

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(Special Original Jurisdiction)

WRIT PETITION NO.... OF 2003

IN THE MATTER OF:

An application for direction under Article 102 of the Constitution of the Peoples' Republic of Bangladesh.

AND

IN THE MATTER OF:

The Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) as amended in 2000 and 2002, the Environment Conservation Rules Act, 1997, the Forest Act, 1927 (Act No. XVI of 1927).

AND

IN THE MATTER OF:

Gazette Notification of Respondent No. 1 dated 03 May, 1999 No.-pabama-4/7/87/99 (the

impugned notification as of **Annexure "G"**) excluding part of the forest area of Sonadia island in Sonadia-Ghotibhanga mauja, Union: Kutubdia, Upazila: Maheshkhali, District Cox's Bazar from the list of ecologically critical areas declared earlier by the same respondent vide Gazette notification dated 19 April, 1999, No. pabama-4/7/87/99/245 under section 5 of the Environment Conservation Act, 1995.

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. 9, Road No. 8 Dhanmondi Residential Area, P.S., Dhanmondi, Dhaka being representation by Ms. Syeda Rizwana Hasan, Member, BELA and Advocate, Supreme Court of Bangladesh.

...Petitioner

versus

1. The Secretary, Ministry of Environment and Forest Bangladesh Secretariat, Dhaka.

2. The Secretary, Ministry of Land, Bangladesh Secretary, Dhaka.

3. The Chief Conservator of Forest, Department of Forest, Bon Bhaban, Mohakhali, Dhaka.

4. The Deputy Commissioner, Office of the Deputy Commissioner, Cox's Bazar.

5. The Divisional Forest Officer, Cox's Bazar Division, Cox's Bazar.

-----**Respondents**

TO

Mr. Justice Khandkor Mahmudul Hasan, the Chief Justice of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the
above named petitioner most
respectfully-

S H E W E T H :

That the Petitioner is Bangladesh Environment
lawyers Association, hereinafter referred to as
BELA, a society registered under the Societies
Registration Act, 1860, Registered No. 1457 (17)
dated 18th February, 1992 being represented by Ms.
Syeda Rizwana Hasan, Member, BELA who has been
duly authorized by a resolution of the Executive
Committee of BELA dated 30 June, 2001 to represent
BELA in all proceedings, case and so on. True
copy of the Certificate of Incorporation and
resolution dated 30 June, 2001 authorizing Syeda
Rizwana Hasan to represent BELA are annexed

herewith and marked as Annexures "A" and "A-1" respectively.

1. That the petitioner BELA has been active since 1992 as one of the organization with expertise in the regulatory field of environment and ecology. Through its various efforts, BELA has developed into an independent legal institution with widespread respect and recognition as a dedicated, bona fide, sincere and public-spirited organization. Since its inception BELA has undertaken a large number of public interest litigation wherein the beneficiaries have not only been the common people but also their surrounding environment, precious eco-system and natural resources that affect material and spiritual well-being.

2. That the Respondent No. 1 is the Secretary, Ministry of Environment and Forest is responsible

for the management and conservation of environment and its various resources in accordance with the Environment Conservation Act, 1995 (hereinafter referred to as "the Act") and the rules made thereunder. Under section 5 of the Act, 1995, the Respondent No.1 is also responsible to declare Ecological Critical Areas (hereafter referred to as ECAs) and regulate the management thereof. The Respondent No.1 is also the line ministry of respondent Nos. 3 and 5. The Respondent Nos. 3 and 5 are respectively the Chief Conservator of Forest and the Divisional Forest Officer who are responsible for conservation and management of forest areas in accordance with the provisions of the Forest Act, 1927.

3. That the Respondent No. 2 is the Secretary, Ministry of Land who is the line ministry of Respondent No. 4 and is responsible for overall administration and management of public land

resources and determine nature of land use in accordance with applicable laws, rules, circulars, manual and so on. The Respondent No. 4 is the Deputy Commissioner, Cox's Bazar who is responsible for administration of land and revenue collection at the local level.

4. That the Petitioner is genuinely concerned with the implementation and enforcement of the laws relating to the protection of the environment and is also interested in performing the fundamental duty cast on every citizen by Article 21 of the Constitution of Bangladesh to protect public property and conserve its riches. The Petitioner in its said capacity has invoked the writ jurisdiction of Your Lordships Courts in a number of matters relating to environmental protection and has obtained relief in pursuance of its aims and objectives.

