

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

**WRIT PETITION NO. \_\_\_\_\_ OF 2006**

**IN THE MATTER OF:**

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

**A N D**

**IN THE MATTER OF:**

Articles 21, 23, 31, 32 and 145 of the Constitution of the People's Republic of Bangladesh, the Building Construction Act, 1952 (E.B Act No. II of 1953), the Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995), the rules made thereunder and gazette notification of respondent No. 2 dated 08. 01. 95, memo No. sha-8/chauka-1/94/335 issued under the Building Construction Act, 1952.

**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. 15/A, Road No. 3 Dhanmondi Residential Area, P.S., Dhanmondi, Dhaka being

representation by its Director (Programs) Ms.  
Syeda Rizwana Hasan, Advocate, Supreme Court  
...**Petitioner**

**-Versus-**

1. Government of Bangladesh, represented by Secretary, Ministry of Land, Bangladesh Secretariat, Ramna, Dhaka
2. Secretary, Ministry of Environment and Forest, Bangladesh Secretariat, P.S. Ramna, Dhaka
3. Secretary, Ministry of Housing and Public Works, Bangladesh Secretariat, P.S. Ramna, Dhaka
4. Divisional Commissioner, Office of the Divisional Commissioner, Sylhet
5. Director General, Department of Environment, Paribesh Bhaban, E-16 Agargaon, Sher-e-bangla Nagar, Dhaka.
6. Deputy Commissioner, Office of the Deputy Commissioner, District: Sunamgonj
7. Deputy Director (Sylhet Division), Department of Environment, House No. 31(1<sup>st</sup> Floor), Block-A, Main Road, Shahjalal Upashor, Sylhet
8. Assistant Commissioner (Land), Office of the Assistant Commissioner, Chhatak Upazila, District Sunamganj

9. The Superintendent of Police, Office of the Police Super, District: Sunamgonj

10. Upazila Nirabhi Officer, Chhatak Upazila, District Sunamganj

11. Upazila Nirabhi Officer, Doarabazar Upazila, District Sunamnganj

12. Mr. Abul Kalam Chowdhury, Chairman, Chhatak Pourashava, Chhatak

13. Chatak Cement Factory, Upazila-Chhatak, District-Sunamganj, represented by the Managing Director.

**...Respondents**

**A N D**

**IN THE MATTER OF:**

Illegal cutting of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla and Nasimour Mouza in the Doarabazar Upazila, District Sunamgonj at the instance of respondents by identified persons (as of Annexures "C", "F" and "K") attributing to ecological imbalance and degradation of environment of the areas and threatening existence of the landless families living in dag No. 330 of the Fakirtila mouza affecting their fundamental rights as guaranteed under Articles 31 and 32 of the Constitution.

**A N D**

**IN THE MATTER OF:**

Purported Settlement Agreement bearing No. 1509 of 2005 dated 27.03.05 signed between respondent Nos. 8 and 13 leasing out 22.65 acres of *khas* land in favour of M/s Chhatak Cement Company Ltd. to use the same for industrial activity and to allow thereby cutting of the hillock (*popularly know as shoi tila*) and removal of earth therefrom in violation of Article 145 of the Constitution, the Building Construction Act, 1952, the Environment Conservation Act, 1995 and gazette notification of respondent No. 3 dated 08. 01. 95, memo No. sha-8/chauka-1/94/335 issued under the Building Construction Act, 1952.

**To**

Mr. Justice Syed J R Mudassir Hossain, the Chief Justice of the Supreme Court 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:**

1. That the Petitioner, Bangladesh Environment Lawyers Association, hereinafter referred to as BELA, is a society registered under the Societies Registration Act, 1860, Registration No. 1457 (17) dated 18<sup>th</sup> February, 1992 being represented by its Director (Programs) Syeda Rizwana Hasan 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 resolution dated 30 June,

2001 authorizing Syeda Rizwana Hasan to represent BELA is annexed hereto and marked as **Annexures "A"**.

