

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

Writ Petition No. 7030 of 2022

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Farid Hasan Mahadi and others

....Petitioners

Versus

Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Land, Bangladesh Secretariat Building, Ramna, Dhaka-1000 and others

....Respondents

Mr. Habib-Un-Nabi, Advocate with

Mr. Md. Ashikur Rahman, Advocate

....For the Petitioners

Mr. Muhammad Rayhan Uddin, Advocate

....For the Respondent No. 3

Mr. Muntasir Mahmud Rahman, Advocate with

Mr. A.N.M. Ashiqur Rahman Khan, Advocate

....For the Respondent No. 4

Mr. Farid Uddin Khan, D.A.G. with

Mr. Md. Shahadat Hossain Adil, A.A.G.,

Mr. Md. Shamsil Arefin, A.A.G. and

Ms. Zohura Khatoon (Jui), A.A.G.

....For the Respondent Nos. 5-7

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 18.03.2025.

Md. Iqbal Kabir, J:

This Rule was under adjudication, at the instance of the Petitioners, issued on 21-06-2022, and was in the following terms:

“Let a Rule Nisi be issued calling upon the Respondents to show cause as to why the failure of the Respondents in protecting the Goaland-Pakshi Channel of Padma river to

ensure safety of the key performance Indicator (KPI) project Ruppur Nuclear Power Plant as being the highest priority project of the Government and also failure to ensure navigability of Padma river as per direction of the Bangladesh Inland Water Transport Authority (BIWTA) dated 28-03-2019 (Annexure-C to the writ petition) should not be declared to be without lawful authority and of no legal effect and further to show cause as to why the Respondents No. 5, 6 and 7 should not be directed to stop all sorts of commercial extraction of sand/ earth including lease from the Padma river flowing over the districts, Rajbari, Kushtia and Pabna including lease thereof as per the provision of sections 4/9(3) of "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০" and as per direction of the BIWTA dated 20-02-2020 (Annexure-D to the writ petition) specifically from the mouzas namely Char Jajira, Furshahat, Nayan Sukh, Char Narshingdhi, Khas Char Padma of Upazila-Rajbari Sadar, District Rajbari, Mouza-Char Srikrishnapur, Harirampur, Kandarpur, Shindurpur, Shatbaria, Charkhapur, Mamudia under upazila-Suzanagor, District-Pabna, Mouza-Newchar Purbapara, Jotkakuraia, Maspara, Khaschar Bolrampur, Dorivaudanga under Upazila-Pabna Sadar, District-Pabna, Mouza-Joynabad, Rahinipara, Kashimpur, Varra of Upazila-Kumar Khali, District-Kushtia for securing the banks of Padma river from river erosion and/or pass such other or further order or orders as to this Court may seem fit and proper."

The short facts for disposal of the Rule are that the Petitioners are the inhabitants of Pabna, Rajbari, and Kushtia, and they brought this application because of the unplanned, illegal extraction of sand from the riverbed Padma and its channel despite several protests. They claim that due to such illegal activities country as well as the Petitioners are affected along with other local people.

According to them, Ruppur Nuclear Power Plant (in short the Power Plant) situated within Upazila-Ishwardi, Pabna is a key performance indicator (KPI) Project located very near the river Padma, therefore, all the foreign machinery, nuclear residues, and other materials of the Power Plant are being carried through the Mongla and Ruppur river port of the river Padma. The Hardinge Bridge is a steel railway truss

bridge over the Padma River located at Ishwardi, Pabna, and Bheramara, Kushtia in Bangladesh. The Hardinge Bridge plays a very important role in Railway communication in the country. The first trial train crossed the bridge down the track on 1st January, 1915, and on 25th February of the same year, the second trial train crossed the bridge up the track. Finally, on 4th March, 1915, Lord Hardinge inaugurated the bridge. Jamuna Multipurpose Bridge Authority (JMBA) has a plan to renovate the bridge so that light and heavy vehicles can also use the bridge. Another bridge, Lalon Shah Bridge, also known as the Paksey Bridge, is a road bridge over the river Padma, situated between Ishwardi Upazila of Pabna on the east, and Bheramara Upazila of Kushtia on the west. It provides an important road connection to Mongla port of Khulna District in the south from Rajshahi division and Rangpur division, the northern part of Bangladesh. It is situated parallel to and south (downstream) of Hardinge Bridge. Apart from those bridges government has invested a huge amount of money in constructing the Rajbari City protection dam, and other dam. Because of the matter, the navigability of the river Padma, as well as saving its banks from river erosion is very important for the safety of the aforementioned important establishments. To maintain the navigability of the Mongla Pakshi Channel of the Padma River, BIWTA is conducting a dredging project, spending a huge amount on the said river channel from Goaland Pakshi under the supervision of the Bangladesh Navy and the Water Development Board. It has also alleged, being specialized in rivers, the BIWTA has the proper knowledge and skill, they are able to maintain the navigability of any river without coursing river erosion therefore, BIWTA itself is dredging the Goaland-Pakshi channel of Padma River only for the sake of the Power Plant, no other organization is allowed to extract sand/earth from the said river channel without having the approval of the BIWTA, as extracting sand from the

aforesaid river channel by any others will create disturbance in the project of BIWTA. Respondents leasing out some mouzas/*Balumohal* situated in the riverbed of the Padma River, taking advantage of such lease lessee including a hundred unscrupulous sand extractors extracting sand/earth from the River Padma and its channel, which causes river erosion, and the navigable channel is being blocked with silt. Respondent No. 3, by a letter (Annexure-C) dated 28-03-2019, requested to take necessary steps to stop such extraction of sand and earth from the Padma River and its channel. Despite such a request, they created a new *Balumohal* over the river channel in violation of the law and published notifications for lease. Knowing such a situation, the office of respondent No. 3 vide its letter dated 20-02-2020 again requested respondent Nos. 5, 6, and 7 not to create any new *Balumohal* at Padma riverbed or the bank of the river within Goalando-Pakshi Channel, as creating the same may endanger the Power Plant. It has claimed vide its memo dated 06-09-2020 Cabinet Division directed all the concerned to take necessary steps to prevent river erosion and secure important establishments. Thereafter, the office of the respondent No. 3 again vide its letter dated 16-11-2020 and 04-01-2022 requested the Respondent Nos. 5, 6 & 7 to take immediate action to prevent unplanned and illegal extraction of sand/ earth from the aforesaid area of Padma River, but all the requests of BIWTA have gone in vain.

