

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

Writ Petition No. 1058 of 2011.

IN THE MATTER OF:

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

-And-

IN THE MATTER OF :

Professor Dr. A.F.M. Masud and another
..... petitioners

-Versus-

The Secretary, Ministry of Housing & Public
Works, Bangladesh Secretariat, Shahbag, Dhaka
and others.

..... respondents

Mr. Md. Manzill Morshed, Advocate
.....For the Petitioners

Mr. Md. Salim, Advocate
.....for the respondent nos.2&8

Mr. Md. Mokleshur Rahman, DAG
.....for the respondent no.9

Mr. M. Amir-Ul-Islam, with
Mr. Rokan Uddin Mahmud,
Mr. M. Moniruzzaman Asad, and
Mr. S.M. Masud Hosain Dolon, Advocates.
.....for the respondent no.10

Mr. A.F. Hassan Ariff, with
Mr. T.M. Shakil Hassan, Advocates
.....for the respondent no.11

Mr. Rokan Uddin Mahmud, with
Mr. Mustafizur Rahman Khan, Advocates
.....for the respondent no.12

Mr. Fazle Noor Taposh, Advocate
.....As intervener

Heard on : 03.05.2012
Judgment on : 11.06.2012.

Present:

Ms. Justice Naima Haider
and
Mr. Justice Farid Ahmed

Naima Haider, J

In this application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why a direction should not be given upon the respondents to maintain and protect the residential character of Dhandmondi Residential Area, Dhaka and why a direction should not be given upon the respondents to demolish /remove/evict all unauthorized commercial operations /institutions situated within the Dhanmandi Residential Area and /or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule the respondent nos.2-6 and 9 were directed not to allow/issue any further permission/licence/trade licence for any commercial operations/institutions within the Dhanmondi residential Area, Dhaka for a period of 6(six) months from date. Further direction was made upon the respondent nos. 1 & 2 to submit a report about the steps taken by the their office.

The respondent no.9, Officer in Charge of Dhanmondi Thana, Dhaka was also directed to submit a report giving full particulars of the Schools, Colleges and Universities situated in the Dhanmondi Residential Area.

The necessary facts leading to the issuance of the Rule, in brief, are:

The residents of the Dhandmondi area formed an association and have been working together to establish and maintain the character of the Dhanmondi Residential Area. The petitioners are the President and Secretary of Dhanmondi Residential Area Welfare Society. The petitioners were authorized by the Society in a meeting dated 12.11.2010 to file a case in order to protect the character of Dhanmondi Residential Area and to stop commercial operation within the residential area.

The petitioners are the owners of the apartments constructed on plots which were allotted to Mr. M.R Chowdhury in 1957 and to Mr. Belal Ahmed in 1956. In both the allotment letters, it was mentioned that the allottee were entitled to have a plot in Dhanmondi which is a residential area. It may be mentioned here that in Master Plan, the Dhanmondi Residential Area is shown as a residential area. On being informed about the Master plan, in which it was recognized as Dhanmondi Residential Area, the people were interested to get plots in Dhanmondi Residential area and after obtaining allotment they have decided to live in the place which is recognized as a residential area. On the same consideration, the petitioners purchased plots in Dhanmondi Residential Area. It is stated in the application that now a days many people of the Dhanmondi Residential Area are violating the construction rules and other provisions of law and have been running some commercial institutions. Due to this commercial use in the residential area, the normal life of the inhabitants of the residential area has been seriously hampered.

At the time of allotment of plots in Dhanmondi Residential Area, the respondent signed a lease agreement with the allottee and in all agreements

it was mentioned that the construction on the plot will be for residential purpose. If there be any violation of the lease agreement, allotment may be cancelled. The Dhanmondi Residential Area was established in a land of 472.64 acres which was acquired by the government and 121.75 acres remains as khas land. A total 1099 plots were allotted to the people. During the establishment of Dhanmondi Residential Area, some land was specified, recognized and identified as lake, play ground etc.

