

**IN THE SUPREME COURT OF BANGLADESH**  
Appellate Division

**PRESENT**

*Mr. Justice Syed Mahmud Hossain, Chief Justice*  
*Mr. Justice Muhammad Imman Ali*  
*Mr. Justice Hasan Foez Siddique*  
*Mr. Justice Mirza Hussain Haider*  
*Ms. Justice Zinat Ara*  
*Mr. Justice Abu Bakar Siddiquee*  
*Mr. Justice Md. Nuruzzaman*

**CIVIL REVIEW PETITION NOS.305-306 OF 2015 WITH C.R.P. NOS.315-316 OF 2015 AND C.R.P. NO. 320 OF 2015 AND C.P. NO.2367 OF 2010**

(From the judgement and order dated 5<sup>th</sup> of August, 2015 passed by this Division in Civil Petitions for Leave to Appeal Nos.2489, 2632 and 2577 of 2010 and Writ Petition No. 639 of 2010)

Mahbubul Anam	... Petitioner (In C.R.P. No.305 of 2015)
Farid Uddin Ahmed Chowdhury and another	... Petitioners (In C.R.P. No.306 of 2015)
Md. Abul Bashar	... Petitioner (In C.R.P. No.315 of 2015)
Firoz Bokht Toaha and another	... Petitioners (In C.R.P. No.316 of 2015)
Md. Hafiz Ibrahim	... Petitioner (In C.R.P. No.320 of 2015)
Mohammad Faridul Alam and another	... Petitioners (In C.P. No.2367 of 2010)

= Versus =

Ministry of Land, represented by its Secretary Government of the People's Republic of Bangladesh and others	... Respondents (In all the cases)
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For the Petitioner (In C.R.P. Nos.305 and 315 of 2015)	: Mr. Rokan Uddin Mahmud Senior Advocate, with Mr. Mizan Sayyed, Advocate appeared with the leave of the Court, instructed by Syed Mahbubar Rahman Advocate-on-Record
For the Petitioners (In C.R.P. No.306 of 2015)	: Mr. Ajmalul Hossain Senior Advocate, instructed by Syed Mahbubar Rahman Advocate-on-Record
For the Petitioners (In C.R.P. No.316 of 2015)	: Mr. M.A. Samad, Senior Advocate instructed by Syed Mahbubar Rahman Advocate-on-Record

For the Petitioner : Mr. Probir Neogi  
(In C.R.P. No.320 of 2015) Senior Advocate, instructed by  
Mr. Taufique Hossain  
Advocate-on-Record

For the Petitioners : Mr. A.M. Aminuddin  
(In C.P. No.2367 of 2010) Senior Advocate, instructed by  
Mr. Zainul Abedin  
Advocate-on-Record

For the Respondents : Mr. Mahbubey Alam  
(In C.R.P. Nos.305 and 320 of 2015) Attorney General, with  
Mr. Biswajit Debnath  
Deputy Attorney General,  
instructed by, Mr. Haridas Paul  
Advocate-on-Record

For the Respondents : None represented  
(In C.R.P. Nos.306 and 315-316 of 2015)

For Respondent No.2 : Mr. Manzill Murshid, Advocate  
(In C.P. No.2367 of 2010) instructed by  
Mr. Md. Nurul Islam  
Advocate-on-Record

For Respondent Nos.1 & 3-4 : None represented  
(In C.P. No.2367 of 2010)

Date of hearing & judgement : The 9<sup>th</sup> of December, 2018

### **J U D G E M E N T**

**MUHAMMAD IMMAN ALI, J:-** These five review petitions and one civil petition for leave to appeal are directed against the judgement and order dated 05.08.2015 passed by this Division in Civil Petitions for Leave to Appeal Nos.2489, 2632, 2577 of 2010 (heard analogously with Civil Petitions for Leave to Appeal Nos.2423, 2574, 2591, 2633, 2647, 2651, 2662 to 2667 of 2010) dismissing the petitions challenging the judgement and order dated 22.07.2010 passed by the High Court Division in Writ Petition No.639 of 2010 which was heard along with Writ Petition Nos.1473 of 2010, 433 of 2010, 8638 of 2009, 468 of 2010, 640 of 2010, 689 of 2010, 579 of 2010, 1186 of 2010, 8635 of 2009, 8636 of 2009, 8637 of 2009, 551 of 2010, 1317 of 2010, 573 of 2010, 575 of 2010, 580 of 2010, 8639 of 2009, 567 of 2010, 512 of 2010, 686 of 2010, 721 of 2010, 775 of 2010, 568 of 2010, 583 of 2010, 698 of 2010, 699 of 2010, 519 of 2010, 536 of 2010,