It is against this backdrop being aggrieved by and dissatisfied with the failure of the Respondents to take appropriate steps in the performance of their statutory obligations and duties Petitioners issued a notice of demand for justice, but the Respondents have failed to take any appropriate steps and having no other equally, efficacious remedy moved this writ petition and obtained Rule Nisi.

Mr. Habib-Un-Nabi, learned Advocate appearing for the Petitioners upon placing the petition submits that the failures of the Respondents to

protect the River and its riches from the unscrupulous traders and allowing illegal, unauthorized, and destructive extraction of sands by the Respondents are violative of the provisions of "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০", the Bangladesh Water Development Board Act, 2000, the Environment Conservation Act, 1995, and the Rules of 1997 made there under and Land Management Manual. According to him, such deliberate failure of the Respondents to prevent illegal and destructive actions of the unscrupulous sand extractors is causing damage to the navigability of the river and denying the neighbors basic rights guaranteed under Articles 31 and 32 of the Constitution.

He submits to maintain the navigability of the river Padma and prevent river erosion, BIWTA by its letters requested the concerned Respondents not to declare any area of the river or its channels or riverbed as *Balumohal*, and stop indiscriminate extraction, but despite those requests Respondents created *Balumohal* on a class-1 navigable river channel in violation of laws.

He claims illegal sand extraction from the riverbed and banks of the River has made the river wider. Erosion causes immense damage to the River and the lives of the neighbors as such, the illegal extraction of sand from the riverbed and its channels should be stopped. According to him, illegal extraction of sand destroys navigability, which shows the utter failure of the Respondents to enforce and uphold the law to protect and manage public property in the best interest of the people.

Mr. Nabi claimed that Respondent Nos. 5-7 are duty-bound to stop unplanned and illegal extraction of sand within their territory. Instead of stopping such acts, Respondents are allowing illegal activities, causing more financial loss than the revenue earned by the lease. According to him, due to such acts, the Power Plant, bridges, and various establishments, including agricultural lands, are under threat. He brought

to notice that such acts cause serious impacts on the river and its ecosystem. According to him, Respondents cannot ignore the claims of the Petitioners as section 4 of the "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০" prohibited the extraction of sand/earth within one kilometer of important Government Establishments and residential areas. Section 9(3) of the said Act empowered to abolition of the *Balumohal*, if it endangers the establishments or public interest. Therefore, he sought intervention and directions from this Court.

He submits that *Balumohal* can be leased out, but those areas or riverbeds have to be declared as *Balumohal* after conducting a hydrographic survey through the BIWTA, and without a hydrographic survey/chart, Respondents are not allowed to give a lease as *Balumohal*. But despite following such prohibition, Respondents are allowing vested quarters or others to extract sand/earth from the river Padma.

Mr. Farid Uddin Khan, the learned DAG appearing on behalf of Respondent Nos. 5 and 7 by filing two separate affidavits-in-opposition, denied the material assertion made in the application and contested the Rule. However, the content of the two affidavits-in-opposition was the same.

By his submission, it has claimed that Respondent No. 3 did not make any representation or allegation before Respondent No. 5 about the unplanned and illegal extortion of sand from the River Padma. He took us to Annexure-"C" and claimed it had been addressed to the Secretary, Ministry of Shipping. Respondent No. 5 does not know the steps, if any, taken by the Ministry of Shipping. However, he claims Respondent Nos. 5 and 7 did not violate any provisions of law. Thus, the Rule is liable to be discharged with costs.

By referring Annexure-E-2, it has been alleged that no one uttered any word about the illegal and unplanned extraction of sand/earth from

any area or *Balumohal* leased out by the Deputy Commissioner, Pabna. According to him regular dredging process should be continued to keep the channel open, otherwise the navigable channel would be silted. He claims Respondent No. 5 did not declare any *Balumohal* within 7 (Seven) kilometers of the Power Plant, and no sand/earth is extracted from such area as it has been prohibited by the circular dated 26-11-2017, issued by the Ministry of Land. He submits that through the mobile court, some miscreants have been punished who were involved with the extraction of sand, and after the legal initiative of the Respondents by the administration, all illegal extortion has been stopped. Now, there is no such allegation from any corner.

Mr. Farid Uddin Khan, learned DAG appearing on behalf of Respondent No. 6 by filing a separate affidavit-in-opposition, denied the material assertion made in the petition. However, he submits that the district Rajbari is situated 77 kilometers away from the Power Plant, the river dam of Rajbari is approximately 5 kilometers away, and the villages are approximately 7 kilometers away from the river Padma. According to him, there will be no detrimental effect if sand is extracted from the Rajbari area. According to him, the district of Rajbari does not fall within any categories stipulated in section 4 (Annexure-B); therefore, there is no legal impediment to extracting sand in the said district. He claims extraction of sand from the Rajbari area will not affect the said project in any way. However, he submits that the river Padma is drying out at multiple points in the middle, leading to the formation of chars, which has an adverse effect on navigability. According to him, it is necessary as well as important to extract sand from such points to ensure smooth navigation. Therefore, sand/earth is extracted using its technical knowledge to facilitate navigation and maintain ideal conditions of the River. He also brought to notice that *Balumohal* generates significant

revenue for the Government; therefore, the Rule has to be discharged, otherwise, navigability will be detrimentally affected and the country will lose a large amount of revenue.