5. The under section 5 of the Environment Conservation Act, 1995, the government in the Ministry of Environment and Forest, i.e., Respondent No. 1 has been entrusted with the responsibility of declaring, by notification in the official Gazette, an area as Ecologically Critical Area if it is satisfied that due to degradation of environment the eco-system of that area has reached or is threatened to reach a critical state. Pursuant to sub-section (2) of section 5 of the said Act, once an area is declared ECA, the government shall also specify, by notification in official Gazette, the operations/ processes that shall not be carried out or initiated in the said ECA.

6. That the Respondent No. 1 acting under the responsibility imposed on it pursuant to Section 5 of the said Act issued a Gazette notification dated 19 April, 1999 published in the Gazette

Extraordinary No. 1258/7 dated 19.4.1999.
(hereinafter referred to as the Notification)
declaring the 4,916 hector (12,138.2716 acres) of
forest area of Sonadia island in Sonadia-
Ghotibhanga mauja, union: Kutubjom, upazila:
Maheshkhali, District: Cox's Bazar specified in
the schedule as an ECA. True copy of the said
Gazette Notification dated 19 April, 1999 is
annexed hereto and marked as **Annexure "B"**.

7. That the said Notification dated 19 April,
1999 (as of **Annexure "B"**) declared a total of 7
(seven) areas of Bangladesh as ECAs including
4,916 hector (12,138. 2716 acres) of the Sonadia
Island and also listed activities that cannot be
undertaken in these ECAs. The bars included
clearing of natural forest or trees, destroying
habitats of animals and plants and activities that
can change nature of land, water and so on.

8. That the declaration of seven vitally important eco-system as ECAs by the Respondent No. 1 aroused a hope in the mind of the people about adequate protection and proper management of these ECAs by the concerned Respondents. But soon disappeared the ray of hope when series of articles found place in the daily newspapers reporting on the deteriorating state of the ECA of the Sonadia Island. These news articles reported that the 9000 acres of forest area in the Sonadia Island, locally known as "*Para bon*" was being cleared up by the local influential people including local member of parliament during last one and a half-year for shrimp cultivation despite its status as ECA. Such use has changed the nature of the land that has lost almost all the traits of a forest and hardly serves as habitat for birds and other wild creatures or protects the people living in adjoining coastal areas from the havoc of natural disasters. True copy of the said news

articles published in various dailies reporting on the deteriorating state of the ECA of the Sonadia Island are annexed hereto and marked as **Annexures "C, C-1, C-2 and C-3"**.

9. That following such reports from the newspapers, the petitioner undertook an extensive field investigation and found the allegations of the news articles as true. Such activities in the ECA constitute gross violation of the Environment Conservation Act, 1995 as amended in 2000 and 2002, the Environment Conservation Rules, 1997, the Forest Act, 1927 and the Gazette notification dated 19.04.1999.

11. That in course of its investigation, it has been found that, 2,121.96 acres of the *khas* land of the Sonadia Island included in the 4, 916 hector (12,138. 2716 acres) declared as ECA was transferred by the Respondent No. 2 vide its

letter dated 09.08.1974, memo No. 389-V-248/73-L.S., to the then Ministry of Forest, Fisheries and Livestock (corresponding Respondent No. 1) for undertaking coastal afforestation activities. The transfer was subjected to the condition that the land would revert to the Respondent No. 2 when no longer required for the purpose of afforestation. True copy of the letter of the Respondent No. 2 dated 09.08.74 transferring 2,121.96 acres of the khas land of Sonadia Island is annexed hereto and marked as **Annexure "D"**.

12. That by a subsequent letter dated 13.08.76, memo No. 344 (4)-5-136/76-L.S. issued from the Office of the Respondent No. 2 newly accreted khas land of four districts including the 2,121.96 acres ECA land of the Sonadia Island of the then Chittagong District was transferred for 10 (ten) years to the then Ministry of Forest, Fishery and Livestock (corresponding Respondent No. 1) with

the objective to create forest. True copy of the letter of the Respondent No. 2 dated 13.08.76 transferring newly formed land of Chittagong District is annexed hereto and marked as Annexure "E".

13. That by a Gazette notification dated 24 March, 1977, no. 1/For.83-75/539, the Ministry of Agriculture, by referring to the above notification (as of (Annexure "E"), declared the government decision to constitute the lands covered by the said notification including the lands of the Sonadia Island including 2,121.96 acres ECA land as 'reserve' forest and appointed a Forest Settlement Officer to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over such land. True copy of the Gazette notification dated 24 March, 1977, no. 1/For.83-75/539 issued by the Ministry of Agriculture

declaring the government's intention to constitute the lands of Sonadia Island (as of Annexure "E") as 'reserve' forest is annexed hereto and marked as "Annexure-F".

