

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique

Ms. Justice Zinat Ara

Mr. Justice Md. Nuruzzaman

CIVIL APPEAL NO.458 OF 2017.

(From the judgment and order dated 30.03.2017 passed by the High Court Division in Writ Petition No.2001 of 2015.)

Rana Surong : Appellant.

=Versus=

Government of Bangladesh and others: Respondents.

For the Appellant : Mr. A.M. Aminuddin, Senior Advocate instructed by Mr. Md. Helal Amin, Advocate-on-Record.

For Respondent No.1 : Mr. Murad Reza, Additional Attorney General (with Mr. Sheik Saifuzzaman, Deputy Attorney General) instructed by Mr. Haridas Paul, Advocate-on-Record.

For Respondent No.7 : Mr. Asaduzzaman, Advocate instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent No.5 : Mr. Nihat Kabir, Advocate instructed by Mrs. Madhumalati Chowdhury Barua, Advocate-on-Record.

For Respondent Nos.2-4 & 6: Not represented.

Date of hearing & judgment on : 05.02.2019.

J U D G M E N T

Hasan Foez Siddique, J: This appeal is directed against the judgment and order dated 30.03.2017 passed by the High Court Division in Writ Petition No.2001 of 2015 discharging the Rule.

The relevant facts, for the disposal of this appeal, are that the appellant filed aforesaid writ petition in the High Court Division challenging the order communicated under Memo

No.22.01.0000.672.21.030.14/6156 dated 22.12.2014 issued by the writ respondent No.3 according permission to the writ respondent No.7 for chopping down trees from Jhemai Punjee of Jhemai Tea Estate, Kulaura, Moulvibazar.

In the writ petition, it was, inter alia, stated that the writ petitioner is the Headman (Minister) of Jhemai Punjee. Their ancestors and other members of the tribe had/have been living in Jhemai Punjee area from more than hundred years peacefully. The Deputy Director (Planning), Bangladesh Tea Board, issued a letter to the Assistant Director(in charge), Jhemai Tea Estate on 05.08.2010 giving permission for chopping down 2096 standing trees in Jhemai Tea Estate and, thereafter, the Assistant Director (in charge), Jhemai Tea Estate issued a letter on 16.08.2010 to the writ respondent No.2 seeking permission for chopping those trees down. Assistant Commissioner (Land), Kulaura submitted a report on 14.12.2010 to writ respondent No.2 stating that there would be no harm in chopping those trees down from the said Tea Estate. The Deputy Director, Directorate of Environment, Sylhet Division, by a letter dated 03.01.2011, issued a no objection certificate regarding the decision of chopping those trees down. The Additional Deputy Commissioner

(Revenue), Moulavibazar, by a letter dated 09.01.2011, forwarded the relevant papers to the Divisional Forest Officer, Sylhet requesting him to consider the application for chopping those trees down as per the lease agreement. The writ respondent No.3, by an order dated 12.01.2011, accorded permission to writ respondent No.5 to chop down the trees from Jhemai Tea Estate. Lastly, the writ respondent No.3, by an order dated 22.12.2014, accorded permission to the writ respondent No.5 for chopping down the trees from Jhemai Punjee/Jhemai Tea Estate without considering the ecological and environmental situation of the area. Thus, the writ petitioner, filing the instant writ petition, obtained Rule.

The writ respondent No.7 Jhemai Tea Estate contested the Rule by filing an affidavit-in-opposition contending that the original owner of the property, in question, was Zaminder of Prittim Pasha who transferred the said property to Nawab Ali Hyder Khan. Thereafter, Nawab Ali Asgar Khan leased out the Jhemai Tea Estate to Fazlul Karim by registered lease deed dated 28.03.1929. In S.A. operation, the same was recorded in the name of Fazlul Karim. Ahmadul Kabir, in order to purchase the same in his name and in the name of writ respondent No.7 from said Fazlul Karim, entered