Mr. Muntasir Mahmud Rahman, learned Advocate appearing on behalf of Respondent No. 4 by filing an affidavit-in-opposition brings notice to this Court that Respondent No. 4 has no statutory power, though NRCC has been working closely with the Government by preparing the list of river grabbers and trying to make aware among general public relates with protection of rivers.

He claims NRCC is always concerned about the navigability of the rivers and their natural flow. He informs, knowing about the extraction of sand, NRCC/Respondent, by sending letters requesting the concerned district administration to stop such an act. According to him, the extraction of sand/earth has to be stopped. He states there is no scope to compromise if navigability and the natural flow of the river or river channels are disrupted due to any extraction.

Having gone through the writ petition along with a supplementary affidavit, affidavit-in-opposition filed by the contesting Respondents, this Court considered the facts, circumstances of the case and submissions made by the parties.

From the averment, this Court notes that the Petitioners filed the present writ petition as a public interest litigation (PIL) seeking direction from the Respondents to take steps to stop unplanned, illegal extraction of sand. Public Interest Litigation has been filed for the cause of the public, and no doubt, they should give meaning to the purpose for which they are knocking on the doors of justice. Therefore, the first question that comes up for consideration is the *locus-standi* of the Petitioners in maintaining this application as an aggrieved person under Article 102 of the Constitution of the People's Republic of Bangladesh.

The question of *locus-standi* of the Petitioners did not arise by the Respondents in this case. However, it is pertinent to state that this Court is quite conscious that the forum of this Court should not be abused by anyone for personal gain or any oblique motive. It has reminded us that the object of PIL is to ensure observance of the provisions of the Constitution or law. Such an object can be achieved to advance the cause of a community of disadvantaged groups and individuals or public interest by permitting any person to act bona fide and having sufficient interest in maintaining any action for judicial redress for public injury to put the judicial machinery in motion. Here, the Petitioners come up to stop the unplanned, illegal extraction of sand from the riverbed Padma and its channel despite several protests. They claim that due to such illegal activities, some important establishments, navigability of the river, and agricultural lands are affected, which, in our opinion, merit consideration.

However, given the above contention as advanced by the learned Advocate for the Petitioners, the questions to be decided are whether *Balumohal* has been operated following the provision of law; sand has been extracted legally, and or illegally other than *Balumohal*, and whether directions are necessary upon the Respondents as sought for in this matter.

By showing annexures, the Petitioners claim that the unplanned extraction of sand is continuing from the river Padma and its channel despite several requests to stop such activities. A huge amount of agricultural land in Pabna, Rajbari, and Kushtia Districts has already emerged in the river, which has widely been published in various national dailies (Annexure-H, I, and M series) including the Daily Ittefaq, Prothom Alo stating that agricultural land are going to be submerged under the River and the lives of neighboring people are endangered by way of losing land. These reports also stated that sand was extracted from the

riverbed and banks of the River Padma and its channel. The photographs appearing in the newspapers also clearly show that sand has been extracted therefrom.

Further, it transpired that Respondent No. 3 of this case made representation (Annexure-C) addressing to the Secretary; Ministry of Shipping along with a copy to the some other Respondents, thus, this Court did not find substance in the denial made by the Respondent that the Annexure-C was not served upon the Respondent No. 5. In this case contesting Respondents states due to their legal initiative unlawful extraction of sand have been stopped, which admits illegal extractions.

From the facts as referred to above, we are satisfied and convinced that sand has been extracted from the riverbed, banks of the River, and its channel in violation of the law of this land. The illegal extraction of sand from the riverbed, bank, and channel has caused damage to the River and its navigability and ecology of the surrounding areas. However, Respondent No. 5 claims there is an ongoing dredging project under the Bangladesh Navy to ensure the navigability of the river and its channel. The project has been taken to carry out goods for the Power Plant. According to him, said river channel has been declared as a first-class riverway vide gazette notification dated 11-11-2018. He claims *Balumohals* are situated 20/25 kilometers from the Power Plant, thus, the sand extraction will not affect the Project/Power Plant in any way.

However, by application under the Right to Information Act Petitioners sought information to know how many *Balumohals* are situated within the concerned districts, whether any authority conducted any hydrographic survey before declaring *Balumohal*, whether any *Balumohal* existed within the limit of any river port, etc.

It is at this juncture that Respondent No. 6, in response to that effect vide its memo dated 15-04-2024, states that there are 6 (six)

declared *Balumohals* existing within the district Rajbari (Annexure-N-1 and N-5). According to him, those were not declared after the commencement of the "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০". Further, disclosed that 3 (three) mouzas, namely "Char Jajira", "Char Narshinghodia" and "Khaschar Padma" have been used as *Balumohal* and those are within the territory of "Dhawapara (Joukura) River Port, Rajbari" (Annexure-N-1 and N-3). At this juncture, it can be said that under the provisions of section 9 of the prevailing law Authority cannot declare *Balumohal* or extracted sand/earth from the above-mentioned areas. However, three mouza, namely "Char Jajira", "Char Narshinghodia" and "khaschar Padma" have been used as *Balumohal*. Admittedly, those are within the territory of "Dhawapara (Joukura) River Port, Rajbari"; therefore, those have to be defunct from the list of *Balumohals*.