The petitioners seek a direction upon the respondents to stop functioning of commercial operation within the Dhanmondi Residential Area, Dhaka in continuous violation of the provision of law. The petitioners also seek to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to take necessary steps against the violation of provisions of law. By way of illegal operation of commercial institutions, a threat is imminent to the environment and the normal life and living of the residents are in critical condition. The matter is a public importance, so this petition may be treated as public interest litigation.

Per contra, affidavit in opposition has been filed by respondent no.10 particularly, who stated that the instant application styled as a public interest litigation which has been filed is not in public interest. Rather, it is specifically designed by a group of residents on a particular road that is Road no.10A.

Mr. Manzill Murshid, appearing on behalf of the petitioner submits that thousands of people are residing in the Dhanmondi Residential Area. The petitioners and all the residents of Dhanmondi residential area

purchased the land being informed through layout plan and prospectus published by the respondents about the existence of the residential character. Moreover if the Residential character of the area destroyed in that case the people will be dangerously suffered. He next submits that the Dhanmondi Residential Welfare Association several times made representation to the respondents to take positive steps to stop all activities of illegal commercial operations in Dhanmondi area. However, without any reasonable explanation the respondents have failed to take proper steps to prevent all the illegal activities. The learned Advocate points out that due attention should be given as the respondents are responsible for all sorts of construction within the capital city and they are under a duty to prevent any such illegal construction as per the Building Construction Act.

He further submits that the Ministry of Housing and Public Works has undergone a survey in the year of 1998 after issuing a notice published in the national dailies. A committee was formed by the Ministry consisting of some members with Mr. Abdul Kaium Executive Engineer as the convener. The committee after completing the field level survey prepared a list of illegal construction and illegal commercial institutions and illegal commercial institutions within the residential area and submitted their report on 07.03.1999. Mr. Murshid categorically points out that the report specifically mentions about the illegal construction and illegal commercial operations and in spite of the report, the respondents did not take any effective steps to stop functioning of commercial operations within the Dhanmondi Residential Area.

Mr. Md. Salim, learned Advocate appearing on behalf of the respondent no. 2 & 8, the Chairman RAJUK, Rajuk Bhaban, Dhaka and the Authorized Officer-1, RAJUK respectively submits that the respondent no.2 having prepared a report, several times served notice upon the residential plots owners for stopping the illegal commercial operation in the Dhanmondi Residential Area. He next submits that a list has been prepared regarding commercial Hospitals, commercial institutions and commercial restaurants of the Dhanmondi Residential Area. He contends that steps has already been taken to remove and evict the illegal commercial occupier from the residential plots.

Mr. Md. Mokleshur Rahman, learned Deputy Attorney General on behalf of the respondent no.9 filed an affidavit of compliance and submitted a full report giving particulars of the Schools, Colleges and Universities situated in the Dhanmondi Residential Area.

Mr. M. Amir-ul-Islam, with Mr. Rokan Uddin Mahmud and Mr. M. Moniruzzaman Asad appearing on behalf of the respondent no.10 submits that the petitioners are the President and Secretary of “Dhanmondi Residential Area Welfare Society”. From the resolution annexed as Annexure-A to the writ petition it is apparent that the name of the society is “Dhanmondi 10/A Residential Welfare Association”. Mr. Islam next submits that the members of the association are primarily concerned about the character of Road No.10/A of Dhanmondi Residential Area and not the Dhanmondi Area as a whole. He next submits that the petitioners have no reason to be aggrieved by the establishment of respondent no.10’s School on Road No.11A as the resolution itself speaks that there are admittedly

9/10 commercial establishments on road no.10 including Maple Leaf International School which is causing traffic jam and congestion in the area. Mr. Islam further contends that none of these commercial establishments have been impleaded as respondents. Rather, the petitioners have chosen to single out respondent no.10's educational establishment which is not on Road No.10A.

Mr. A.F. Hassan Ariff with Mr. T.M. Shakil Hassan, learned Advocates appearing on behalf of the respondent no.11 at the outset submits that in order to protect the character of Dhanmondi Residential Area and to stop commercial operation within the residential area, the resolution has authorized the petitioners to take legal steps so as to ensure that no new commercial establishments are established in Road No.10/A and the remaining Dhanmondi Area and to take steps to ensure that the existing establishments are not expanded. He next submits that there is no way in which the petitioners or the members of their association can be aggrieved by the establishment of any commercial building. The petitioners have no locus standi to question activities beyond Road No.10A and Members of "Road No.10A Kallyan Samity" are competent to authorize the petitioners to speak for residents of Road 10A only.