2. 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 ecosystem and natural resources that affect peoples' material and spiritual well-being.

3. That respondent No. 1 is the Ministry of Land responsible for land management and administration of the country in a way best suited to the interest of the people. Respondent No. 2 is the Secretary, Ministry of Environment and Forest responsible for the management and conservation of environment and its various components in accordance with the Environment Conservation Act, 1995 and the rules made thereunder. Respondent No. 3 is the Secretary, Ministry of Housing and Public Works empowered to authorize hill cutting only

after due consideration of public interests. Respondents nos. 4 and 6 are respectively the Divisional Commissioner of the Sylhet Division and the Deputy Commissioner of Sunamganj District administering land management at the local level.

4. That Respondent Nos. 5 and 7 are respectively the Director General and Deputy Director of Department of Environment who, under the Environment Conservation Act, 1995 (Act No. I of 1995), are vested with responsibilities regarding protection and conservation of environment and fragile ecosystems. Respondent No. 8 is the Assistant Commissioner (Land) who has executed the impugned settlement agreement with the respondent No. 13. Respondent no. 9 is the Superintendent of Police of Sunamganj district authorized under the Building Construction Act to take cognizance of acts that contravene the provisions of the said Act. Respondent Nos. 10 and 11 are Upazilla Nirbahi Officers respectively of Chhatak and Doarabazar Upazilla with responsibility of local administration in accordance with law and due respect for peoples' legitimate rights. In addition to the persons mentioned in Annexures "C" and "K", respondent No. 12 is engaged in the illegal action of hill cutting in JL No. 71, dagh No. 330 of Fakirtila Mouza under Upazilla Chhatak, District Sunamgonj (popularly know as the *Shoi Tila*). Respondent No. 13 is the Managing Director

of M/s Chhatak Cement Factory Ltd. who has signed the impugned settlement agreement with respondent No. 8.

5. That the addresses of the parties given in the cause title are correct addresses for the service of notices upon them.

6. That the environment of the country is being continuously endangered and threatened by various unplanned activities originating from both private and public sources. Like other places of the country, the Sylhet Division known for its green, hilly appeal is also rapidly losing its natural heritage and pacifying beauty. Amongst the primary causes and sources of environmental degradation in Sylhet remains the unplanned, unauthorized and indiscriminate cutting or razing of hills in different parts of the Division without at all considering the environmental contributions of the hills. The disappearance, shrinkage and destruction of hills have been caused, among others, directly by the unlawful, hazardous and defiant attitudes of law violators in various forms leading to ravage of the unique ecosystem of the City. There have been regular newspaper reporting to show that during the past few years huge area of hill lands, either public or private, in Sylhet were cut and leveled to the ground despite clear legal prohibition in this regard.

7. That such ravaging of hills in Sylhet have been continuing in unregulated and hazardous manner causing chronic soil erosion, destruction of natural land profile, destroying valuable trees and herbs, abolishing habitat of insects, birds and animals, creating imbalance in rainfall, wild-flow, temperature and seasons, land slips, land slides and so on. Experts have categorically opined that with the demolition and razing of most of the hills the city has been exposed to serious natural and ecological calamities.

8. That in recent times, incidents of cutting of hills/hillocks in Sylhet came to public attention when the local newspapers reported about public grievances around cutting of hills/hillocks in the Fakirtila mouza, specifically in dag No. 330 of Mouza Fakirtila in JL 71 (popularly known as *Shoi Tila*) falling under the Noarai Islampur Union, Chhatak Upazila.

Truecopies of newspaper clippings reporting on such cutting of Shoi Tila in the Fakirtila mouza are annexed hereto and marked as

**Annexures “B” and “B-1”.**



9. That being concerned with the news reports the Petitioner organization undertook necessary field survey, interviewed local people and authorities and on scrutinising relevant papers found that much to the derogation of environment and causing sufferings of local people, cutting of the hills/hillocks in the Fakirtila mouza in Chhatak Upazila under Sunamganj district were in fact taking place at an alarming pace ignoring legal prohibitions.