480 of 2010, 481 of 2010, 501 of 2010, 511 of 2010, 893 of 2010, 894 of 2010, 1003 of 2010, 565 of 2010 and 692 of 2010 discharging the Rules *Nisi*.

The facts, relevant for disposal of the instant civil review petitions, are that all the writ petitions were filed challenging the memo No. জঃপ্র/কঃপ্র/রাজস্ব/২৪-৫৯/২০০৯-১০৫ dated 12.01.2010 issued by writ-respondent No.3, Deputy Commissioner, Cox's Bazar cancelling long term leases of lands in Hotel/Motel Zone of Cox's Bazar. The writ-petitioners stated, *inter alia*, that they were granted long term lease of various quanta of land in the Hotel/Motel Zone of Cox's Bazar by the proper authority for the purpose of constructing 1-5 star hotels and motels thereon by registered deed of agreement of different dates. The writ-petitioners paid the entire consideration money in instalments and were handed over possession of the lands and they have also mutated those lands in their respective names. As per terms of the lease deed the writ-petitioners started construction work also in their leasehold land after obtaining clearance from various authorities and have already invested big amounts of money for the construction in those plots. Some of the writ-petitioners have already completed their construction works in the leasehold land as per deed of agreement. In these circumstances, all of a sudden, the Deputy Commissioner, Cox's Bazar, without serving any show cause notice, issued the impugned memo cancelling the permanent lease of the said plots in favour of the writ-petitioners directing the writ-petitioners to hand over possession of those plots in favour of the Government.

Rules *Nisi* were issued in all those writ-petitions.

Writ-respondent No.1 Government contested those Rules by filing affidavit-in-opposition.

The material case of writ-respondent No.1 is that in order to protect the environment and the ecosystem of the largest sea beach area of Cox's Bazar, the Government issued a Gazette Notification on 19.04.1999 declaring the area in question as Ecologically Critical Area (ECA) and also prohibiting any change of the nature of the land and water of that area. As such the construction of Hotel/Motel in that Ecologically Critical Area is totally illegal, inasmuch as any such construction will frustrate the purpose of that Gazette Notification. In the affidavit-in-opposition it was alleged also that as per the lease agreement the lessees were to make the constructions in their leasehold land within one year from the date of lease agreement which the lessees could not comply and for this reason also the lessor was empowered to cancel the lease unilaterally as per terms of that lease deed. It has further been alleged in that affidavit-in-opposition that some of the writ-petitioners, violating the conditions of the lease deed, constructed multistoried buildings and sold out flats of that building to different persons instead of constructing hotels/motels in those plots as per terms of the lease deed.

After hearing the parties and considering the materials on record, the High Court Division discharged the Rules *Nisi* giving some directions, one of which was to return the lease money to the lessees. Being aggrieved, the writ-petitioners filed the above mentioned civil petitions for leave to appeal which upon hearing the parties were

dismissed by this Division. Hence, the petitioners are now before us having filed the instant civil review petitions.

Mr. Rokan Uddin Mahmud, learned Senior Advocate with Mr. Mizan Sayyed, learned Advocate appeared on behalf of the petitioners in Civil Review Petition No.305 and 315 of 2015, Mr. Ajmalul Hossain, learned Senior Advocate appeared on behalf of the petitioners in Civil Review Petition No.306 of 2015, Mr. M. A. Samad, learned Senior Advocate appeared on behalf of the petitioners in Civil Review Petition No.316 of 2015, Mr. Probir Neogi, learned Senior Advocate appeared on behalf of the petitioner in Civil Review Petition No.320 of 2015 and Mr. A.M. Aminuddin, learned Senior Advocate appeared on behalf of the petitioner in Civil Petition for Leave to Appeal No.2367 of 2010.