We have perused the application, its annexures and the affidavits in opposition filed by the respective respondents as well as affidavit-in-reply filed by the respondent no.9.

Before we embark to address the issue, we deem it prudent to address first on the ground of maintainability of this application under Article 102

of the Constitution. Having seen the nature of the public interest litigation in its present form, we find that the instant application under Article 102 although has been represented by an association pertaining to a particular road does not necessarily mean that they are not the localities and other areas of Dhanmondi are not affected. By way of illegal operation of commercial institutions, a threat is imminent to the environment and the normal life and living of the residents are in critical condition. The matter is of public importance and in that view of the matter, we find that this public interest litigation is maintainable under Article 102 which has been specifically filed in order to maintain and protect residential character of the Dhanmondi Residential Area as a whole and not of a particular road as advanced by the learned Advocate for the respondents.

In our quest for rapid industrial growth over the years, the environmental quality has come to be subordinated to developmental goals. We are now gradually heading towards irreversible environmental damage, due to widespread land degradation, water pollution, air pollution, mushrooming growth of slums and population explosion. The existing administrative and institutional framework is too feeble and ineffective to handle the challenge of environmental protection, which threatens our very survival. Hence, there is a need to have a new environmental ethos to meet the challenge. This is precisely where the role of an active judiciary comes in. We may profitably note the decision held in **Modern Educational and Cultural Society v. Nizam, RLW 2007 (4) Raj 3214**, where the allotment of an open space reserved as per approved scheme under Rajasthan Urban Areas (Sub-Division, Reconstruction and Improvement of Plots) Rules,

1975 by the Jaipur Development Authority to a private person/body for a school was held by the Single Judge to be illegal. The Division Bench in **Nizam v. Jaipur Development Authority, AIR 1994 Raj 87** affirmed this and held: “The action of JDA in making allotment of the site in question in favour of Modern School to establish a school is invalid and without jurisdiction, being contrary to the legislative intent to safeguard healthy, safety and general welfare the people of the locality. It was also opposed to the statutory Scheme/ Plan.”

The centre of gravity of justice has now shifted from traditional individual locus standi to the community orientation of public interest litigation. Nation’s progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. We feel no government can cope with the problem of environmental repair by itself alone; unless there is voluntary participation of the people in environmental management which is a must for sustainable development. There is certainly a need to create environmental awareness which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. As professor **Ben Boer, Environmental Law, Faculty of Law, University of Sydney, New South Wales, Australia**, in his article **“Implementing Sustainability”** observed as under :

“Strategies for sustainable development have been formulated in many countries in the past several years. Their implementation through legal and administrative mechanisms

is underway on a national and regional basis. The impetus for these strategies has come from documents such as the Stockholm Declaration of 1972, the world Conservation Strategy, the World Charter for Nature of 1982 and the report of the World Commission on Environment and Development and our Common Future. The initiatives are part of a worldwide movement for the introduction of National Conservation strategies based on the world conservation strategy.”

In the same articles, **Professor Boer** further observed in the said article as follows:

“Sustainability is defined in Caring for the Earth as a Characteristic or state that can be maintained indefinitely whilst development is defined as increasing the capacity to meet human needs and improve the quality of human life. What this seems to mean is to increase the efficiency of resources use in order to improve human living standards.”

This Court further notes the Public Trust Doctrine which is the concept of public trusteeship may be accepted as a basic principle for the protection of natural resources including the natural particular area which, in the instant case is the Dhanmondi Residential Area. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea , water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life.

In the case of *M.C. Mehta vs. Kamal Nath, (1997) 1 SCC, Page 388*

the court dealt with the Public Trust Doctrine in great detail: The court observed as under:

“35. We are fully aware, that the issue presented in this case illustrate the classic struggle between those members of the public who would preserve our ecological balance rivers, forests parks and open lands in their pristine purity and those charged with administrative responsibilities, who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent.

