the Most Vulnerable Countries (MVCs), coastal afforestation is of crucial importance to protect lives, safety and property of the coastal people.

If necessary the government may also set up MOBILE COURTS to monitor and protect the coastal belt from all anti-environment activities, protect ecology and uphold the interests of the all generations to come.

The government being the executive wing of the State is under obligation to obey law and act in accordance with law made by the legislature. The government has no exemption from complying with laws, rules and regulations.

The current depletion of the ozone layer, spread of diseases like anthrax, bird flue, dengue fever carrier etc. are vivid examples of the complex, unpredictable and potentially catastrophic effects posed by our disregard to the environment and we are concerned only to protect the environment from such danger for our future generations.

We are of the view that the 'STATE' is the trustee of all natural resources, e.g., seashore, running water, air, forests and fragile lands and so on, that are meant to be for the benefit of the public at large. These resources cannot be converted into private ownership at the peril of the general people. The environment and the running waters do not have any boundaries or borders; ownership of the same belongs to the

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STATE and NOT TO THE GOVERNMENT to allow arbitrary decisions over the same in violation of lawful decisions and documents.

From the above facts and circumstances, we hold that the respondents Nos. 6,7,8,11 and 12 have no authority to lease out seashore. Again the leasing out of coastal areas and forest lands without conforming to applicable laws and legal requirements are without jurisdiction and of no legal effect. Respondent No. 7 has no legal authority and jurisdiction to lease out the land in question to respondent No. 14, 15,16,17 and 19.

Considering the above facts, circumstances and legal premises, we observe and direct as follows;

- (A) The government and the Forest Department is hereby directed to immediately act upon all memos and decisions pertinent to coastal afforestation as mentioned in the Writ Petition and the policies of the government and ensure the protection of such afforested lands. For this for this purpose the government may form surveillance team and/or set up Mobile Courts.

The outcome of not paying attention to the environmental consequences of our actions will result in some catastrophic events in the near far future when it will be beyond our capacity to control and handle. It is the duty of the Government to protect environment and has more to do with the preservation human life.

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(B) The Government agencies shall issue necessary clearance to the shipbreakers provided only that strictly comply Rules and Regulations. If the government is of the view to allow this business to continue, then it must earmark a Zone /Area like EPZ, Port Authority or a place for the yards and consider locating them at the earmarked place or area ensuring safety and sustainability of the environment. The government must come forward to do this in greater public and national interest. If such shipbreaking yards are to be allowed under the control and supervision of the Government, then these yards may be set up as a dry-dock so that the waste from the shipbreaking does not flow on to the beach and out to sea. There must be proper system set up to properly dispose of waste without having the environment and ecology of the coastal area.

(C) We are also to remind the government respondents and its agencies that the directions issued by this Court in various writ petitions on ship breaking are meant to be complied with. We wish to emphasis that since it is the STATE to comply with the judicial orders as constitutional obligation we are repeating the view that let the needful be done within reasonable time failing which citizens have the right to take shelter of law. We need to protect the environment to protect ourselves.

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(D) The government is once again directed to finalize the draft Rules ensuring conformity with the relevant law, Rules and Regulations thereunder and inform this Court immediately and must also take steps for publication of the Rules in official gazette.

The application for striking out of the name of alleged respondent No. 18, is allowed as the petitioner did not oppose the same and we also find merit in the application.

In the result, the Rule is made absolute with the above directions and observation and without any order as to cost.

The impugned lease agreement (Annexure-B) and similar other agreements executed and issued by the Respondent No: 7,11 and 12 (the Deputy Commissioner, Chittagong, the UNO and AC (land) of Sitakunda respectively) purporting to lease out the sea shore and lands of Coastal Green Belt, in favour of respondent Nos. 14,15,16,17 and 19, for setting up of ship breaking yards therein are against public interest and without lawful authority and as such of no legal effect.

Order of stay granted in this Rule stands vacated.

Communicate the judgment to the respondent Nos. 1-13.

M.A.Tariq.

Md. Inman Ali, J.

I agree.

Md. Inman Ali.

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Type by: Manun/11.10.2010

Read by: *[Signature]* 11.11.10

Exd. by: *[Signature]* 11.11.10