14. That from separate notes of the Respondent Nos. 3 and 5 dated 02.10.2002, memo No. CCF (T)/4D-257(Part-2)/2002/1075 and 16.09.02 (as of Annexures "I" and "J"), written to the petitioner, it is gathered that in 1985 also, the said land of Sonadia Island was decided to be declared as 'reserve' forest under Section 4 of the Forest Act, 1927 by the Respondent No. 2. Accordingly, a forest settlement officer was also appointed to complete the procedures as laid down from Sections 4 to 20 of the Forest Act, 1927 before a forest can be declared 'reserve', but the procedures were never completed and as a result, the said forest area of 2,121.96 acres of the Sonadia island was never declared a 'reserve' forest.

15. That meanwhile, the Respondent No. 1 issued another notification dated 03.05.1999 published in the Gazette Extraordinary No.1272/31 (hereinafter referred to as the impugned Notification) purportedly modifying part of the notification dated 19.04.99 (as of Annexure "B"). The modification excluded part of the forest area of Sonadia island from the list of ECA on the erroneous ground that the said forest area was a 'reserve forest' and as such was under the management of the forest division and regulated by the provisions of the forest law, wild life law and government approved management plans. True copy of the impugned notification dated 03.05.1999 is annexed hereto and marked as Annexure "G".

16. That such exclusion of an area of 2121.96 acres from the total ECA of 4,916 hector virtually means that, (a) 10, 016. 3116 acres (4056. 606198

hectars) of land of the ECA of Sonadia Island still remains to be ECA, and (b) the rest 2121.96 acres are neither ECA nor reserve forest and as such receiving no special protection/conservation measures either under the Forest Act, 1927 or the Environment Conservation Act, 1995. Taking advantage of such administrative vacuum, the unscrupulous businessmen resorted to clearing the forest area of Sonadia for their anti-environment business activities including shrimp cultivation and environmentally hazardous activities in clear violation of the Environment Conservation Act, 1995, the rule of 1997 made thereunder, the Forest Act, 1927 and the Gazette notification dated 19 April, 1999 (as of Annexure "B").

17. That on the basis of the above findings and being seriously aggrieved by the callousness of the Respondents in protecting the precious ecosystem of the Sonadia Island, the petitioner

served a Notice of Demand for Justice dated 02.09.02 upon the Respondents demanding cancellation of the impugned notification dated 03.05.99 (as of Annexure "G") as being erroneous and misconceived on the face of the record. True copy of the said Notice of Demand for Justice dated 02.09.02 is annexed hereto and marked as Annexure "H".

18. That the Respondent No. 3 by a letter dated 02.10.02 replied to the said Notice of Demand for the Justice served by the petitioner. In the reply, the Respondent No.3 admitted the fact that the process of declaring part of Sonadia Island as reserve forest was not completed inasmuch as demarcation of the reserve forest and publication of the notification as required under sections 4 of the Forest Act, 1927 were never completed by the Additional Deputy Commission (Revenue) who was appointed the FSO (as of Annexure "F"). True copy

of the said reply of the Respondent No. 3 dated 02.10.02 is annexed hereto and marked as Annexure "I".

19. That the said reply as given by the Respondent No. 3 also admitted the allegation of the petitioner about encroachment of the forest land of Sonadia Island that was declared ECA and attempted to be declared 'reserve' forest. While the Respondent No. 3 held the local influential people with political blessings as responsible for such encroachment, it was also critical of the role of the revenue Department that was leasing out the coastal *khas* land to shrimp cultivators being under the administrative control of Respondent Nos.2 and 4. The said Respondent No. 3 claimed to have filed civil suits praying cancellation of such lease granted by the Respondent No. 2 and also criminal cases against the encroachers.

20. That similar reply to the Notice of Demand for Justice (as of Annexure "H") was also given by the Respondent No. 5 vide letter dated 16.09.02. True copy of the reply given by the Chief Conservator of Forest dated 16.09.02 is annexed hereto and marked as Annexure "J".

21. That as stated by the Respondent Nos. 5 and 7 in their replies to the petitioner (as of Annexures "I" and "J"), the coastal afforestation done in the newly accreted char lands of the coastal belts including the land of Sonadia Island was needed to protect and preserve the char land from erosion and also to save the country-side areas and people living therein from being inundated and swept by the tidal bore during natural disaster.

22. That available court records suggest that the Coastal Afforestation Department of the Respondent No. 1 filed miscellaneous suit No. 30 of 2002 against respondent No. 4 along with Assistant Commissioner (Land) and 45 individuals seeking injunction against them to prevent leasing out of scheduled land measuring 1895.36 acre. True copy of the plaint of the said miscellaneous case is annexed hereto and marked as **Annexure "K"**.