It was submitted on behalf of the petitioners that this Division has committed an error on the face of the record in not considering that the hotel/motel zone, including the plots of the petitioners, does not fall within the purview of the "ecologically critical area" as described in the Government Notification No.পবম/৪/৭/৮৭/৯৯/২৪৫ dated 19.04.1999 and the said Notification was amended by a subsequent Notification No. পবম/৪/৭/৮৭/৯৯/২৬৯ dated 03.05.1999 whereby Cox's Bazar-Teknaf Sea Beach and Sonadia Island were excluded from the areas previously declared by the said Notification dated 19.04.1999 as "ecologically critical area" and hence, this Division committed an error apparent on the face of the record in upholding the decision of the High Court Division. It is submitted that the plots of the petitioners situated within the hotel/motel zone by no manner of application can be considered as "ecologically critical area" within the

meaning of the said Notification dated 19.04.1999 as amended subsequently by Notification dated 03.05.1999 which made it more clear that the hotel/motel zone including the plots of the petitioners do not fall within the "ecologically critical area" and the same also has been confirmed by the Directorate of Environment, Cox's Bazar Office, Saimon Road, Cox's Bazar vide Memo No.পঅ/কঃজেঃকাঃ/ছাড়াপত্র/১৪৩২/২০১৫/৫২৭ dated 02.11.2015 by recent certificate issued by him upon physical verification and, therefore, this Division committed a patent error apparent on the face of the record in upholding the decision of the High Court Division that needs to be reviewed. It is submitted that the review petitioners *bona fide* feel that they would be deprived of getting proper justice if the judgement and order dated 05.08.2015 passed by this Division in above mentioned civil petitions for leave to appeal is not reviewed for ends of justice, particularly when the learned Advocate for the review petitioner never conceded that "the location of the land in question have been declared by the Government as 'Ecologically Critical Area' by a Gazette Notification dated 19.04.1999 and that the petitioners were granted lease of this land violating this gazette notification which has prohibited also any construction in such land" as mentioned by this Division in its judgement and order dated 05.08.2015.

In addition Mr. Ajmalul Hossain, learned Senior Advocate appearing for the petitioners in Civil Review Petition No. 306 of 2015 made the following submissions:

This Court fell into error in coming to the conclusion that "the leave petitioners ..... did not deny the fact that

the location of the land in question have been declared by the Government as Ecologically Critical Area by Gazette Notification dated 19.04.1999 and that the petitioners were granted lease of this land violating this Gazette Notification which has prohibited also any construction in such land". It is submitted that this finding is an error apparent on the face on the record, and thus reviewable. He submitted that the plot of the review petitioner is not within the ECA and the authority illegally cancelled the petitioners' registered lease deed. He further submitted that no evidence was placed on the record by the Government before the High Court Division that any notice was given to the petitioners to cancel their leases on the ground that the petitioner's plot was in the ECA. The only notice of cancellation is the one relating to failure to get plans approved for construction and which point was conceded. He further submitted that there was no evidence placed before the High Court Division that the subject plot of the petitioners, namely plot 10 on Road No.1, Marine Drive is within the ECA. In contrast, it is submitted that there is substantial body of evidence before the Court coming from at least three Government departments, namely the DC's office, the Revenue Department and the Department of Environment dated 26.08.2015, which shows that the petitioners' plot is not within the ECA.

Mr. Rokan Uddin Mahmud, learned Senior Advocate appearing with Mr. Mizan Sayeed, learned Advocate for the petitioner in Civil Review Petition Nos.315 of 2015 and 305 of 2015 made additional submissions as follows:

The petitioner persistently argued that the entire Hotel/Motel Zone is outside the area of the maritime boundary of "ECA" which has already been substantiated by a number of credible documents. In addition to that the petitioner has already submitted the videography with aerial scene of the entire Hotel/Motel Zone and some still photographs of the Hotels/Motels within the Hotel/Motel Zone which are in existence from long since. These Hotels are fully functional at the moment and doing business without any hindrance within the same area. There are as many as 20 Hotels (3-star to 5-star standard) (including Hotel Radison Blu which is under construction) within the Hotel/Motel Zone. The owners of the said Hotels have invested more than 20,000 (twenty thousand) crores (Approx.) in establishing those Hotels/Motels. He submitted that it would be a travesty of justice and an example of sheer discrimination and violation of equality clause as guaranteed by the Constitution under Art.27 if the plot of the petitioner (along with those of the other Review Petitioners)-is allowed to be cancelled on a false plea that the same (along with other plots of the Hotel/Motel Zone) falls within ECA and conversely the other existing Hotels are allowed to be continued despite the fact that all plots within the same area deserve equal treatment and fairness. In other words, if the existing structures in the Hotel/Motel Zone can be allowed to exist, then the plot of the petitioner is also liable to exist and not to be cancelled. He further submitted that the Cox's Bazar Sea Beach Area is excluded for the ECA, which has been overlooked by this Division and hence the impugned decision is liable to be reviewed.



Mr. Mahbubey Alam, learned Attorney General, appeared on behalf of the respondents in Civil Review Petition Nos.305 and 320 of 2015 and Mr. Manzill Murshid, learned Advocate, appeared on behalf of respondent No.2 in Civil Petition for Leave to Appeal No.2367 of 2010 and made submissions in support of the impugned judgements and orders of this Division and of the High Court Division. The learned Attorney General submitted that the plots in question are all within Mouza Jhilanja which is within the ECA and is protected by the prohibitions mentioned in the Notification dated 19.04.1999. He submitted that by the subsequent Notification dated 03.05.1999 only the reserve forest areas are excluded from the ECA, and not the sea beach area. He submitted that the subsequent letter dated 02.11.2015 issued by the Department of Environment was somehow procured after the judgement was delivered by the High Court Division. He submitted that this letter was issued at the behest of only one of parties who litigated before the High Court Division and cannot override the Notification dated 19.04.1999 which was published in the Official Gazette. Moreover, there is nothing in the gazette notification to suggest that 'Nal' land will be excluded from the ECA.

We have considered the submissions of the learned Advocates for the parties concerned, perused the judgements sought to be reviewed and the judgement and order of the High Court Division under challenge in the civil petition for leave to appeal and other connected papers on record.

In the impugned judgement this Division noted that "the learned Counsel for the leave-petitioners though have made some submissions in support of their respective leave

petitions but did not deny the fact that the location of the land in question have been declared by the Government as Ecologically Critical Area by a Gazette Notification dated 19.04.1999 and that the petitioners were granted lease of this land violating this gazette notification which has prohibited also any construction in such land."

Although the basis of the observation is now denied by the petitioners, we find that they are now relying heavily on the contention that the Cox's Bazar to Teknaf Sea Beach has been excluded by a subsequent Notification dated 03.05.1999. This aspect will be discussed later.

We find from the judgement of the High Court Division that two substantive issues were agitated before that Division by the petitioners. Firstly, that the cancellation of their lease deeds for non-compliance with the conditions of the lease deed was illegal since no notice was given to them before the cancellation. Secondly, the respondents belatedly urged the point that the plots fell within the ECA.

With regard to the claim of illegal cancellation of the leases, we find from the papers submitted by the respondents, that the leases were all cancelled due to the fact that the plots were found empty, i.e. no construction had taken place. Therefore, the petitioners were in breach of the terms and conditions specified in the lease deeds.

From the judgement of the High Court Division it appears that initially the leases/allotments were cancelled due to breach in terms and conditions of the lease, and the respondents in their affidavits-in-opposition substantiated their action in cancelling the leases by pointing to the

breaches alleged. However, we see from the submissions made by the learned Attorney General before the High Court Division that the thrust of the respondents' case changed to the preservation of ecological balance in the environment and protection of natural resources. Here the case turned to a new dimension, i.e. the protection of natural resources for the benefit of the public. The learned Attorney General went so far as to submit that the Government had granted the leases without taking notice of the Notification dated 19.04.1999 declaring the Cox's Bazar Sea Beach as Ecologically Critical Area under section 5 of the Bangladesh Environment Conservation Act 1995.

In response to the new dimension introduced by the learned Attorney General, learned Counsel appearing for the petitioners have turned their attention to the second Notification dated 03.05.1999, by which, according to them, their plots were excluded from the ECA.