into an agreement with Fazlul Karim on 23.05.1968. After demise of Fazlul Karim, Ahmadul Kabir and the writ respondent No.7 requested his heirs to execute and register sale deed but they did not pay any heed. Thus, Ahmadul Kabir and writ respondent No.7 filed Title Suit No.5 of 1977 in the Court of the then Additional Subordinate Judge, Sylhet for specific performance of contract and got decree on 30.11.1977. Pursuant to the said decree, the heirs of Fazlul Karim executed and registered sale deed on 26.04.1979 in favour of the writ respondent No.7. The writ respondent No.7 Jhemai Tea Estate (Kedarpur Tea Company Limited) mutated its name and paid rent. As per provision of P.O.No.98 of 1972 Jhemai Tea Estate was acquired by the Government and the Government executed and registered lease deed dated 09.09.1993 leasing out 661.08 acres of land to writ respondent No.7 giving retrospective effect for 20 years, that is, from 15.08.1972 to 14.08.1992. Subsequently, the same was renewed on 19.03.2000 for a period from 15.08.1992 to 14.08.2012 by another registered lease deed. Lastly, the lease was again extended by executing another lease deed on 04.10.2012 for a further period from 15.08.2012 to 14.08.2052. The trees, in question, are part of Jhemai Tea Estate and

those are either pre-existing and/or planted by the writ respondent No.7 who have been maintaining those trees. Now chopping down those 2096 trees are required for expansion of the Tea Estate as per terms of the lease agreement and so, this writ respondent approached the authority concerned for according permission for chopping down the trees as per law. Thus, the Rule should be discharged.

The High Court Division, by the impugned judgment and order, discharged the Rule. Thus, the writ petitioner has preferred this appeal upon getting leave to appeal.

Mr. A.M. Aminuddin, learned Senior Counsel appearing for the appellant, submits that the tribal people earn their livelihood by growing betel leaf using the trees, in question, from their ancestors time and so, the High Court Division erred in law in discharging the rule. He further submits that the appellant and other tribal people and their predecessors had /have been leaving in the said area for more than hundred years upon getting settlement from the original owners. The trees, in question, mostly were grown naturally and the rest of them were planted by their predecessors to maintain the ecological and environmental balance of the

locality and the Directorate of environment, without taking notice of the environmental aspects of the area, has accorded permission to chop down the trees from the said Jhemai Tea Estate, the High Court Division erred in law in discharging the Rule.

Mr. Murad Reza, Additional Attorney General appearing for the respondent No.1 and Mr. Asaduzzaman, learned Advocate for respondent No.7, submit that it is apparent on the face of the impugned order itself that it has been issued by the writ respondent No.3 upon keeping the environment protection issue in primacy as such the High Court Division rightly upheld the impugned order. They further submit that the appellant has relied upon and came to the Court to enforce Article 18 of the Constitution, which is one of the basic principles of state policy and so, is not enforceable under article 102 of the Constitution and, as such, the appeal is liable to be dismissed. They further submit that a civil suit has been filed by the appellant and others, being Title Suit No.36 of 2011 in the First Court of Joint District Judge, Moulvibazar and the same is still pending for determination of the title of the appellant and others, therefore, filing of the writ petition upon suppressing the said facts in

one hand is a commission of fraud upon the Court and on the other hand due to availing the said alternative remedy, the appeal is liable to be dismissed. They further submit that the appellant has obtained Rule in the writ petition for establishing the right of the tribal people being their headman, which does not qualify him as an aggrieved person under article 102 of the Constitution and he cannot represent the said community and that he has not claimed that he has filed this writ petition as a public interest litigation on the ground of his heart bleeding or for an indefinite number of people or for the common cause or common injury and as such the appeal is liable to be dismissed.

It appears from Annexure-B to the writ petition that Jhemai Tea Estate Authority approached the Bangladesh Tea Board on 19.05.2010 seeking permission for chopping down 2096 trees and, on 05.01.2010, Bangladesh Tea Board, considering the prayer of Jhemai Tea Estate, opined that trees may be chopped down with certain terms and conditions and same may be permitted in respect of the trees standing in the land of plot Nos.3,4,6,7,8,9,10,11,12,21, 22, 402, 403, 404 and 406 of Khatian Nos.2 and 3. On 16.08.2010, Jhemai Tea Estate Authority filed an application