23. That it is evident from the above facts and circumstances, that 2121. 96 acres of the forest area of the Sonadia Island has no special protection either as ECA or as 'reserve' forest and that taking advantage of such administrative loophole, the Respondent Nos. 2 and 4 are attempting to lease out part of said forest area to influential people for shrimp cultivation and other non-afforestation purposes. As a result the forest is fast disappearing and the denuded char

land is being exposed to inundation subjecting the local inhabitants to the risks and dangers of natural disasters.

24. That the local people protested against such attempt of leasing out of forest area for shrimp cultivation and by their letter dated 01.08.02 lodged complaint to the Respondent No. 4 demanding protection of the forest area from unscrupulous shrimp cultivators who have been causing serious environmental degradation to the entire island. True copy of the letter of the local people dated 01.08.02 is annexed hereto and marked as Annexure "L".

25. That it is humbly submitted that the declaration of the total of 4916 hector of land of the Sonadia Island establishes the facts that the mangrove forest of the said land area has special ecological significance that played crucial role

in protecting and preserving the char land of Sonadia Island from erosion and also to save the people living nearby from being inundated and swept by the tidal bore during natural disaster.

26. That the fact that the government decided to declare part of the land of the Sonadia Island as 'reserve' forest also manifests the concern of the responsible authorities to accord special protection to the mangrove forest of Sonadia in stabilizing the newly formed land and allowing unhindered growth of the vegetation.

27. That is it most respectfully submitted that by excluding part of the forest land (as of Annexure "G") from the list of ECA of Sonadia Island the Respondent No. 1 has acted on erroneous assumption that the said forest land area was 'reserve' forest and the activities conducted therein are regulated by the laws on forest, wildlife and

other management plans of the government whereas in reality no such protection was accorded to the forest area in question.

28. That it is humbly submitted that this particular case is a classic example of conflicting and overlapping jurisdiction of authorities that aggravates due to lack of interagency coordination taking toll over nature, natural resources and people dependant on such resources. The vested interest groups and the land grabbers in cohesion with some corrupt and self motivated public servants are taking advantage of such administrative loopholes and are taking hold of the forest land of Sonadia for shrimp cultivation at the cost of the precious eco-system of the island.

29. That it is shocking to observe that while one public agency is claiming to have developed

precious mangrove forest in the Island of Sonadia, the other public agency in total disregard of public trust and solely for the apparent sake of revenue earning, is purporting to lease out the same land showing the forest land as barren and fit for shrimp cultivation.

30. That it is submitted that such confusions and conflicts have already resulted in destruction of the mangrove forest that needs to be immediately stopped and corrective measures need to be taken to restore the forest to its original condition and preserve it in the best interest of the people.

31. That it is humbly submitted that the petitioner being the leading environmental organization in the country takes great interest in ensuring sound environment through proper observance of law by all concerned and is directly

affected by such unlawful acts and deeds of the respondents. The failure by the Respondents in performing their legal duties and obligations have made the petitioner feel aggrieved and have thus filed this Writ Petition before the Hon'ble Court to uphold public interest.

32. That the application is filed in public interest and since the petitioner being not in possession of all original documents begs permission to file photocopies as annexures.

33. That the petition is *bona fide* to protect the forest land of Sonadia Island for ecological sake and also to protect the thousands of inhabitants of the said area who without the forest would be exposed to the risks and dangers of natural disaster and the relief sought for herein, if granted, shall be effective, efficacious and complete.

34. That having no other adequate efficacious remedy, the petitioner begs to move your Lordships on the following, amongst others:

G R O U N D S:

I. For that the exclusion of part of the of forest land of Sonadia Island (as of Annexure "G") from the list of ECA by the Respondent No. 1 has no legal basis and without any lawful authority in as much as the said exclusion has been made on an erroneous assumption of the said forest land being 'reserve' forest and that Section 5 of the Environment Conservation Act, 1995 does not give the said Respondent any such power to modify or change the list of ECA so as to exclude areas and hence the impugned notification is liable to be set aside.

II. For that the fact that the area of forest land of Sonadia Island decided by the government to be declared 'reserve' could not be so declared for procedural incompleteness demonstrate failure by the Respondent No. 4 in performing statutory duties under the Forest Act, 1927 and managing public property as entrusted under Article 13 of the Constitution.

III. For that the failures by the Respondent Nos. 1, 2 and 4 in according special protection to the forest area of Sonadia Island negate their statutory obligations of protecting ecosystem and managing public property and jeopardize the rights of the petitioner and the local residents as guaranteed under Articles 31, 32 and 42 of the Constitution and hence appropriate direction

and order from this Hon'ble Court is sought for.