At the outset, we note that Cox's Bazar to Teknaf is reputed to be the longest natural sand beach in the world stretching for 120 kilometres (70 miles). This bounty has been bestowed upon us by the Almighty Creator. We should all endeavour to protect and preserve this national asset which undoubtedly brings benefits for our economy, but more importantly leaves a heritage for our offspring-our future generations.

The learned Attorney General most zealously made submissions stirring emotions for the sake of preserving the natural heritage of our country. He went so far as to suggest that those officials, who granted leases in spite of prohibitions in the Notification dated 19.04.1999, did so

illegally, perhaps due to extrinsic considerations, forgetting the national interests.

Be that as it may. The crux of the submissions of the learned Counsel for the review petitioners is that the plots of land in question were given on long lease to the petitioners and they have spent huge sums of money in developing them for commercial purposes. Their leases have been cancelled without giving any notice and without affording any opportunity to be heard. Moreover, they argue that the new ground for cancelling the leases, i.e. that the plots are within the ECA, is not sustainable since the subsequent Notification dated 03.05.1999 excluded the plots along the Cox's Bazar to Teknaf Sea Beach from the ECA. Therefore, the prohibitions upon commercial development of the plots mentioned in the Notification dated 19.04.1999, are no longer applicable to the plots of the review petitioners.

We find from the judgement of the High Court Division that both the substantive submissions now placed before us were placed before the High Court Division and have been dealt with in that judgement.

With regard to the submission that the plots have been excluded in the later Notification dated 03.05.1999, the High Court Division held as follows:

"We have meticulously examined the notification dated 03.05.1999 by which certain areas were excluded from the declaration and found that "কক্সবাজার জেলার কক্সবাজার-টেকনাফ সমুদ্র সৈকত ও সোনাদিয়া দ্বীপ এর সংশ্লিষ্ট রিজার্ভ ফরেস্ট এলাকাসমূহ, বর্ণিত প্রজ্ঞাপন উল্লেখিত বিধি নিষেধের আওতা বহির্ভূত করা হল।" Thus this clearly means that রিজার্ভ ফরেস্ট এলাকাসমূহ, বর্ণিত প্রজ্ঞাপন উল্লেখিত বিধি নিষেধের আওতা বহির্ভূত করা হল। This means "Reserved Forest Area" of the Cox's Bazar

Sea Beach has been excluded from the Ecologically Critical Area but not the Cox's Bazar Sea Beach from the declaration of Ecologically Critical Area." The same argument has been made before us with more force by eminent Senior Advocates.

There is no ambiguity about the Notification dated 19.04.1999, by which, among others, the Sea Beach from Cox's Bazar to Teknaf, including Jhilanja Mouza, was included in the ECA. And that was done to protect the natural and ecological balance of the areas in question.

In the additional paper book dated 06.08.2017 the respondents have annexed papers which clearly show that all the plots of the present petitioners are within Jhilanja Mouza, which was included in the ECA by Notification dated 19.04.1999. The said Notification was published in the Official Gazette. However, on 03.05.1999 a further Notification was published partly amending the earlier Notification. The petitioners claim that **this** last mentioned Notification has excluded their plots from the ECA.

The Notification dated 03.05.1999 provides as follows:

“গণপ্রজাতন্ত্রী বাংলা-দশ সরকার  
পরি-বশ ও বন মন্ত্রণালয়  
শাখা-৪

নং পবম ৪/৭/৮৭/৯৯/

২০/০১/১৪০৬ বাং

তারিখঃ

০৩/০৫/১৯৯৯ ইং

প্রজ্ঞাপন

পরিবেশগত সংকটাপন্ন এলাকা সংক্রান্ত পরি-বশ ও বন মন্ত্রণালয়-র ১৯-০৪-৯৯ ইং তারি-খর পবম-৪/৭/৮৭/৯৯/২৪৫ সংখ্যক প্রজ্ঞাপনের আংশিক সংশোধনক্রমে বা-গরহাট, খুলনা ও সাতক্ষীরা জেলার সুন্দরবন রিজার্ভ ফরেস্ট এলাকা এবং কক্সবাজার জেলার কক্সবাজার-টেকনাফ সমুদ্র সৈকত ও সোনাদিয়া দ্বীপ এর সংশ্লিষ্ট রিজার্ভ ফ-রস্ট এলাকাসমূহ, বর্ণিত প্রজ্ঞাপনে উল্লেখিত বিধি নিষেধের আওতা বহির্ভূত করা হলো। উক্ত প্রজ্ঞাপনে উল্লিখিত অন্যান্য এলাকাসমূহে জারীকৃত প্রজ্ঞাপনের বিধি নিষেধ যথারীতি বহাল থাক-ব।

