

IN THE SUPREME COURT OF BANGLADESH  
APPELLATE DIVISION

**PRESENT:**

***Mr. Justice Hasan Foez Siddique, C.J.***

***Mr. Justice M. Enayetur Rahim***

***Mr. Justice Jahangir Hossain***

**CIVIL PETITION FOR LEAVE TO APPEAL NO.657 OF 2023**

**(Arising out of Writ Petition No.9324 of 2019)**

(From the judgment and order dated 04<sup>th</sup> day of January, 2023 passed by the High Court Division in Writ Petition No.9324 of 2019)

Bangladesh Fire Service and Civil Defence, Fire Service and Civil Defence Directorate, 38-46 Kazi Alauddin Road, Fulbaria, Dhaka-1000, Represented by its Director General . . . . . Petitioner

-Versus-

The Committee for Protection of Monthon Pond, Rangpur, Repr. by its Member Palash Kanti Nag, son of Babul Nag, of Village-Rothbari, Rangpur Sadar, District- Rangpur and others . . . . . Respondents

For the Petitioner : Mr. A.M. Amin Uddin, Senior Advocate instructed by Mr. Md. Zahirul Islam, Advocate-on-Record

For the Respondent No.1 : Mr. Dipayan Saha, Advocate instructed by Ms. Madhumalti Chowdhury Basree, Advocate-on-Record

For the Respondent Nos.2-10 : Not represented

**Date of Hearing and Judgment** : **The 21<sup>st</sup> day of May, 2023**

**JUDGMENT**

**M. Enayetur Rahim, J:** This civil petition for leave to appeal, at the instance of writ-respondents are directed against the judgment and order dated 04.01.2023 passed by a Division Bench of the High Court Division in writ petition No.9324 of 2019 making the Rule absolute.

The relevant facts leading to the filing of the leave petition are as follows:

The present respondent No.1 as petitioner filed writ petition No.9324 of 2019 before the High Court Division challenging the inaction of the writ respondents in disposal of the application dated 20.06.2019 filed by the petitioner from earth filling and construction of shopping center at Monthon Pond, Rangpur.

In the writ petition it was contended, inter alia, that the Fire Service Unit, Rangpur started earth filling on several hundred years old Monthan Pond located adjunct to the Fire Service Station, Rangpur Sadar, Rangpur Containing 1.04 acres of land situated in Mouja Radaballob, Police Station Rangpur Sadar, J.L. No.12 recorded in Khatian No.13801 Plot No.14083 in the name of the respondent No.1 (Government). The original copy of the Khatian lies in the custody of the respondents and the petitioner has managed to obtain a copy of the same.

On 19.06.2019 the elite persons from the Community formed a Committee know as "The Protection of Traditional Monthan Pond Committee" (herein after relevant to as the committee) to protect Monthan Pond, Rangpur consisting of 13 members from the community presided over by its secretary.

On 20.06.2019 the secretary of the aforesaid committee made a representation to the writ-respondents to take necessary steps to refrain the respondents from earth filling and construction of shopping center at Monthan Pond which has been duly received by the office of the writ-respondent No.9, Deputy Commissioner, Rangpur by putting its seal and signature on it.

On 21.06.2019 news was published in "the Daily Prothom Alo" in regard of earth filling at Monthan Pond and the

concerned people from the community made protest against the action of the Rangpur Fire Service by creating human chain in front of the office of the Rangpur Fire Service and Civil Defense.

On 24.06.2019 the committee under the signature of the writ petitioner filed an application before the writ-respondent No.10 requesting to stop earth filling and construction of shopping center at Monthan Pond, which has been duly received by the respondent No.10 but till today the respondents have not taken any initiative to comply with the application of the petitioner.

On 27.06.2019 "the Dainik Juger Alo" and "the Dainik Bayannor Alo" and on 28.06.2019 "the Daily Prothom Alo" published the news reporting that the bank of the aforesaid pond was damaged because of removing earth from the bottom of the aforesaid pond by the respondent No.8.