Reverting back to the case in hand, what transpires from the affidavit of compliance filed by respondent No. 9 is that Maple Leaf International School has 13 branches in different plots appertaining to Road 7/A, 10/A, 11/A, 12/A, 14/A of Dhanmandi Residential Area. It is pertinent to mention here that the premises of Maple Leaf International School presently situated at House No.44, Road No.11 A was originally situated at House No.37, Road No.5 from which it shifted in 2008. The premises in the earlier location had a trade licence. No trade licence in respect of the present premises could be shown although the Respondent No.10 applied for transfer of the trade licence to its premises.

During the course of the argument, we invited Mr. Fazle Noor Taposh as the intervener, who at the time of making his submission categorically mentioned and drew our attention to the systematic plot numbers as well as the Master Plan of the Dhanmondi Residential Area, in

which the commercial roads appertaining to the Dhanmondi Residential Area are stated as herein under:

Green Road, Mirpur Road, Road no.2 Road no.27(Old), Satmasjid road have been upgraded to commercial roads and any commercial establishment on these roads are assumed to be in accordance with the Building Construction Act and approved by the RAJUK.

Mr. Taposh submits that the Maple Leaf International School which is situated on this particular road, i.e., on Road 11 A has several branches in different areas of Dhanmondi residential area and it is time that the School shifts from the residential area to its own campus.

We are not oblivious of the fact that in contravention of the law, full-fledged commercial activities have been going on in Dhanmandi Residential Area, mounting pressure on the infrastructure in the form of traffic jams, non-availability of parking areas, noise pollution, water scarcity and others. Residents have a right to live peacefully in their earmarked space.

It appears that Maple Leaf International School has been running as a school for a very long time with licence and has been commercially operating as school in the residential area. We also note that the respondents no.2-8 not only served notices upon the owners of the flats in question but also served notices upon the owners of commercial businesses in operation particularly, schools, colleges, universities, clinics etc. As already stated before, Maple Leaf International School has several branches in several

roads of Dhanmandi Residential Area and it is time that the several branches of the school come under one roof and relocate itself to a suitable area.

We further note that respondent no.10 was directed to take steps for not allowing any car parking near the school during the school time and to appoint necessary manpower to monitor and control traffic management around the school. The respondent no.10 is directed to comply with the direction of this Court until the School shifts from the present holding to its own campus.

We thus propose to dispose of the application by giving certain directions which flow from the discussions and the conclusions reached by us hereinabove:

1. Unauthorized commercial operation/institutions in Dhanmandi Residential Area beyond condonable limits are to be stopped.
2. Where illegal constructions have already taken place beyond the plan approved by RAJUK, it should be nipped in the bud and be demolished immediately.
3. The RAJUK is directed to see whether any illegal construction has taken place, if so, the same should be demolished with prior notice to the occupier giving them six months time, so that they can relocate, if necessary.
4. We are aware that the government has taken a decision to allow the lease hold plots of the Dhanmandi Residential Area which are

adjacent to the main thoroughfare that abound and/or run through being Green Road, Mirpur Road, Road no.2, Satmasjid Road and Road No.27(Old) to be used for non residential purposes subject to the permission of the Government, which has to be obtained by the owners of the plots upon payments of conversion fees. The owners of the aforementioned plots will not be affected by this order.

5. Those who have applied before the RAJUK authority prior to filing of this writ petition and their plan has already been approved under the Building Construction Act, 1952 will not be affected by this Order.
6. In respect of Maple Leaf International School, Dhanmondi, House No.44, Road No.11A, Dhanmondi Residential Area, P.S. Dhanmondi, Dhaka Metropolitan Area, we direct the authorities of the Maple Leaf International School to relocate at a convenient place and move its campus within 3 (three) years from the date of receipt of this Judgment.
7. Other educational institutions or commercial establishments running in the Dhanmandi Residential Area without proper approval from RAJUK should relocate themselves as expeditiously as possible.

With the above directions, the Rule in this writ petition is disposed of without any order as to cost.

Farid Ahmed , J

I agree.