10. That such cutting of hills/hillocks arose genuine concerns even amongst the concerned authorities who are respondents to this petition. As such respondent No. 7 vide its letter dated 25 April, 2005 accused respondent No. 12 of unauthorized cutting of the Fakirtila hillocks (*Shoi Tila*) and requested the said respondent to refrain from any further hill cutting and also to produce relevant documents to establish title and permission/authorization from concerned agencies for cutting of the said hillock within 7 days from the day of receipt of the letter.

11. That as regards the environmental consequences of such hillock cutting, the said letter dated 25 April, 2005 of respondent No. 7 clearly stated as follows:

“AvþjvP” cvnvþoi `wflb cvþk cvnvo KZ©þbi dþj Avþk cvþki fqven  
 cwiþek wech©q NUvi mæþebv iþqþQ| Avcwb wbðqB AeMZ  
 AvþQb þh, cÖvK...wZK cwiþek msiþþY wUjv/cvnnþoi ,i“Zi  
 Acwimxg| ZvQvov wUjv/cvnvo KZ©þbi Dci miKvþii KþVvi  
 wbþlavÁv iþqþQ| myZivs AbygwZ Qvov wUjv/cvnvo KZ©b cÖPwjZ  
 AvBþbi cwicš’x|

GgZ þcÖwflþZ mvwe©K cwiþek iþlvþ\_© AwZ mËi wUjvwU KZ©b  
 eÜ KiZ: f~wg am iþlvþ\_© m” cvnvo KZ©þbi ~vþb A\_©vr cwðg  
 `wflb w`þK kw³kvjx wiþUBwbs lqvj ^Zixi Rb” Abyþiva Kiv nþjv|Ò

Copy of the letter of respondent No. 7 dated 25 April, 2005 is annexed  
 hereto and marked as **Annexure “C”**.

12. That while talking to the local people who are largely landless and  
 have been residing in and around the said hillock on the basis of  
 yearly Duplicate Carbon Receipt (DCR) with respondent No. 6, the  
 Petitioner organization came to know that the total land area in the  
 said hillocks in Dag 330, JL 71 of the Fakirtila mouza is 80.56 acres.  
 Of this total land area 43.14 acres are recorded in the name of

individuals while 37.42 acres are recorded in the name of the Government as *Khas Land*. Of this 37.42 acres, the Chattak Cement Company has purportedly taken *lease* of 12.35 acres (which fact the petitioners came to know very recently) and another individual 2.42 acres. The rest of the 22.65 acres is occupied by more than two hundred landless families on the basis of one year and five year settlement where they have been residing for more than two three decades and have constructed huts, religious and academic institutions and so on.

True copies of DCR, receipt of land development tax and paurashava tax showing settlements in favour of the landless people are annexed hereto and marked as **Annexures "D", "D-1", "D-2", "D-3", "D-4" and "D-5"**.

13. That on various occasions these landless families appealed to concerned agencies to permanently settle these 22.65 acres of the said hilly land of Fakirtila Mouza in their favour and not to lease out the land to others. As such the landless families appealed to the respondent no. 6 on 03. 07. 2003 and also appealed to the State Minister, Ministry of Land vide letter dated 18-05-04 and also to the Chairman, Chattak Pourashava vide letter dated 10-07-03.

Responding to the appeal of these landless families, the local member of Parliament vide a letter dated 18-5-2004 wrote to the State Minister, Ministry of Land requesting the latter to consider the appeal of the landless people.

Copies of the letters of landless people dated 03 July, 2003, 10 July, 2003 and 18 May, 2004 are annexed hereto and the letter of the Member of Parliament dated 18 May, 2004 are annexed hereto and marked as **Annexures "E", "E-1", "E-2" and "E-3"**.