The writ-respondent No.10 vide letter under Memo No.46.18.0000.101.99.001.19-2178 dated 03.07.2019 requested the writ-respondent No.8 to protect Monthan Pond.

The Member of the Committee submitted representation requesting the writ-respondent No.8 to stop illegal earth filling on Monthan Pond and the writ-respondent No.8, Deputy Commissioner, Rangpur through his mobile phone directed the writ-respondent No.7 to stop earth filling at Monthan Pond. The said news was published in "The Daily Protidiner Barta" on 03.07.2019.

Thereafter on 05.07.2019 the Deputy Commissioner, Rangpur arranged a meeting in Circuit House, Rangpur regarding protection of the Monthan Pond but the meeting was

ended without any decision. The said news was published in "The Daily Karatoa".

On 07.07.2019 "the Dainik Kaler Kantho" published a report stating that the Committee for protection of the traditional Monthan Pond and the Fire Service, Rangpur were in face to face conflicting situation regarding Monthan Pond issue in which the respondent No.7 has been building a shopping centre by earth filling on the Monthan Pond.

On 13.07.2019 in a Press Conference the Secretary of the committee demanded to stop construction work at Monthan Pond and demanded to save the aforesaid pond for the purpose of ecological balance in the Rangpur Sadar. The said news was published in "Swadesh Pratidin" and in "the Daily Bayannor Alo" on 14.07.2019.

On 06.08.2019 the writ-petitioner again filed an application to the writ-respondent No.5 requesting to preserve the Monthan Pond from earth filling and to stop construction of Shopping center in the aforesaid pond. The said application was duly received by the respondent No.5 by putting its seal and signature on the application.

The writ-respondent No.8 has been filling earth on the Monthan Pond and constructing shopping center without obtaining lease from the Government causing damage to ecological balance upon filling earth on the retention pond located in the heart of Rangpur Sadar causing irreparable loss and injury to the people in the community. Therefore interference, by the High Court Division is necessary to restrain the respondent No.8 from earth filling and construction of shopping center at Monthan Pond, Rangpur.

Hence the writ petition.

The respondent No.7 by filing affidavit-in-opposition opposed the Rule. In the said affidavit it was contended that the pond in question was not being filled up to construct any market place; rather the pond was being renovated and there was a proposal that the pond be used for swimming training for fire fighters belonging to the Fire Service and which will bring fruitful consequences for the local residents; swimming training is necessary for fire fighter for protection from any emergency; no building was being constructed on the pond and there will be no change in the nature of the water body and therefore there is no threat to change or jeopardize or otherwise cause any hazard to the ecological balance of the area.

A Division Bench of the High Court Division after hearing the Rule made by the same absolute with same directions. Feeling aggrieved by the said judgment and order writ-respondent No.7 has preferred this civil petition for leave to appeal.

Mr. A.M. Aminuddin, Senior Advocate submits that the land has been handed over along with its possession by the Deputy Commissioner, Rangpur to this petitioner, Fire Service and Civil Defence and since then, the respondent has been possessing the land, renovating the pond area by using a walkway around the pond and cleaning the pond for using as a Swimming Training Centre for the firefighters which shall certainly provide service to the people of the country. The writ petitioner respondent misleads the court by making wrong information that the Fire Service filing the earth on the pond and constructing shopping centre thereon. The Mayor of the Rangpur City Corporation has visited the place and issued

a certificate to the effect that the Fire Service has taken initiatives to renovate the Pond which is now used as a Garbage Bin by the local inhabitants and after renovation, that pond may be a good source of water for the localities.

Mr. Aminuddin further submits that the High Court Bench committed gross illegalities in holding that the Fire Service was going to construct a shopping center in the Monthon Pond rather they had been renovating the Pond for the use of the Firemen as well as the villagers and thus the judgment and order dated 04.01.2023 is liable to be set aside for the ends of justice.

However, Mr. Dipayan Saha, learned Advocate appearing for the respondent No.1 makes submission in support of the impugned judgment.