addressing the Deputy Commissioner, Moulvibazar for according permission for chopping down 2096 trees from the land measuring an area of 40 hectars of plot No.406 for extension of the Tea Estate. From Annexure-D, it appears that the Assistant Commissioner (Land), Kulaura, Moulvibazar submitted a report to the Deputy Commissioner, Moulvibazar wherein it was, inter alia, stated, “৬। বাগান কর্তৃপক্ষ গাছ কর্তন করে নতুন গাছের চারা রোপন করবেন মর্মে উল্লেখ করেন।” It was further stated that, “৮। গাছ কর্তনের ফলে পরিবেশের কোন ক্ষতির কারণ নেই মর্মে প্রতীয়মান হয়। কারণ কর্তৃপক্ষ পুনঃ গাছের চারা রোপন করবেন বলে জানান।” The Deputy Director of Environment Directorate, Sylhet Division issued a letter dated 03.09.2011 (Annexure-E) addressing the Deputy Commissioner, Moulvibazar stating, inter alia, that, “১। অপরিপক্ক গাছ কর্তন করা যাবে না। ৬। বাগানের বয়স্ক গাছ কর্তনের পর শেড টি হিসেবে দেশীয় প্রজাতির পর্যাপ্ত সংখ্যক গাছ লাগাতে হবে। ৭। বিভাগের প্রচলিত নিয়মনীতি পালন করে বন বিভাগ হতে গাছ কর্তন ও অপসারণের অনুমতি পত্র প্রাপ্তির পর প্রার্থীত বনজ সম্পদ কর্তন/অপসারণ করতে হবে। বন বিভাগ কর্তৃক নির্ধারিত গাছের জাত, ঘনফুট ও সংখ্যা চূড়ান্ত বলে বিবেচিত হবে। ৯। বাগানটির পূর্ব পার্শ্বে বনবিভাগের রিজার্ভ ফরেস্ট থাকায় সতর্কতা অবলম্বন করতে হবে। এ বিষয়ে বন বিভাগের প্রতিনিধির উপস্থিত এবং কর্তৃপক্ষের সিদ্ধান্ত চূড়ান্ত হবে।” (underlined by us). In the aforesaid letters, it was specially mentioned that immatured trees would not be cut down and sufficient number of trees must be planted. But unfortunately, it was

mentioned that due to chopping down the trees the environment would not be affected.

Annexure-E(1) shows that the Additional Deputy Commissioner (Rev), Moulvibazar issued a letter addressing the Divisional Forest Officer, Sylhet Division, inter alia, stated, “গ) পরিবেশ অধিদপ্তরের সকল শর্ত আবশ্যিক পালন করতে হবে। কোন অবস্থাতে পরিবেশ ক্ষতিসাধন করে গাছ কর্তন করা যাবে না।”

Thereafter, the Division Forest Officer issued the impugned letter (Annexure-F to the writ petition). Contents of which are as follows:

“গনপ্রজাতন্ত্রী বাংলাদেশ সরকার
বিভাগীয় বন কর্মকর্তার কার্যালয়
সিলেট বন বিভাগ।

সিলেট

স্মারক নং-২২.০১.০০০০.৬৭২.২১.০৩০.১৪.৬১৫৬

তারিখ-২২/১২/২০১৪ইং

প্রাপক,

রেঞ্জ কর্মকর্তা,

কুলাউড়া রেঞ্জ।

বিষয়- কুলাউড়া উপজেলাধীন ঝিমাই চা বাগানের ভূমি হইতে গাছ কর্তন এবং স্থানান্তর প্রসঙ্গে।

সূত্রঃ জেলা প্রশাসক মৌলভী বাজার এর স্মারক নং-০৫.০০.৫৮০০.০২৪.০১.০৫৬.১৪-১৬৩(২)

তারিখ-০৭/১২/২০১৪ইং।

বিষয়ে বর্ণিত চা বাগানের গাছ স্থানান্তরের নিমিত্তে ম্যানেজার ঝিমাই চা বাগান কর্তৃক জেলা প্রশাসক, মৌলভী বাজার এর মাধ্যমে ‘৭’ ফরমে দাখিলকৃত আবেদন পত্রের মূলকপি এবং উক্ত চা বাগানের গাছ কর্তনের নিমিত্তে বাংলাদেশ চা বোর্ডের অনুমতি ও তৎসংযুক্ত কাগজ পত্রের আলোকছাপ এতদসংগে প্রেরণ করা হইল। আবেদনপত্রের বর্ণিত দাগ সমূহের সহিত বাংলাদেশ চা বোর্ডের অনুমতি পত্রের বর্ণিত দাগ এবং নিজ দলিলে বিদ্যমান যে সমস্ত দাগের গাছের প্রজাতি, শ্রেণী সংখ্যা ও পরিমাণ (ঘনমিটার) উল্লেখপূর্বক মার্কিং তালিকা ও শ্রেণী ভিত্তিক সার সংক্ষেপসহ বিস্তারিত তদন্ত প্রতিবেদন সহকারী বন সংরক্ষক, শ্রীমঙ্গল এর মাধ্যমে এর কার্যালয়ে প্রেরণ করার জন্য নির্দেশ দেওয়া হইল। মার্কিং তালিকার প্রতি পাতায় নোট বহি পৃষ্ঠা নং ও স্বাক্ষর থাকিতে হইবে।

