

ENVIRONMENTAL PROTECTION, ‘COMPLETE JUSTICE’ AND CONSTITUTIONAL RIGHTS: ANALYSING THE BANGLADESH SUPREME COURT’S DECISION IN *METRO MAKERS VS BELA*

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ABSTRACT

This paper analyses the judgment of Bangladesh Supreme Court in Metro Makers vs BELA focusing the legality of a housing project in a wetland area near the capital Dhaka. The Court applied its extraordinary power underlying the constitutional principle of ‘complete justice’ to provide a restorative remedy for degrading the wetland area. The significance of utilising the principle in the case is that the Supreme Court expanded, quite innovatively, the conventional scope of applying such special power to the protection of the environment and ecosystem. This paper demonstrates how constitutional right to life and right to property are applied by the Court in dealing with ecological damage resulting from the breaches of planning law instruments and environmental statutes. The study finds that there is no absolute liberty for the citizens to buy or enjoy lands on the ground of constitutional right to property but are obliged to comply with the planning and environmental laws too. The legal protection of the environment and ecological resources may accordingly depend on the regulated communities’ legitimate and restricted exercise of the property rights. This study argues that the Bangladesh Supreme Court adopts a holistic approach in interpreting statutory environmental provisions and constitutional rights involving citizens’ life and property to enhance ecological protection and restorative justice. The Metro Makers vs BELA thereby settled several legal and constitutional issues in relation to ecological conservation, helping to develop the realm of environmental law and jurisprudence in Bangladesh.

I. INTRODUCTION

*Metro Makers vs BELA*¹ is a landmark case on the environmental legal landscape of Bangladesh. Despite the country’s Supreme Court established a set

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¹ *Metro Makers and Developers Limited vs Bangladesh Environmental Lawyers Association (BELA)* 65 (2013) DLR (AD) 189. The full judgment of this case was published also in the *Oxford Reports on International Law in Domestic Courts* on, March 18, 2019 <opil.ouplaw.com/view/10.1093/illdc/2980bd12.case.1/law-ildc-2980bd12?rskey=VFbEPf&result=1&prd=OPIL> (Last visited on October 25, 2020).

of precedents in legal protection of the environment and natural resources, the Bangladesh Constitution has not included yet an explicit right to the environment. However, the fifteenth amendment of the Constitution added a new article whereby the “State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wildlife for the present and future citizens.”² This provision is included in the Part II of the Constitution which lists some fundamental principles of state policy that are not directly judicially enforceable.³ On the other hand, Bangladesh Constitution includes the right to life as one of the fundamental rights,⁴ and such rights are justifiable before the court of law. The Supreme Court in several decisions liberally interpreted the right to life recognising the environmental rights within its ambit and granted further the activist organisations the standing to sue for protection of the collective right of the people.⁵ *Metro Makers vs BELA*⁶ is a recent environmental case of such a nature, which has reinforced the existing judicial principles about environmental protection and provided some significant insights concerning the enjoyment of property right, implication of the right to life and ‘complete justice’ in relation to ecological conservation.

In *Metro Makers vs BELA*⁷, the Appellate Division of Bangladesh Supreme Court opened a new horizon of environmental legal action by applying the constitutional power of ‘complete justice’ to conserve wetlands for the purpose of protecting the environment and ecology of Dhaka city. This is a very wide and unique power bestowed upon the higher courts in some South Asian countries.⁸ This power is a distinct feature of South Asian judicial constitutionalism, and it

² Art 18A, the Constitution of the People’s Republic of Bangladesh, 1972 [hereinafter referred as ‘the Constitution’].

³ On the fundamental principles of state policy and environmental justice, see Karim, M.S., *Shipbreaking in Developing Countries: A Requiem for Environmental Justice from the Perspective of Bangladesh*, London and New York: Routledge, 2018, at pp. 37 – 43; Aktar, N., and Hasanat, A., “Judicial Protection of the Environment in Bangladesh: A Comparative Overview” 17 (2018) *Judicial Administration Training Institute Journal*, pp. 80-91.