14. That while it was expected that concerned agencies would protect the hillocks of Fakirtila in consideration of its ecological significance and the needs of the landless families who have been living in coherence with the hilly environment, the Petitioner organization came to know that completely ignoring the ecological significance of the said hillocks, the appeals of the landless families and ignoring the laws of the land, respondent No. 6 vide a settlement agreement signed on 27.03.05 ("the impugned agreement") has leased out the said 22.65 acres of land in favour of M/s Chhatak Cement Company Ltd. The fact of such illegal lease was kept secret and it was not known to general public until the respondent No. 13 started physical destruction of hillocks. According to the settlement agreement signed between

respondent nos. 8 and 13 the said area has been settled with the Chhatak Cement Company Ltd. for industrial activity. The said agreement purports to allow the lessee to remove earth from the *land* to use the same as raw material of cement claiming that the government has authorized the same although no government permission was referred to in this respect. In signing the settlement agreement respondent Nos. 6, 8 and 13 have by passed the legal procedures as mentioned in the Building Construction Act, 1952 and the gazette notification dated 08.01.95 for regulating cutting of hillocks.

Copy of the settlement agreement dated 27 March, 2005 is annexed hereto and marked as **Annexure "F"**.

15. That meanwhile, although the intervention of respondent No. 7 (as of **Annexure "C"**) resulted in slowing down for few months the pace of cutting of hills/hillocks in Fakirtila, the same restarted in September, 2005 when the local people approached the petitioner organization for legal assistance against the unlawful cutting of the said hills/hillocks.

Truecopy of the said letter of the landless people dated 12 September, 2005 is annexed hereto and marked as **Annexure "G"**.

16. That on receipt of such application from the local people, the petitioner organization vide its letter 18 September, 2005 informed respondent No. 7 as to the restarting of hills/hillocks cutting and requested the said respondent to inform the petitioner as to the measures taken by it to effectively prevent the cutting of hills/hillocks.

Truecopy of the letter of the Petitioner organization dated 18 September, 2005 is annexed hereto and marked as **Annexure "H"**.

17. That while cutting of said hills/hillocks continued off and on against which the respondents failed to take any effective measures, the petitioner sent Notice Demanding Justice dated 14 November, 2005 requesting the respondents to take all appropriate action and immediate measures to stop further erasing of the said hills/hillocks in the Fakirtila mouza. Recent newspaper reports and field visits by the petitioner organization however, suggest that cutting of hillocks is continuing in the said areas against which the respondents have failed to take effective measures.

Truecopy of the Notice of Demand dated 14 November, 2005 and copies of recent newspaper reports are annexed hereto and marked as **Annexures "I", "I-1", "I-2", "I-3" and "I-4"**.

18. That although none of the respondents have thus far responded to the said Demand Notice of the petitioner organization (**as of Annexure "I"**), respondent No. 6 vide its letter dated 29.11.05 memo being Sunam/JePro/SA/Uchhed/Chhatak (Angsho)/2005-2574 (6) requested respondent No. 9 to take measures against those involved in unlawful cutting of hills/hillocks in JL No. 71, Dag 330 in Fakirtila mouza, JI No. 52, Dag 10 in Niojgaon Mouza in Chhatak Upazilla and in JL 49, mouza Nasimpur Under Doarabazar Upazilla of Sunamgaonj district. This letter of respondent No. 6 revealed that a First Information Report (FIR) was filed from the office of this respondent naming those responsible for illegal hill/hillock cutting in the said mouzas of Fakirtila, Nijgaon and Nasimpur under Sunamgonj district. A copy of the said letter of respondent No. 6 was forwarded to the petitioner organization.

True copy of the letter of respondent No. 6 dated 29 November, 2005 is annexed hereto and marked as **Annexure "J"**.