প্রস্তাবিত পারমিটভুক্ত সংরক্ষিত বনের সীমানা সংলগ্ন হইতে যৌথ জরীপ করতঃ যৌথ জরীপ প্রতিবেদন ও যৌথ স্বাক্ষরিত ম্যাপ মূল প্রতিবেদনের সহিত দাখিল করিতে হইবে। উক্ত ম্যাপে জেলা

প্রশাসকের পক্ষে ভূমি সংক্রান্ত একজন উপযুক্ত কর্মকর্তার স্বাক্ষর থাকিতে হইবে। ইহা ছাড়া এতদসঙ্গে ওয়ার্কি প্লান ফরম 'বি' যথাযথ পূরণ করতঃ ভূমির পবট সীট ম্যাপসহ সীটম্যাপের উপর আবেদন কৃত দাগ নং দেখাইয়া ও পার্শ্ববর্তী বনভূমির অবস্থান প্রদর্শনী পূর্বক ১৬"-১ মাইল হিসাবে ২ প্রস্থ ট্রেস ম্যাপ দাখিল করিতে হইবে।

উল্লেখ্য যে, বিমাই চা বাগানের কর্তন যোগ্য গাছের মধ্যে বাগান কর্তৃক রোপিত গাছের সংখ্য শ্রেণী ও পরিমান (ঘনমিটার) উল্লেখ করিতে হইবে। ইহা ছাড়া উক্ত চা বাগান হইতে সংরক্ষিত বন ভূমির দুরত্ব ও সার্টিফিকেট মামলা আছে কিনা প্রাকৃতিক ভাবে জন্মানো কোন গাছ চা বাগানের কোন গাছ, পাখি, বন্যপ্রাণী আবাসস্থল হিসাবে চিহ্নিত হইলে বা প্রকৃতি সংরক্ষন/ভূমি ক্ষয়রোধের জন্য বিবেচিত কোন গাছ বনপ্রাণী (সংরক্ষন ও নিরাপত্তা) আইন ২০১২ ও উল্লেখিত রক্ষত গাছ ৩"-০ফুট এর কম বেড়ে সম্পন্ন কোন গাছ মার্ক করা যাইবে না এবং প্রতিবেদনে উক্ত বিষয়াদি উল্লেখ করিতে হইবে। সর্বোপরি জেলা প্রশাসক, কর্তৃক প্রদত্ত প্রতিবেদন ও ফরম '৭' এ উল্লেখিত দাগ ও ভূমির পরিমান যাচাই বাছাই করিয়া যাবতীয় কার্যাদি সম্পন্ন করিতে হইবে।

স্বাক্ষর-অস্পষ্ট

মোঃ দেলোয়ার হোসেন
বিভাগীয় বন কর্মকর্তা
সিলেট বন বিভাগ
সিলেট "

Whole attempt, as it appears from the materials on record, was that the writ respondent No.7 decided to convert the land with trees for tea garden purposes. Since environment issue is very important aspect today, the matter deserves meticulous consideration. Environmental deterioration and ecological imbalance have been affecting the humanity seriously. Most important ecological problem is wide spread disappearance of forest. Many species depend almost entirely on trees for shelter, safety, food and for reproduction.

When our constitution was adopted in 1972, the framers had not foreseen the importance of environmental preservation. This aspect did

receive attention later and, in 2011, 15th amendment of the Constitution incorporated protection the natural resources, biodiversity, wetlands, forests and wildlife. Article 18A of the Constitution provides that the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens. In the case where the problem of ecology is brought before the Court, the Court is bound to bear in mind article 18A which enjoins that the State shall endeavour to protect and improve the environment. It is our constitutional duty to safeguard the forests and wildlife of the country. The Constitution proclaims it to be fundamental duty of every citizen of Bangladesh to protect and improve the natural environment including forests. Depletion of forests would lead to ecological imbalance.