⁴ Arts. 31 and 32 of the Constitution.

⁵ *Dr Mohiuddin Farooque vs Bangladesh and Others* 48 (1996) DLR (HCD) 438; *Dr Mohiuddin Farooque vs Bangladesh and Others* 49 (1997) DLR (AD) 1; *Dr Mohiuddin Farooque vs Bangladesh and Others* 55 (2003) DLR (HCD) 69; *Rabia Bhuiyan, MP vs Ministry of LGRD* 59 (2007) DLR (AD) 176. Also see Karim, *supra* note 3.

⁶ *supra* note 1.

⁷ *ibid.*

⁸ See Krishnan, R.H., and Bhaskar, A., “Article 142 of the Indian Constitution on the Thin Line between Judicial Activism and Restraint”, in Khurshid, S. et al (eds), *Judicial Review: Process, Powers, and Problems -Essays in Honour of Upendra Baxi*, New Delhi, Cambridge University Press, 2020, pp. 341-364, at pp. 348-352.

helps the courts extraordinarily to provide appropriate and just remedies.⁹ In Bangladesh, this power is reserved for only the highest court of the country and the Court for the first time used this power in *Metro Makers vs BELA* for protection of the environment. It also explained several critical legal issues relating to land use, wetland conservation, and property rights in the context of statutory laws such as the *Waterbodies Act, 2000*¹⁰ and the constitutional law provisions such as the right to life clauses. This case also emerged as a good example that shows an overlap of constitutional rights provisions with the statutory environmental and planning laws for the protection of the wetlands and the ecology.

II. CASE BACKGROUND

Dhaka, the capital city of Bangladesh is one of most densely populated megacities in the world. This megacity is facing serious problem of “unplanned urbanisation and destruction of water bodies”¹¹ and increasing number of illegal housing projects is a major concern for the sustainability of the city.¹² While such illegal projects by private companies mitigate housing problems of some people, they surely affect environmental rights of the urban community in the capital, creating an unsustainable trend of land development. Metro Makers and Developers Ltd (hereinafter referred as Metro Makers), a private real estate company, undertook a project in a large wetlands area near Dhaka. The wetlands were seasonally used as water reservoirs and natural drainage systems for passing out floodwater from the surrounding area. Consequently, they were classified as sub flood flow zone in the Master Plan of Dhaka city adopted under the Town Improvement Act, 1953. Metro Makers, however, started to fill earth on the wetlands to prepare housing plots and offered to sell the plots to potential customers, despite the *Rajdhani Unnayan Kartripakkha* (RAJUK)¹³, the incumbent statutory body overseeing planning and development activities in the area, rejecting its application to carry out the development. It also continued to advertise plot sale, violating a stay order passed by the High Court Division of the Bangladesh Supreme Court in writ petition no. 5103 of 2003 filed by the company itself. In this situation, Bangladesh Environmental Lawyers Association

⁹ *ibid.*, at p. 342.

¹⁰ Mohanagari, bibhagio shohor o jela shohorer pauro elakaso ho desher sokol pauro elakar khelar matha, unmukta sthan, uddan ebong prakritik joladhar sanrakkhan ain, 2000 (Act XXXVI of 2000) can be translated as the Waterbodies Act, 2000 and through this paper it shall be referred as the Waterbodies Act, 2000.

¹¹ ‘Stop all illegal housing projects’ *The Daily Star*, Dhaka, 10 August 2017, <thedailystar.net/city/stop-all-illegal-housing-projects-1446277?amp> (Last visited on July 10, 2020).

¹² Akther, S., and Islam, I., “Ethics and Professionalism in Planning Practice: An Experience from Dhaka” in Thakur, R. R., et al (eds), *Urban and Regional Planning and Development*, Cham: Springer, 2020, pp. 389-403, at p. 396.

¹³ RAJUK (Rajdhani Unnayan Kartripakkha) can be translated as “the Capital Development Authority.”