The office of Respondent No. 3, by a reply dated 25-04-2024 to the application of the Petitioners, informed that no hydrographic survey chart has been supplied to Respondent Nos. 5-7, as there was no requisition for supplying such a chart.

However, the office of Respondent No. 5 vide memo dated 05-05-2024 (Annexure-N-5) brought notice to the Petitioners that there are 7(seven) enlisted *Balumohals* at Pabna district and none of those were declared as *Balumohal* after conducting the hydrographic survey following the provision of section 9 of the "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০". It is admitted that *Balumohal* of those areas have been declared before the law came into force. On query, it has been brought to light that all those *Balumohal* have been leased out every year without determining the quantum of sand, though leases were permitted to extract a specific quantum of sand from the *Balumohal*. Since the quantum of sand was not determined or specified scientifically, in such a situation, there is a question of how the authority determines the quantum of sand to extract.

Thus, there is every chance to extract sand more than the permitted limit to extract. It is pertinent to note that Respondent No. 7 did not provide any information about the *Balumohal* of his district. But from Annexure-D-10, it appears there are as many as 18 *Balumohals*.

It is pertinent to note that Respondent No. 3, by filing an affidavit-in-opposition, entered its appearance, but its assistance is not up to the mark. This Respondent has a vital role in the subject matter, but at the very outset respondent was very reluctant to respond. The reason is best known to him. It has reminded us that the Padma River originates from the Gangotri Glacier and flows into India as the Ganges; it enters Rajshahi District of Bangladesh in the name of Padma River and passes through Pabna, Kushtia, Rajbari, Faridpur, Madaripur, Manikganj, Munshiganj Districts and ends in the Meghna River at Chandpur district. As the Padma River flows, it brings a lot of silt from upstream, thereby, reducing the navigability of the river. Since this waterway is very important due to the presence of the Ruppur Nuclear Power Plant, BIWTA has taken up a huge budget project to overcome the navigability crisis of this river from Goalando to Pakshi, spending a huge amount of money. Respondent No. 3 has also taken another dredging project in collaboration with the Bangladesh Navy for the development of navigability of the aforesaid river channel known as the Capital Dredging project, which is being interrupted due to unplanned extraction of sand by the lessees and illegal extractors.

It is transpired that the Goalanda-Pakshi channel of the Padma River is a very important riverway for the country. There are many important, highly expensive priority projects and establishments, as well as cultivable land of the local people around the aforesaid river channel, which are in imminent danger due to unplanned extraction of sand. Further, the biodiversity & ecology of the river are also under threat due to

the continuous extraction of sand all over the river through bulkhead dredgers.

The riverbank is getting covered with sand, and different points of the river revealed excessive char areas. Referring to the expert's news report states that the water level remains low, and due to a lack of proper dredging, silt is being accumulated, forming chars at different points.

We may now turn to see the relevant provisions of law to examine whether the power conferred under the law is being complied/abused to the prejudice of the people as alleged by the Petitioners.

Sections 4, 5, 9, and 10 of the "বালুমহাল ও মাটি ব্যবস্থাপনা আইন, ২০১০" deal with the prohibition of sand /earth, when and how a particular area can be declared *Balumohal*, and the procedure of lease. Relevant part of those sections which read as under:

৪। কতিপয় ক্ষেত্রে বালু বা মাটি উত্তোলন নিষিদ্ধ।-বিক্রয়ের উদ্দেশ্যে কোনো সরকারি মালিকানাধীন উন্মুক্ত স্থান, চা বাগানের ছড়া বা নদীর তলদেশ হইতে নিম্নবর্ণিত ক্ষেত্রে বালু বা মাটি উত্তোলন করা যাইবে না, যদি-

...

(খ) উহা সেতু, কালভার্ট, ড্যাম, ব্যারেজ, বাঁধ, সড়ক, মহাসড়ক, বন, রেললাইন ও অন্যান্য গুরুত্বপূর্ণ সরকারি ও বেসরকারি স্থাপনা হয় অথবা আবাসিক এলাকা হইতে সর্বনিম্ন ১ (এক) কিলোমিটার বা সংশ্লিষ্ট কর্তৃপক্ষ কর্তৃক নির্ধারিত সীমানার মধ্যে হয়;

(গ) বালু বা মাটি উত্তোলন বা বিক্রয়ের উদ্দেশ্যে ড্রেজিংয়ের ফলে কোনো নদীর তীর ভাঙ্গনের শিকার হয়;

(ঘ) ড্রেজিংয়ের ফলে কোনো স্থানে স্থাপিত কোনো গ্যাস-লাইন, বিদ্যুৎ-লাইন, পয়ঃনিষ্কাশন-লাইন বা অন্য কোনো গুরুত্বপূর্ণ লাইন বা তদসংশ্লিষ্ট স্থাপনা ক্ষতিগ্রস্ত হইবার আশংকা থাকে;

(ঙ) উহা বাংলাদেশ পানি উন্নয়ন বোর্ড কর্তৃক চিহ্নিত বা নির্ধারিত বন্যা নিয়ন্ত্রণ, পানি নিষ্কাশন, সেচ, খরা প্রতিরোধের লক্ষ্যে নির্মিত জলাধার, ব্যারেজ, বাঁধ বা নদী ভাঙ্গন রোধকল্পে নির্মিত পরিকাঠামো বা অবকাঠামো সংলগ্ন এলাকা হয়;

...

