

## Lost land areas should return to public

*Punish illegal occupants, adopt land use policy and stick by it*

**T**HE plunder of land resources has reached a critical state as is evident from the disclosure in parliament of the land minister and state minister for environment and forest on Thursday. It is now known that around 13 lakh acres of khas land, both farm and non-farm, including large forest swathes, has been expropriated and held in illegal possession by individuals, industries and businesses over the years.

Such turning of public lands into personal fiefdoms is nothing short of a national betrayal perpetrated through connective tissues of power and influence over the years by default of the patently culpable variety. But now that the government has woken up to the criminal denial of resources that belong to the public it must go the whole hog in ensuring that these are fully restored to the people. Basically, those who have committed the illegalities should be criminally charged with full weight of the powers of the state bearing down on them.

No government worth its salt in any country whatsoever of whatever size would have countenanced the land grabbing on any scale but this is all the more damning and culpable in our context, especially given the magnitude of expropriation blatantly taking place in such a land-short and populous country like Bangladesh.

It is the fundamental lack of an overarching land usage policy, far less implementation of any semblance of it, that has given a free hand to wheeling and dealing with our land resources. Therefore, what the startling disclosure about the extent of land loss to illegal possession should lead to are serious, energetic and focused efforts climaxing in the formulation of a balanced land use policy that is home grown and yet based on best practice methods projected into the future. We broadly need optimal land utilisation in such areas as forestry, habitat formation and sustenance, infrastructure building, industrialisation, agriculture, fishery and horticulture.

A land constrained country smarting under population pressure and the prospect of being a victim to global warming has all the requirements in the world to cater to basic demands for: a) housing; b) more food; and c) industrialisation to increase livelihood options. Each of these three basic claimants to land is as strong as the other. The population now hovering at 150 million is projected to be 220 million by 2025. To that extent, our basic needs are poised to multiply and in view of this overriding reality, it is a stupendous intellectual challenge to address such a perspective with an adequate, sustainable and effective land use policy. There is no trifling with a land management and usage policy and concrete steps towards it must be taken without any further loss of time.

## Reckless driving takes toll of five-year olds

*A special committee needed to address the sharp deterioration in road safety*

**W**ITHIN hours of each other, two school-going children, Hamim Sheikh and Sujon, both chillingly five-year old, lost their lives in accidents, one near the Kakrail intersection in front of Willes Little Flower School, and the other on Dhaka-Mymensingh highway in Gazipur sending shock waves throughout the country. The mother accompanying the first child and the second child's elder brother who was with him sustained serious injuries.

The way the child was run over by a speeding bus in the first incident, that too at an intersection where traffic was supposed to be slowest, more so, because of the proximity to a school, and the over-speeding that caused the second, have given rise to a number of questions in the public mind about traffic management and some of its crucial aspects. It should set off the alarm bell about the new low road safety has touched in the city streets and busy highways.

The thought of such large bodied transports plying without fitness certificates topped off by mostly helper-turned drivers operating with fake licences, without side or rear view mirrors and blindly following the instructions of helpers is as atrocious as it is outrageous. All of this is a ringing indictment on inefficiency, corruption and malpractice in the regulatory authorities.

It is the job of the Bangladesh Road Transport Authority (BRTA) to certify the fitness of the vehicles and that of the drivers. And the traffic police and whatever we have by way of highway police, have on-the-ground responsibilities to check on things vital to road safety. How can they turn a blind eye to the consequences of some of their actions? Of course, the BRTA is over-worked and so is the traffic police authority but that should not lead to a willful neglect of duty or any resigned attitude to given obligations. We believe, unless the tyranny of vested groups having stake in deceitfully authorising transports and drivers to operate is stymied, the ills will continue to eat into the vitals of the system of traffic regulation, surveillance and management will continue.

The steep decline in road safety is nothing short of transport terrorism. We suggest that the relevant parliamentary standing committee in consultation with citizens groups and expert bodies set up a special committee to recommend ways and means to re-equip and reform the traffic regulatory.

Our heart goes out in sympathy for the accident victims and the bereaved. It is time the government arranged to compensate for the losses by having the transport owners pay up and punish those responsible for the accidents.

## Removing innovations from the constitution

We have to understand that the importance of this decision arises from the fact that it is restoring the spirit of the 1972 Constitution and also asserting that imposing martial law or usurping power through any extra-constitutional means will always be treated as illegitimate.