Accordingly to the Holly Quran the creation of man is, as a matter of fact, the culmination of a well defined divine scheme. Since earth is divinely gifted abode for man and man is its the divinely appointed custodian, it is his divinely assigned duty to protect, guard and nurture the planet which is his and his fellow creatures' sole

habital. Just like men, nature is the creation of Allah. Nobody has the right to exploit the resources of nature at his will and pleasure never minding the consequences of their action. According to the Holly Quran man is accountable to Allah for his actions. Man has no absolute freedom on nature. Our Prophet (peace be upon him) encouraged cultivation and plantation. He said, "When a Muslim plants a tree or cultivate a crop, and birds and animals eat from them, he will be rewarded for charity. Even if the crops are stolen he will be rewarded."

The preservation of ecology and environment, based on the principle of sustainable development to reconcile the conflicting interest of development with the preservation of healthy environment has been recognized as a facet of right of life. The principle adopted is that ecology and environment are not objects of ownership but are nature's gift intended to be preserved in trust for future generation. The main motto of social life is to live in harmony with nature. Ongoing environmental degradation that is going must now come to a stop. For balancing our environment, massive tree plantation in the country has become vital. The adverse impacts of climate change and now acutely felt all over the

country. Global warming is a worrying issue for us all. The increase of CO_2 in the levels of atmospheric is a significant contributory factor in global warming. Trees play a vital role in absorbing CO_2 and releasing Oxygen in day time. Trees absorb harmful gases and emit oxygen resulting in increase of oxygen supply. It is said that on an average, a single tree emits 260 pounds of oxygen annually. Similarly, a fully-grown tree is sufficient for 18 human beings in one acre of land in one year stressing the importance of tree plantation for mankind(source-wikipedia). Number one problem caused by deforestation is the impact on the global carbon cycle. Gas molecules that absorb thermal inferred radiation which are called greenhouse gases. It is our duty to plant trees as a top priority to save the country from natural disasters.

The public has a right to expect certain lands and natural areas to retain their natural characteristic in finding its way into the law of the land. Professor Barbara Ward has written of this ecological imperative in language:

"We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We can not cheat on

DNA. We can not get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death."

It is to be regarded as a sacred duty of every one to protect forests, trees, flora and fauna. When trees are cut the natural balance is upset and the important functions that trees perform such as holding the soil in place, protecting ground water, and providing food and shelter for plants and animals cannot take place. Overcutting forests and the disruption of the forest ecosystem are causing erosion of soil, loss of biodiversity, loss of soil fertility etc. Where the process continues for a long period of time or over a large area there can be total environmental collapse. The trees provide oxygen, reduce air pollution, and provide shade from the sun and shelter from harsh weather.

Submission of the learned Advocates of respondent regarding locus-standi of the appellant to file writ petition it is to be mentioned that in order to have locus-standi to file a writ petition, the petitioner should be an 'aggrieved person'. The expression 'aggrieved person' has not

been defined anywhere. The term, however, denotes an elastic, and to some extent, and elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive formula. Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or cause him some prejudice in one form or other. In this case the appellant has a genuine grievance because the order passed may prejudicially affects his interests as well as the interest of his community.

Be that as it may, it is also to be considered that the agreement of lease between the Government and the writ petitioner provides a clause for extension/ expansion of tea garden on the lease hold land. Moreover, tea is one of our exportable item earning foreign currency as well as fulfilling the local demand of tea, which is increasing day by day. Moreover, tea gardens with shed trees are also greeneries and such gardens are also causing emission of oxygen in the atmosphere and absorbing CO_2 . Tea gardens also take active part in the photosynthesis process. Therefore, for the purpose of sustainable development as well as to protect the environment, Writ Respondent No.7 may be permitted to cut down the trees for which permission has

been given to it by the concerned authorities subject to certain terms and conditions as mentioned hereinafter:

- (1) Immature trees cannot be cut down.
- (2) Before cutting down each trees, two saplings are to be planted in suitable places of Jhemai Punjee area.
- (3) After nourishing newly planted saplings for at least three years, the leave respondent No.7 would be entitled to chop down old and matured trees only from Jhemai Punjee under the supervision of the Local Officials of the Department of Environment and the Department of Forest.

With the observation made above, the appeal is disposed of.

J.

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The 5th February, 2019.

M.N.S./words-3307/