(ছ) নদীর ভূ-প্রাকৃতিক পরিবেশ, প্রতিবেশ, জীববৈচিত্র্য, মৎস্য, জলজ ও স্থলজ প্রাণি, ফসলি জমি বা উদ্ভিদ বিনষ্ট হয় বা হইবার আশংকা থাকে;

(জ) বালু বা মাটি উত্তোলনের কারণে বাংলাদেশ অভ্যন্তরীণ নৌ-পরিবহন কর্তৃপক্ষ (বিআইডব্লিউটিএ) কর্তৃক নির্ধারিত নৌ-পথের নাব্যতা ক্ষতিগ্রস্ত হয় বা নৌ-চ্যানেল বন্ধ হইবার সম্ভাবনা থাকে; এবং

৫। ভূ-গর্ভস্থ বা নদীর তলদেশ হইতে বালু বা মাটি উত্তোলন সংক্রান্ত বিশেষ বিধান।-(১) পাম্প বা ড্রেজিং বা অন্য কোন মাধ্যমে ভূ-গর্ভস্থ বালু বা মাটি উত্তোলন করা যাইবে না।

(২) নদীর তলদেশ হইতে বালু বা মাটি উত্তোলনের ক্ষেত্রে যথাযথ ঢাল সংরক্ষণ সাপেক্ষে, সুইং করিয়া নদীর তলদেশ সুযম স্তরে (River Bed Uniform Level) খনন করা যায় এইরূপ ড্রেজার ব্যবহার করতঃ বিধি দ্বারা নির্ধারিত পদ্ধতিতে কার্যক্রম পরিচালনা করিতে হইবে।

(৩) উপ-ধারা (২) এর অধীন ড্রেজিং কার্যক্রমে বাল্কহেড বা প্রচলিত বলগেট ড্রেজার ব্যবহার করা যাইবে না।

৯। বালুমহাল ঘোষণা ও বিলুপ্তকরণ।-(১) বালুমহাল চিহ্নিত ও ঘোষণাকরণের ক্ষেত্রে, উপ-ধারা (২) এর বিধান সাপেক্ষে, জেলা প্রশাসককে নিম্নবর্ণিত পদ্ধতি অনুসরণ করিতে হইবে-

(ক) সংশ্লিষ্ট এলাকার রাজস্ব অফিসার কর্তৃক পরিদর্শন করাইয়া ট্রেসম্যাপ ও তফসিলসহ স্বয়ংসম্পূর্ণ প্রতিবেদন গ্রহণ করিবেন;

(খ) নৌ-বন্দর সীমার বাহিরে নির্ধারিত নৌ-পথ যেই স্থানে বালু বা মাটি রহিয়াছে সেই স্থানে বিআইডব্লিউটিএ এর মাধ্যমে হাইড্রোগ্রাফিক জরিপ পরিচালনাপূর্বক স্বয়ংসম্পূর্ণ প্রতিবেদন গ্রহণ করিবেন, তবে যুক্তিসঙ্গত কোনো কারণে বিআইডব্লিউটিএ কর্তৃক উক্ত জরিপ পরিচালনা করা সম্ভব না হইলে, পানি উন্নয়ন বোর্ড বা অন্য কোনো সরকারি সংস্থা কর্তৃক জরিপ সম্পন্ন করা যাইবে;

...

(২) উপ-ধারা (১) এর দফা (গ) এর অধীন প্রস্তাব প্রেরণের পূর্বে জেলা প্রশাসক পরিবেশ, পাহাড় ধ্বংস, ভূমি ধ্বংস অথবা নদী বা খালের পানির স্রোতের গতিপথ পরিবর্তন, সরকারি স্থাপনার (যথাঃ ব্রিজ, কালভার্ট, রাস্তাঘাট, ফেরিঘাট, হাটবাজার, চা-বাগান, নদীর বাঁধ, ইত্যাদি) এবং আবাসিক এলাকার কোনো ক্ষতি হইবে কিনা সেই বিষয়ে সংশ্লিষ্ট কর্তৃপক্ষের মতামত গ্রহণ করিবেন।

(৩) কোনো বালুমহালে উত্তোলনযোগ্য বালু বা মাটি না থাকিলে, বা বালু বা মাটি উত্তোলন করিবার ফলে পরিবেশ, প্রতিবেশ বা জীববৈচিত্র্য বিনষ্ট বা সরকারি বা বেসরকারি গুরুত্বপূর্ণ স্থাপনা ক্ষতিগ্রস্ত অথবা জনস্বাস্থ্য বা জনস্বার্থ বিঘ্নিত হইবার আশংকা থাকিলে অথবা উত্তোলিত বালু পরিবহণের জন্য প্রয়োজনীয় সরকারি রাস্তা না থাকিলে বা এইরূপ বালু পরিবহণের কারণে বিদ্যমান সরকারি রাস্তা ক্ষতিগ্রস্ত হইলে বা ইজারাগ্রহীতা স্বীয় উদ্যোগে বা স্বীয় অর্থায়নে সংশ্লিষ্ট রাস্তা মেরামত বা রাস্তা না থাকিলে তৈরি করিতে সম্মত না হইলে, জেলা প্রশাসক বিভাগীয় কমিশনারের নিকট উক্ত বালুমহাল বিলুপ্ত ঘোষণা করিবার প্রস্তাব প্রেরণ করিতে পারিবেন, এবং

১০. বালুমহাল ইজারা প্রদান, ইত্যাদি।

...

(৮) বালুমহাল ইজারা প্রদানের ক্ষেত্রে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, নিম্নবর্ণিত উদ্দেশ্যে নির্দেশনা জারি করিতে পারিবে, যথা-

...