19. That subsequent investigation by the Petitioner organization further reveal that respondent No. 8 vide its letter dated 09.04.05, memo No. Sunam/chhatak/374 requested the Officer-in-charge of the Chhatak Police Station to take measures against identified individuals engaged in illegal hill cutting in the Nasimpur, Fakir Tila and Nijgaon Mouzas. Surprisingly this list as prepared from the office of respondent No. 8 does not include respondent Nos. 12 (as of **Annexure “C”**).

Photocopy of the letter dated 9 April, 2005 is annexed hereto and marked as **Annexure “K”**.

20. That following the response of respondent No. 6, the field investigation and the scrutiny of the relevant papers by the Petitioner organization revealed that several hillocks exist under different *dag* and *khatian* Nos in the Fakir Tila and Nijgaon mouzas of the Chhatak Upazila. These include:

Mouza Fakir tila

JL 71

Khatian No. 127

Dag Nos.118,277,316,324,326,328,329,330,341,343,452,473

Khatian No. 128

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473



Khatian No. 129

Dag Nos.118, 147/167, 277, 316, 324, 326, 328, 329, 330, 341, 346, 452, 1624

Khatian No. 163

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 164

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 165

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 166

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 167

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 168

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 169

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 173

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 174

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 175

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 176

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 177

Dag Nos.118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 178

Dag Nos.277,316,324,326,328,329,330,341,346,452,118,124,473

Khatian No. 179

Dag Nos.277,316,324,326,328,329,330,341,346,452,118,473

Khatian No. 184

Dag Nos.118, 120, 121, 224, 229, 234, 277, 316, 324, 326, 328, 329, 330, 341, 346, 452, 473

Khatian No. 185

Dag Nos.118, 120, 121, 224, 229, 234, 277, 316, 324, 326, 328, 329, 330, 341, 346, 452, 473

Khatian No. 284

Dag Nos.316,324,326,328,329,330,341,346,452,118,473

Khatian No. 285

Dag Nos. 277,316,324,326,328,329,330,341,346,452,118,473

Khatian No. 289

Dag Nos. 118,277,298,316,324,326,328,329,330,341,346,452,473

Khatian No. 290

Dag Nos. 118,473,277,316,324,326,328,329,330,341,346,452

Khatian No. 291

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 292

Dag Nos. 118,473,277,316,324,326,328,329,330,341,346,452

Khatian No. 293

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 294

Dag Nos. 118,473,534,277,316,324,326,328,329,330,341,346,452

Khatian No. 295

Dag Nos. 473,118,277,316,324,326,328,329,330,341,346,452

Khatian No. 296

Dag Nos. 118,298,316,324,326,328,329,330,341,346,452,473

Khatian No. 297

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 298

Dag Nos. 118,473,277,316,324,326,328,329,330,341,346,452

Khatian No. 299

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 300

Dag Nos. 118,473,277,316,324,326,328,329,330,341,346,452

Khatian No. 301

Dag Nos. 118,277,452,473,316,324,326,328,329,330,341,346

Khatian No. 304

Dag Nos. 118, 277, 298, 316, 324, 326, 328, 329, 330, 341, 346, 452,  
473, 224, 229, 234

Khatian No. 305

Dag Nos. 118, 277, 298, 316, 324, 326, 328, 329, 330, 341, 346, 452, 473, 224, 229, 239

Khatian No. 378

Dag Nos. 118,277,316,324,326,329,329,330,341,346,452,473

Khatian No. 379

Dag Nos. 118 ,316,324,326,328,329,330,341,346,452,473

Khatian No. 383

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 384

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 387

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 389

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 390

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 391

Dag Nos. 118,277,316,326,328,329,330,341,346,452,473

Khatian No. 405

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473,820

Khatian No. 425

Dag Nos. 118, 224, 229, 234, 277, 316, 324, 326, 328, 329, 330, 341, 346, 452, 473