We have heard the learned counsels and perused the application and materials before us. Both parties made some factual submissions controverting the other side regarding the intention of the earth filling near the pond.

Admittedly the Monthona Pond is a traditional age old pond situated in the locality and it is also admitted that still it is in the ownership of the government and therefore it is a public property. The writ-petitioner alleged that the respondent No.7 Fire Service Department in collusion with some other government officials have been attempting to fill up the age old pond for construction a shopping center to serve their own purposes and thereby have been trying to destroy the ecological balance of the locality.

On the other hand the writ-respondents contradicted the submissions of the writ petitioner by claiming that the respondents have sent proposal to the Ministry of land for

allotting the pond for fire fighter Duburi Training, Swimming Training, water preservation etc.

We have examined the বাংলাদেশ পরিবেশ সংরক্ষন আইন, ১৯৯৫। Needless to state that pond comes with the definition of জলাধার under section 2 of the Ain, 1995. Section 6(Uma) of the section 6(Uma) is reproduced here under:

“আপাতত: বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, জলাধার হিসাবে চিহ্নিত জায়গা ভরাট বা অন্য কোনভাবে শ্রেণী পরিবর্তন করা যাইবে না। তবে শর্ত থাকে যে, অপরিহার্য জাতীয় স্বার্থে অধিদপ্তরের ছাড়পত্র গ্রহণক্রমে জলাধার সম্পর্কিত বাধা নিষেধ শিথিল করা যাইতে পারে।”

Upon a plain reading of section 6(Uma) it is clear that notwithstanding anything contained in any other law for the time being in force, the nature of a waterbody cannot be changed under any other circumstances by earth filling except for indispensable national interest (অপরিহার্য জাতীয় স্বার্থ)।

However, in the midst of the hearing of the leave petition on behalf of the leave petitioner an additional paper book has been filed and it is asserted by the leave petitioner that Fire Service and Civil Defence has been serving in Rangpur District since November, 1948 and they had established their own building in the place in the years of 1966-67 and in recent years, in order to meet the necessities of the North Bengal Fire Service had intended to extend their functions, particularly to train up the swimmers to serve the people of the North Bengal in the accidents and curses relating to water and from that perspective, they have been requested and resultantly has received offers from the Deputy Commissioner, Rangpur of allotment of total 3.11 acres land taking from Plot Nos.2158, 2138 and 2190 of Radhaballav Mouza of G.L. Ray Road under Kotwali Police Station, Rangpur being

in near and adjacent to their old place. It is further contended that after receiving the proposal from the government, Fire Service and Civil Defence had made a plan for setting up of a full-fledged Fire Station making a Walkway around the pond, a Training Center for the Divers of the Fire Service and making the Pond as a Fresh Water Reserver for future use but the Fire Service hereby assures this Court that they will not construct therein any commercial establishment and further they are assuring the Court that they will must refrain from using the Pond from commercial purpose and will only use the same for the purposes stated above.

It is further contended that the local people are now using the pond as a Garbage Bin by throwing wastes and hazards in the pond and using the pond for discharging sewerage therein which are damaging heritage of the historical Monthon Pond and on the other hand, the Fire Service and Civil Defence has taken initiatives to renovate the pond by making walkways around the pond, for using the same for swimmers training purposes with a view to explore training, experiences and skills of the firemen.

In view of the above assertions made by the leave petitioner and the attending facts and circumstances of the present case, we are of the view that justice would be best served, if we dispose of the leave petition on the following observations by setting aside the judgment and order dated 04.01.2023 passed by the High Court Division in writ petition No.9324 of 2019.

The leave petitioner is allowed to use the pond for 'জরুরী and সুইমিং ট্রেনিং' purpose only and for that purpose be entitled to



set up Swimming Pool, Water Rescue and Divers Training for the purpose of using the same by the Bangladesh Fire Service and Civil Defense directly. The District Administration Office is directed to supervise such construction/there any construction and conversion accordingly.

Accordingly, the leave petition is disposed of.

**C. J.**

**J.**

**J.**