(জ) অবৈধ বা অতিরিক্ত বালু উত্তোলনের ফলে নদী ভাঙ্গনের সৃষ্টি হইলে বা ঘর-বাড়ি, স্থাপনা, গাছ বা ফসল বিনষ্ট হইলে বা পরিবেশ, প্রতিবেশ বা জীববৈচিত্র্যের ক্ষতি সাধিত হইলে, অনুরূপ ক্ষতির পরিমাণ নির্ণয় এবং ইজারাগ্রহীতার জামানত হইতে ক্ষতিপূরণ আদায় পদ্ধতি নির্ধারণের ব্যবস্থাকরণ।

Sub Rule (1)(2)(3)(6)(7)(10),(11) of Rule 3 and 5 of বালুমহাল ও মাটি ব্যবস্থাপনা বিধিমালা, ২০১১ deals with Hydrographic survey, Hydrographic chart, required report from authority, monitoring, and measures to prevent erosion etc.

৩. ড্রেজিং-এর মাধ্যমে বালু উত্তোলন সংক্রান্ত বিধান, ইত্যাদি।-(১) নৌ-বন্দর সীমার বাহিরে নির্ধারিত নৌ-পথসমূহ হইতে বালু উত্তোলনের জন্য নৌ-পরিবহন কর্তৃপক্ষ হাইড্রোগ্রাফিক জরিপ কাজ পরিচালনা করিবে এবং হাইড্রোগ্রাফিক চার্টের ভিত্তিতে বালু উত্তোলনের নিমিত্ত ড্রেজিংয়ের এলাকা চিহ্নিত করিয়া উক্ত চিহ্নিত স্থানের উত্তোলনযোগ্য বালুর পরিমাণ নির্ণয় করিয়া হাইড্রোগ্রাফিক চার্ট, তফসিলসহ মৌজাম্যাপ ও প্রতিবেদন সংশ্লিষ্ট জেলা প্রশাসক বরাবরে প্রদান করিবে।

(২) নৌ-পরিবহন কর্তৃপক্ষের হাইড্রোগ্রাফিক চার্ট, তফসিলসহ মৌজাম্যাপ ও প্রতিবেদন অনুযায়ী এবং আইনের ধারা ৯ এর বিধান অনুসরণক্রমে সংশ্লিষ্ট জেলা প্রশাসক উক্ত শ্রেণীভুক্ত নৌ-পথকে বালুমহাল ঘোষণা করিবেন।

(৩) ইজারাদার নৌ-পরিবহন কর্তৃপক্ষ কর্তৃক প্রণীত হাইড্রোগ্রাফিক জরিপের ভিত্তিতে প্রণীত চার্ট অনুসরণক্রমে বালু মহাল হইতে বালু উত্তোলন শুরু করিবে;

...

(৬) ড্রেজিংকালে ইজারাদার তাহার নিজ পদ্ধতিতে অর্জিত গভীরতা পর্যবেক্ষণ করিবে এবং ড্রেজিং এর মাধ্যমে পোস্ট-ড্রেজিং নির্ধারিত গভীরতা অর্জিত হইয়াছে মর্মে ইজারাদারীতা সংশ্লিষ্ট জেলা প্রশাসককে অবহিত পূর্বক নৌ-পরিবহন কর্তৃপক্ষের নিকট হাইড্রোগ্রাফিক জরিপ করিবার আবেদন করিবে।

(৭) উপ-বিধি (৬) এর অধীন আবেদন প্রাপ্তির পর নৌ-পরিবহন কর্তৃপক্ষের হাইড্রোগ্রাফিক শাখা প্রি-ড্রেজিং হাইড্রোগ্রাফিক জরিপের ন্যায় একই পদ্ধতিতে প্রকৌশলী ও ইজারাদারের প্রতিনিধির উপস্থিতিতে ড্রেজিংকৃত এলাকায় পোস্ট ড্রেজিং হাইড্রোগ্রাফিক জরিপ সম্পন্ন এবং প্রি-পোস্ট ড্রেজিং হাইড্রোগ্রাফিক জরিপের চার্টসমূহ একই স্কেলে (১ : ১০০০) ১০০ মিটার সাউন্ডিং ইন্টারভ্যালে প্রস্তুত করিবে।

...

(১০) ইজারাদার কর্তৃক ড্রেজিংয়ের মাধ্যমে বালু উত্তোলন কার্যক্রম নৌ-পরিবহন কর্তৃপক্ষ নিয়মিত তদারকি ও পর্যবেক্ষণ করিবে এবং তদারকি ও পর্যবেক্ষণকালে হাইড্রোগ্রাফিক জরিপের সুপারিশ অনুসারে বালু উত্তোলন ও ড্রেজিং কাজ নির্দিষ্ট পরিমাণে হইতেছে কিনা, উক্ত কার্যক্রমের ফলে নদীপথ বা নদীর গতি প্রকৃতির উপর কী প্রভাব পড়িতেছে এবং ইহার ফলে পরিবেশের ভারসাম্য বিঘ্নিত বা জনস্বার্থ ক্ষুণ্ণ হইতেছে কিনা তাহা বিবেচনা করিবে এবং প্রয়োজ্য ক্ষেত্রে প্রয়োজনীয় কারিগরি বা প্রশাসনিক সিদ্ধান্ত গ্রহণের জন্য এতদ্বিষয়ে উপযুক্ত কর্তৃপক্ষের কাছে সুপারিশ করিবে।

(১১) তদারকি বা পর্যবেক্ষণে গাফিলতির কারণে পরিবেশের ভারসাম্য বিঘ্নিত বা জনস্বার্থ ক্ষুণ্ণ হইলে সংশ্লিষ্ট তদারকী কর্মকর্তাগণ উহার জন্য দায়ী হইবেন।

৫. জেলা কমিটির দায়িত্ব ও কার্যাবলী।-

...