Khatian No. 426

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 431

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 432

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 436

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 437

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 440

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Khatian No. 441

Dag Nos. 118,277,316,324,326,328,329,330,341,346,452,473

Mouza Nijgaon

JL 52

Khatian No. 1

Dag No.10

21. That it is stated that in order to regulate the indiscriminate cutting of hills, the Building Construction Act, 1952 (E.B Act No.II of 1952) has incorporated the following provisions by an amendment made in 1990 (Act No. XXXVI of 1990) providing restriction on cutting or razing of hills –

"Section 3C. Restriction on cutting etc., of hills.- (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, without the previous sanction of an Authorized Officer, cut or raze any hill within the area to which this Act applies; and such sanction shall be subject to such terms and conditions as the Authorized Officer may think fit to impose;

Provided that no such sanction shall be granted without the previous approval of the Government or such other authority as the Government may, by notification in the official Gazette, specify in this behalf:

Provided further that no such sanction shall be granted unless the Authorized Officer and the Government or the authority specified in the notification mentioned in the first proviso is satisfied that-

- (a) the cutting or razing of the hill shall not cause any serious damage to any hill, building, structure or land adjacent to or in the vicinity of the hill, or
- (b) the cutting or razing of the hill shall not cause any silting of or obstruction to any drain, stream or river, or
- (c) the cutting or razing of the hill is necessary in order to prevent the loss of life or property, or
- (d) the cutting of the hill is such as is normally necessary for construction of dwelling house without causing any major damage to the hill, or
- (e) the cutting or razing of the hill is necessary in the public interest

(4) The Government may, by notification in the official gazette, direct that the power of an authorized officer under subsection (1) shall be exercised by a Committee in such area as may be specified in the notification.

23. That it is stated that in furtherance of Section 3C of the Building Construction Act, 1952 (E.B Act No.II of 1952) as amended in 1990 (Act No. XXXVI of 1990), respondent No. 3 vide gazette notification dated 08.01.95, memo No. sha-8/chauka-1/94/335 constituted 7 member committee headed by respondent No. 6 in 14 districts including Sunamganj. In addition to respondent No. 6, the 7 seven member Committee of Sunamganj includes respondent Nos. 10, 11, 7, and Additional Deputy Commission (Revenue), Executive Officer of *Paurashava* and Revenue Deputy Collector.

True copy of the notification dated 08.01.95 is annexed hereto and marked as **Annexure "L"**.

24. That it is stated that the gazette notification dated 8.1.95 (as of **Annexure "L"**) empowered the seven-member Committee with the powers of Authorized Officer as mentioned in Section 3C (1) of the Building Construction Act, 1952 (E.B Act No. II of 1952) as amended in 1990 (Act No. XXXVI of 1990) and has made it amply clear that permission for authorizing cutting and/or razing of hill can only be

given by the Committee on prior approval of the government, i.e., respondent No. 3. The letters of respondent Nos. 6 and 7 (as of **Annexures “J” and “C”**) clearly suggest that the procedure as mentioned in the gazette notification dated 08.01.95 (as of **Annexure “L”**) and the Building Construction Act, 1952 was bypassed in executing the lease agreement dated 27.03.05 (as of **Annexure “F”**).

25. That as per sections 4 and 7 of the Environment Conservation Act, 1995 Respondent No. 5 is empowered to take any appropriate action to protect the environment, ecology and the ecologically critical area and also to require adoption of corrective measures against environmental wrongs.

26. That despite interventions from the office of respondent Nos. 6 and 7, recent newspapers reports and the field visits of the petitioner organization reveal that unauthorized cutting of hills in the said areas of Fakirtila and Nijgaon Mouzas under Chhatak Upazilla and Nasimour Mouza in the Doarabazar Upazila, District Sunamgonj is continuing unabated against which the respondents have failed to take any effective measures. While such violations of law and defiance of the lawful authorities of the respondents by the identified persons remain to be prevented to protect the ecology and environment, the cutting of



hills in Dagh No. 330 of the Fakirtila Mouza under Chhatak Upazilla are posing more than 200 landless families residing therein with threats of land slide and eviction against their claim for permanent settlement.