IV. For that such failure by the Respondents in according special protection to the Sonadia Island and undertaking special management scheme for its conservation is allowing vested interest groups/land grabbers to grab the precious forest lands and use the same for purposes like shrimp cultivation in connivance with some unscrupulous public service officials.

V. For that the Respondents have utterly failed to exercise their lawful authority in protecting and conserving the Sonadia Island and has thus failed to discharge their obligation under the Constitution, the Environment Conservation Act, 1995 and the

rules of 1997 made thereunder and the Forest Act, 1927.

VI. For that the unlawful acts of unscrupulous shrimp cultivators in violation of the applicable laws and rules have resulted in damage to the public property of the forest of Sonadia for which they are liable to compensate towards restoration of the ecosystem and hence appropriate direction and order from this Hon'ble Court is necessary.

VII. For that the respondents are duty bound to ensure that environmental degradation is abated and prevented by the adoption of appropriate protection plan and having failed to exercise their legal obligation to the public in general they are required to be directed to perform their legal obligations by strict implementation Law of the land.

VIII. For that the respondents have totally failed to implement and perform the legal obligations bestowed upon them under the provision of the Environmental Conservation Act, 1995 (Act 1 of 1995) and the Forrest Act, 1927 and hence appropriate direction from this Hon'ble Court is prayed for.

WHEREFORE it is most humbly prayed that your Lordship would graciously be pleased to:

a) Issue a Rule Nisi calling upon the Respondents to show cause as to why they should not be directed to:

(i) show cause as to why the Gazette Notification of Respondent No. 1 dated 03 May,

1999 No.-pabama-4/7/87/99 (as of **Annexure "G"**) excluding 2,794.04 hectores of forest area from the 4915 hectores of Ecologically Critical Area (ECA) of the Sonadia Island as declared vide Gazette notification dated 19 April, 1999, No. pabama-4/7/87/99/245 under section 5 of the Environment Conservation Act, 1995 shall not be declared erroneous, without lawful authority and of no legal effect as being violative of the petitioners and other inhabitants of the Island's fundamental rights as guaranteed under Articles 27,31 and 42 of the Constitution.

(ii) undertake special protective measures as required under Section 5 of the Environment Conservation Act, 1995 to protect and conserve the 4916 hectores of Sonadia Island as an Ecologically Critical Area;

(b) Pending hearing of the Rule-
(i) stay granting of lease of or otherwise tampering with the 4, 916 hectores of the forest land of Sonadia Island that was originally declared ECA vide Gazette notification dated 19 April, 1999, No. pabama-4/7/87/99/245 (as of Annexure "B"); (ii) direct the Respondent Nos. 1, 2, 3 and 4 to undertake investigation to identify and

measure the areas within the 4, 916 hectars of the Sonadia Island where shrimp cultivation/clearing of forest is taking place or has taken place, list those who are involved in such cultivation/clearing and the enabling arrangements, assess in monetary terms the loss of forest resources for such individual shrimp cultivation/clearing of forest and submit a report on the same within two months before this Hon'ble Court;

(c) From the report to be submitted under prayer direct those involved in denuding

forest-land for shrimp cultivation to pay back the price of the forest resource as recovery of public demands and also eviction of the unlawful encroachers;

(d) Cost of and incidental to this application be directed to be borne by the Respondents;

(e) After perusing the cause shown, if any, and hearing the parties make the Rule absolute;

(f) Any other or further order or orders as may be deemed fit and proper be also granted.

And for this act of kindness your petitioners as
in duty bound shall ever pray.

AFFIDAVIT

I, Mirza Quamrul Hasan, son of
of House No. 9, Road No.8, Dhanmondi R/A, P.S.
Dhanmondi, Dhaka, Aged about 50 years, by
profession Lawyer ,by Nationality Bangladeshi, do
here by solemnly affirm and say as follows :

1. That I am Member of Executive Committee of
'BELA' and as such I am fully conversant with the
facts and circumstances of the case and competent
to swear this affidavit.

2. That the statements made herein above are true
to the best of my knowledge and beliefs
Prepared in my office.

(M IQBAL KABIR)
ADVOCATE

(Mirza Quamrul Hasan)
DEPONENT

The deponent is known
to me and identified by
me.

(M. IQBAL KABIR)
Advocate

Solemnly affirmed before
by the said deponent on
this the-----day of
June, 2003 at---- a.m.

COMMISSIONER OF AFFIDAVITS,
SUPREME COURT OF BANGLADESH,
HIGH COURT DIVISION, DHAKA.