(৮) পরিবেশের উপর বালু উত্তোলনের সম্ভাব্য প্রভাব পর্যবেক্ষণ, নদীর তীর ভাঙ্গন রোধে গৃহীত ব্যবস্থা পর্যবেক্ষণ ও বালু উত্তোলনস্থলে শব্দ নিয়ন্ত্রণে প্রয়োজনীয় ব্যবস্থা গ্রহণ করা;

(ছ) বালু উত্তোলনের ফলে পানির গুণগত মানের পরিবর্তন ও প্রভাব পর্যবেক্ষণ, মাছ ও অন্যান্য জলজ প্রাণীর উপর সৃষ্ট প্রভাব ও ঝুঁকি পর্যবেক্ষণ এবং তদনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণের সুপারিশ করা ;

...

(ঝ) নদী গতি পথের পরিবর্তন হইতেছে কিনা বা সেই কারণে তীরবর্তী জনসাধারণ ক্ষতিগ্রস্ত হইতেছে কিনা এবং নৌ-পথে নৌযান চলাচল সুগম রাখা হইতেছে কিনা তাহা পর্যবেক্ষণ ও তদনুযায়ী প্রয়োজনীয় ব্যবস্থা গ্রহণ করা;

(ঞ) বালু উত্তোলন কার্যকর্মের ফলে বাঁধ, স্থাপনা বা অবকাঠামো ক্ষতিগ্রস্ত হইতেছে কিনা বা ক্ষতিগ্রস্ত হইবার সম্ভাবনা রহিয়াছে কিনা তাহা পর্যবেক্ষণ ও প্রয়োজনীয় ব্যবস্থা গ্রহণ করা।

Sections 5 and 6 of the Bangladesh Pani Unnayn Board Ain, 2000 have emphasized the responsibilities and duties of the Respondents regarding the maintenance of the River and the environment and ecology of the area, which are reproduced below:

৫। বোর্ডের ক্ষমতা ও দায়িত্ব।-(১) এই আইনের বিধানাবলী সাপেক্ষে, পানি সম্পদের উন্নয়ন ও দক্ষ ব্যবস্থাপনা এবং ধারা ৬-এ বর্ণিত কার্যাবলী সম্পাদনের লক্ষ্যে বোর্ড সমগ্র বাংলাদেশ অথবা উহার যে কোন অংশে কার্যক্রম গ্রহণ করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন ক্ষমতা ও দায়িত্বের সামগ্রিকতা ক্ষুণ্ণ না করিয়া, বোর্ডের নিম্নবর্ণিত ক্ষমতা ও দায়িত্ব থাকিবে, যথাঃ-

(ক) কোন ব্যক্তির আইনসংগত অধিকার ক্ষুণ্ণ না করিয়া, সরকারের পূর্বানুমোদনক্রমে, সকল নদী, জলপথ ও ভূ-গর্ভস্থ পানিস্তরের পানি প্রবাহ নিয়ন্ত্রণ;

...

৬। বোর্ডের কার্যাবলী। (১) সরকার কর্তৃক গৃহীত জাতীয় পানি নীতি ও জাতীয় পানি মহাপরিকল্পনার আলোকে এবং এই ধারার অন্যান্য বিধানাবলী সাপেক্ষে, বোর্ড নিম্নবর্ণিত কার্যাবলী সম্পাদন এবং তদুদ্দেশ্যে প্রয়োজনীয় প্রকল্প প্রণয়ন, বাস্তবায়ন, পরিচালনা, রক্ষণাবেক্ষণ ও মূল্যায়ন সংক্রান্ত যাবতীয় কার্যক্রম গ্রহণ করিতে পারিবে, যথাঃ-

(ক) নদী ও নদী অববাহিকা নিয়ন্ত্রণ ও উন্নয়ন এবং বন্যা নিয়ন্ত্রণ, পানি নিষ্কাশন, সেচ ও খরা প্রতিরোধের লক্ষ্যে জলাধার, ব্যারেজ, বাঁধ, রেগুলেটর বা অন্য যে কোন অবকাঠামো নির্মাণ;

...

(ঘ) নদীর তীর সংরক্ষণ এবং নদী ভাঙ্গন হইতে সম্ভাব্য ক্ষেত্রে শহর, বাজার, হাট এবং ঐতিহাসিক ও জাতীয় জনগুরুত্বপূর্ণ স্থানসমূহ সংরক্ষণ;

It appears from the provisions of Sections 5 and 6 of the Bangladesh Pani Unnayn Board Ain, 2000 that the Director General of the Bangladesh Water Development Board is responsible for regulating the flows of all rivers and also for protecting river banks and towns, markets, and other important historic and public sites from river erosion.

The Land Management Manual, 1990, states that Deputy Commissioners are the custodians of the River and, as such, they are liable to prevent unauthorized destructive activities therein.

Indeed, the River Padma is a downstream part of the River Ganga; the water flow of the upstream part, i.e., the River Ganga, is being controlled by the neighboring upstream country. At this juncture, it has been claimed that Bangladesh is not getting the required quantity of water, and due to such dispute, researchers have persistently alleged allocation of water is not enough to sustain the river Padma. The water level remains a lot less than ideal, and the level is still declining with gradual destruction, apart from those manmade activities leading to the expansion of chars. In this context, maintaining the flow and smooth navigation requires proper dredging and stopping the activities of sand traders, including the encroachers, because their activities exploit the river's natural course and damage its ecosystem. Thus, to save the River Padma and its channel, proper dredging is essential to keep the river flow better. Therefore, it would be highly appreciable if the authorities took appropriate initiative and dredged the river Padma to ensure navigability and maintain a better flow. By the elapsed time, the river has already been widened, causing more erosion of its banks and inundation of the surrounding areas, and the above position was not denied by the Respondents. Unregulated intervention and extraction of sand from the River have caused immense damage to the navigability of the River, as well as its ecology.