27. That the petitioner is aggrieved by the fact that despite clear legal prohibition/ regulations against cutting of hillocks and findings by respondent Nos. 6, 7 and 8 about the illegal cutting of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj by few identified persons as of **Annexures “C” and “K”**, the respondents have utterly failed to take any effective measures to prevent the illegal act of hill cutting and thus safeguard the legitimate rights/interests of the surrounding landless people and protect the ecology.

28. That the Petitioner humbly submits that the conservation and improvement of environment are vital for the survival and well being of living and non living beings and the natural resources of land, air and water have to be used wisely as trust to ensure healthy and safe environment for the present and future generations. It is the duty of the Respondents to conserve environment and prevent the

degradation of the same that in the instant case they have manifestly failed to do.

29. That it is submitted that the Respondents have failed to perform specific obligations as public authority agencies mandated by the Building Construction Act, 1952 in preventing the indiscriminate cutting or razing of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj causing imbalance to the natural environment and an appropriate direction upon the said Respondents is necessary to ensure effective enforcement of all the relevant legal provisions.

30. That it is respectfully submitted that the settlements agreement dated 27.03.05 (as of **Annexure "F"**) having been signed and *executed* in violation of the provisions of the Buildings Construction Act, 1952, the Environment Conservation Act, 1995 and the gazette notification dated 08.01.95, the same is liable to be declared without lawful authority and of no legal effect. Available documents do not suggest that the seven member committee as formed by the gazette notification dated 08.01.95 was ever consulted and/or the government ever approached for authorization about the signing the agreement. By allowing respondent No. 13 to remove earth from dag No. 330 of

Fakirtila mouza (shoi tila), the said agreement has put the existence of more than 200 landless families residing therein to undue threats of eviction undermining their constitutional rights to life and livelihood.

31. That it is further submitted that the reluctance by the respondents in preventing the continuing illegal acts and malpractices demonstrates gross failure to protect the natural environment and to manage the same in accordance with law and to take effective measures against the violators of law which has resulted in loss and destruction of invaluable hill areas of the country that constitutes part of our natural heritage and the heritage of the people and hence requires to be preserved under Article 23 of our Constitution.

32. That it is also submitted that the unabated, unregulated and increasing destruction of natural hill areas for changed land use has threatened the environmental and ecological integrity of the area which is increasingly becoming a threat to right to life of the citizens as guaranteed under Articles 31 and 32 of the Constitution.

33. That it is submitted that execution of the impugned Agreement is without lawful authority and is of no legal effect inasmuch as it has been executed in violation of Article 145 of the Constitution.

34. That it is submitted that the Petitioner being an organization of environmental lawyers' takes great interest in ensuring sound environment through proper observance of law by all concerned. The violation of the various legal provisions by the Respondents and their failure in implementing 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.

35. That unless the Respondents are directed to prevent razing of hillocks by identified persons and/or other persons in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj, cutting of hillocks in the said areas will continue and will be completed before disposal of the petition and in that event it shall cause irreparable damage to the environment and shall also threaten the landless families with eviction negating their constitutional right to life as guaranteed under Articles 31 and 32 of the Constitution.

36. That it is submitted that the Petitioner is acting *pro bono publico* to protect the public property and natural heritage which is its constitutional obligation under Article 21 of the Constitution and the

reliefs sought for herein, if granted, shall be effective, efficacious and complete.

37. That since this application is filed in public interest, the petitioner, not being in possession of all original documents, begs permission to file photocopies as Annexures.