২। রিজার্ভ ফ-রস্ট এলাকা বন অধিদপ্ত-র নিয়ন্ত্রণাধীন হওয়ায় এবং বন ব্যবস্থাপনার জন্য সুনির্দিষ্ট আইন, বিধি ও ব্যবস্থাপনা পরিকল্পনা থাকায় উ-ল্লিখিত রিজার্ভ ফ-রস্ট এর আওতাধীন এলাকায় যাবতীয় কার্যাবলী বন আইন, বন্য প্রাণী সংরক্ষণ আইন এবং সরকার অনু-মাদিত কার্যকরী পরিকল্পনা অনুযায়ী সকল সম্পদ সংরক্ষণ ও ব্যবস্থাপনা করা হ-ব।

৩। এই আ-দশ অবিল-ম্ব কার্যকর হ-ব।

রাষ্ট্রপতির আদেশক্রমে

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সচিব”

The petitioners claim that the Sea Beach from Cox's Bazar to Teknaf within Cox's Bazar District is excluded from the ECA.

However, we must construe the Notification in its totality. It is clear that the sentence read as a whole refers to the "Reserve Forest areas of the Sundarbans in Bagerhat, Khulna and Satkhira District," and the "Reserve Forest areas of the sea beach within Cox's Bazar District from Cox's Bazar to Teknaf and Sonadia Island."

Clause 2 of the said Notification makes it clear that the Reserve Forest areas are being excluded from the ECA due to the fact that they are under the control of the Forest Department and are governed by other specific laws, rules and management plans.

The High Court Division was absolutely correct in holding that the plots in question are not excluded from the ECA. The exclusion of the petitioners' plots from the ECA being the main thrust of their submissions, we do not find any merit in the review petitions.

The review petitioners also adverted to the letter dated 02.11.2015 issued by the Department of Environment which states that the plot in question has been described as 'Nal' land and is, therefore, not included in the ECA. We note that this is a letter issued at the request of one of the writ-petitioners after the High Court Division delivered its judgement. We agree with the submission of the learned Attorney General that such a letter cannot override the gazette notification which has included all the area of a

particular Mouza, namely Jhilanja Mouza. In that notification no exception has been made on the basis of category of land. The Notification dated 19.04.1999 has simply included all land within Jhilanja Mouza as ECA. Hence, we find the letter dated 02.11.2015 is misconceived and contravenes the official gazette. The said letter is, therefore, of no legal effect.

Before concluding, we must appreciate the zeal with which the learned Attorney General made his submissions for the sake of preserving our natural resources. His sentiments are laudable as is the apparent policy of the Government to protect the environment and the natural resources of this country. However, we hope that in the days and years to come the Government will adhere to the policy of preservation of the ecological balance and protection of the natural resources of our country not only for our future generations, but also to ensure protection of the environment from degradation and the harmful effects of climate change. Certainly, this much we owe to our progeny. It would indeed be a travesty of justice if the petitioners having been deprived of their business opportunities, the plots are leased out to others for the purpose of construction and commercial development.

We, therefore, direct that all leases within Jhilanja Mouza granted after 19.04.1999 be cancelled in the same way as those of the writ-petitioners and any constructions made thereon be demolished. Of course, the lease holders shall be compensated for their loss due to such cancellation/demolition. We further direct that henceforth

no lease shall be granted within Jhilanja Mouza or any area which has been classified as ecologically critical area.

We finally re-iterate that the petitioners shall be fully compensated for their loss due to the cancellation of their leases, in accordance with the decision of the High Court Division.

In the light of the above discussion, all the review petitions and Civil Petition for Leave to appeal No.2367 of 2010 are dismissed.

**CJ.**

**J.**

**J.**

**J.**

**J.**

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**J.**