In such a situation, the correctness of the news published by various national dailies has not been specifically denied by the contesting Respondents. Rather, their affidavit-in-opposition admits illegal extraction of sand and poor navigability of the River. Thereby, it's clear that the allegations made by the Petitioners are true, and for the greater interest of

the country, the river and its channel have to be saved by stopping illegal activities.

It is pertinent that the Respondent No. 6, during the pendency of the Rule, publish a tender notice for a lease of Char Jajira, Char Narshinghodia, and Khaschar Padma mouzas as *Balumohal*, mentioning the same volume of extractable sand of those mouzas which is being mentioned in the tender notices published since 2014. However, based on an application Respondent Nos. 5-7 were directed not to grant any lease for the extraction of sand/earth from the aforementioned area, i.e., Goalanda (Rajbari) to Pabna (Pakshi) via Kushtia from 1430 B.S.

It is predicted that due to the direction/injunction order, local administrations have taken initiative to stop extraction, but despite operations conducted by the district administrations time and again, the syndicate remains undeterred. Therefore, the unlawful extraction of sand has been partially reduced, but it cannot be said that it has stopped. It is an open secret influential group backed by administration/political connections that operated with impunity and extracted sand/earth from the river and its adjoining areas. Those acts damaged the navigability and river ecology, apart from creating a serious threat to the establishments beside the river. Such acts also increased the width of the River, submerging agricultural land and washing away the adjoining village during the flood. Such conduct on the part of the officials is highly deplorable and deprecated. However, Respondents have authority under the law, and they cannot shirk their responsibility of taking steps against the illegal extractor and implementing the law to deal with *Balumohal*, protect rivers, and other activities. In this context, it is pertinent to note that Articles 31, 32, and 42 of the Constitution can come into play. As those articles deal with rights to protection of law, life, and property of the people/villagers are guaranteed by the Constitution, and the Respondents

are duty-bound to discharge their duties to ensure those rights of the people. In this context, Respondents must exercise the powers given by the above provision of laws to uphold the interest of the public and must be vigilant in this regard henceforth.

In light of the discussions and reasons made hereinabove, this Court finds merit in the Rule for which the Rule is required to be made absolute.

However, considering the circumstances and having regard to the provisions of law, we are of the view that some observations and directions are required for strict compliance with the same in the greater public interest, and those are as follows:

Unregulated sand mining and unscrupulous sand traders exploit the river's natural course and further damage its ecosystem; therefore, it should be regulated and stopped. In such view of the matter Respondent Nos. 5, 6, and 7 are directed to prepare a list of miscreants and unscrupulous sand traders, which should be upgrade time to time, and have to take all sorts of legal initiatives/action against those miscreants and unscrupulous sand traders, and take other necessary initiatives to prevent damage to the river and its ecosystem.

The list of miscreants and unscrupulous sand traders has to be prepared within two months, and soon after, action has to be taken.

Respondents, being the executive wings of the state, are under an obligation to obey the law and Rules under the law made by the legislature. Authority has no exemption from complying with laws, Rules, and regulations. Therefore, Respondents cannot be allowed to extract sand using their mechanism or tool without following the law. Every extraction has to be within the ambit of law, and Respondents will make sure the law and rules are complied with.

The hydrographic survey has to be done following the provisions of law for proper identification of the area before declaring *Balumohal* or measuring the quantity of sand.

Before leasing out or the extraction of sand from a particular place or river bed or river bank, that area has to be demarcated and declared as *Balumohal* following the provision of law, as well as the quantum of sand has to be determined, without doing such, no one can be allowed to extract sand.

The river bed area, river bank area, and quantum of sand have to be determined following the law in all existing declared *Balumohal*; only then can sand be extracted from the existing *Balumohal*.

Before the extraction of sand, all requirements of the law, including the required no-objection certificate prescribed under the law, have to be obtained from the authorities; otherwise, no one can be permitted to extract sand.

If necessary, the Respondents may also set up a mobile court to monitor and protect the River from all illegal activities and prevent miscreants.

Aggression has to be stopped, and to stop aggression embankment has to be maintained and protected properly, as and when and where it is necessary. The Bank Protection Embankment has to be constructed, and it should be a high-priority work/project.

Respondent Nos. 5, 6, and 7 may take assistance from other Respondents or authorities who are involved with the subject matter to implement and ensure navigability, stop illegal extraction, and protect the river Padma.

The Respondents, any other authority, or police are directed to provide/afford assistance, if any of the Respondents of this case seek any assistance from any other Respondents, authority, or police, so that the directions of this Court are meticulously and thoroughly implemented.

The Government is directed to take appropriate action against the concerned officers during whose tenure damage and or

irregularity has occurred due to their inaction, and sand has been extracted from the River Padma and its channel by the miscreants.

Respondents are directed to take the necessary steps immediately upon receiving a copy of the Judgment.

Every 6 (six) months, Respondent Nos. 5, 6, and 7 shall have prepared a report to make compliance and update all other action/activities related to navigability, protection, extraction, and or to stop the extraction of sand from river Padma and the said report is to be submitted to the Registrar, High Court Division, Supreme Court of Bangladesh.

With the above observations and directions, the Rule is made absolute.

The order of direction granted on 29-03-2023 by this Court is hereby recalled.

There will be no order as to cost.

Communicate the order at once.

Md. Riaz Uddin Khan, J:
I agree.