38. 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 unauthorized cutting of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj by the identified persons (“the impugned action”) is without lawful authority and is of no legal effect as being clearly violative of the provisions of the Building Construction Act, 1952, the Environment Conservation Act, 1995 and gazette notification of respondent No. 3 dated 08. 01. 95, memo No. sha-8/chauka-1/94/335 issued under the said Act of 1952.

- II. For that the respondents, having failed to prevent the impugned action despite their own findings, are liable to be directed to restraint identified persons and/or any other persons from *illegal* cutting of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj;
  
- III. For that the impugned agreement dated 27.03.05 is without lawful authority and is of no legal effect inasmuch as it has been executed by the respondent No.8 in violation of Article 145 of the Constitution, the Building Construction Act, 1952 and the gazette notification of respondent No. 3 dated 08. 01. 95, memo No. sha-8/chauka-1/94/335 issued under the said Act of 1952.
  
- IV. For that the impugned action and manifest failure on the part of the respondents to discharge their statutory duties in preventing the persons responsible for such illegal cutting of hills is without lawful authority and is of no legal effect inasmuch as such conduct and failure to prevent the same is attributing to ecological imbalance and degradation of environment of the areas and also threatening existence of more than 200 landless

families living for ages in the Fakirtila area affecting their fundamental rights as guaranteed under Articles 31 and 32 of the Constitution.

- V. For that the impugned action and manifest failure on the part of the respondents to discharge their statutory duties in preventing the persons responsible for such illegal cutting of hills is without lawful authority and is of no legal effect inasmuch as unabated, unregulated and increased destruction of natural hill areas for changed land use threaten the environmental and ecological integrity of concerned areas and violative of the right to life of the citizens as guaranteed under Articles 31 and 32 of the Constitution.

**Wherefore** it is most humbly prayed that your Lordships would graciously be pleased to:

- a) Issue a Rule Nisi calling upon the Respondents to show cause as to why the impugned Agreement signed between respondent Nos. 8 and 13 on 27.03.05 leasing out 22.65 acres of *khas* land (**Annexure "F"**) of the popularly known

*Shoi Tila* in favour of M/s Chhatak Cement Company Ltd. to use the same for industrial activity and the impugned action and omission of the responding in allowing removal of earth from the said hillock shall not be declared to be without lawful authority and of no legal effect and why they shall not be directed to take all necessary and effective measures to prevent cutting or razing of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur Mouza under Doarabazar Upazilla, District Sunamgonj by any one;

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

c); Pending hearing of the Rule stay operation of the impugned agreement dated 27.3.2995 (Annexure "F") and issue an injunction restraining the respondents from allowing any one from cutting of hillocks in the Fakirtila and Nijgaon Mouzas under Chhatak Upazilla, and Nasimpur



Mouza under Doarabazar Upazilla, District Sunamgonj.

d) Direct the respondents to transmit the records to this Hon'ble Court to be dealt in accordance with law;

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

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 Petitioner as in duty bound shall ever pray.

**AFFIDAVIT**

I, Syeda Rizwana Hasan, wife of Abu Bakar Siddique of House No.15/A, Road No. 3, Dhanmondi Residential Area, P.S. Dhanmondi, District-Dhaka, aged about 38 years, by faith Muslim, by profession lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows:

1. That I am the Director (Program) and member of the Executive Committee of the Bangladesh Environmental Lawyers Association (BELA). By a resolution of the Executive Committee of BELA I have been duly authorised to represent BELA and swear affidavit on its behalf, and as such I am fully conversant with the facts and circumstances of the case.

2. That the statements made in paragraphs of the petition are correct and true to the best of my knowledge which I verily believe to be true, and rest are submission made before this Hon'ble Court.

Prepared in my office.

**(Md. Iqbal Kabir)**

Advocate

**(Syeda Rizwana Hasan)**

Deponent

The deponent is known to me and identified by me.

Solemnly affirmed before me  
by the said deponent on this  
the .... day of March, 2006  
at A.M.

**(Md. Iqbal Kabir)**

Advocate.

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