MUHAMMAD ZAMIR

**A** legal process initiated on April 28, 1972, by the Bangladesh Italian Marble Works pertaining to a dispute over a cinema hall at Wise Ghat in old Dhaka has eventually led to the possible restoration of the original pristine features of our Constitution.

The dispute started with the possession of the hall, but the legal process subsequently led to the government being asked to explain why 'ratification and confirmation' of the Abandoned Properties (Supplementary Provisions) Regulation 1977 (Martial Law Regulation VII of 1977) and Proclamation (Amendments) Order 1977 with regard to insertion of Paragraph 3A to the Fourth Schedule of the constitution by the Fifth Amendment to the Constitution would not be declared illegal.

This judicial dynamics continued through several tiers over the next few decades and exhaustively dealt with the nuances, connotations and denotations of different enactments and various Orders and Amendments issued and made between 15 August 1975 and April 1978.

Eventually, the High Court bench of Justice ABM Khairul Huq and Justice ATM Fazley Kabir on August 29, 2005, delivered a verdict declaring illegal and void the Fifth Amendment (which had special bearing for the case) and the Martial Law regulations issued between August 15, 1975 and April 1979.

The verdict, however, also pointed out that '... all acts and things done and actions and proceedings taken during the period from August 15, 1975 to April 9, 1979, are condoned as past and closed transactions.' This was construed to mean that according to the verdict, such matters would not be deemed illegal or void under the declaration the court had made. The court also observed that 'condonations of provisions were made, among others, in respect of provisions, deleting the various provisions of the Fourth Amendment but no condonation of the provisions was allowed in respect of omission of any provision enshrined in the original constitution'. It was also pointed out that 'the Preamble, Article 6, 8, 9, 10, 12, 25, 38 and 142' will 'remain as it was in the original constitution'. In addition, 'Article 95, as amended by the Second Proclamation Order No IV of 1976' was 'declared valid and retained.'

When the HC delivered the judgment in 2005, the BNP-Jamaat led four-party alliance was in power, and the government sought to appeal against the verdict. This process however remained incomplete over the next few years. Matters changed after the present government assumed office. They decided not to challenge the verdict. Seeing this, the Bangladesh Nationalist Party's Secretary General and three other lawyers filed two provisional petitions on May 3,

2009 seeking permission to appeal against the High Court verdict.

In response, the Chief Justice-led six member bench of the Appellate Division has now pronounced that 'the petitions for leave to appeal are dismissed with modifications and observations'. Some have argued that this suggests a degree of uncertainty with regard to which parts of the High Court verdict will be upheld and retained by the highest court.

The BNP has seized on this slight lack of clarity to point out that one needs to wait and see whether restoration of the provisions would require further enactment of the Parliament. This view, as expected, has not been accepted by those associated with the Office of the Attorney General and they have held that only a reprint of the constitution with the addition, alteration and substitution of the provisions, as to be directed in the final judgment, will be enough for the restoration of these provisions. The Attorney General quite rightly has referred to the process of revival of the original Article 100 as a precedent.

Nevertheless, the Law Minister has mentioned that the Law Commission would be asked for their opinion with regard to the implementation of the judgment and if the Law Commission suggests any enactment by the Parliament, such a course of action would receive consideration. This is constructive engagement at work.

The way ahead will be complex and definitely contentious. We will have to deal with sensitive issues and ramifications pertaining to religion and fundamental principles of state policy. That will, among others include the reverting of citizens being known as 'Bangalees' as opposed to 'Bangladeshis' (Article 6).

One thing is however clear. The decision has possibly paved the way for the return of the Constitution to the four fundamental principles of the state -- nationality, socialism, democracy and secularism -- as stipulated in the original Constitution (under Article 8). Restoration of the original Article 9 will also mean the re-affirmation of our ethos as represented through our war of independence. In this context, it would however be important to see if references towards encouragement of local government institutions and participation of women in all spheres of life (included in amended Articles 9 and 10) are somehow retained.

It would similarly be interesting to see how principles enunciated earlier in the original provisions and later amended in Article 38 (barring the right to form associations or unions where members might have religion for its object and pursue a political purpose) and that in Article 42 (related to acquisition, nationalization or requisition and compensation) are dealt with.

In addition, there will have to be a very careful consideration of Article 142 which



at various times has been amended through the Second Amendment, the Fifth Amendment and also the Twelfth Amendment. It refers to crucial aspects associated with the parliamentary process and will need to be handled with caution.

Some lawyers have expressed the opinion that the declaration of the Fifth Amendment being illegal might denote the revival of the Fourth Amendment which had introduced a presidential form of government and a one-party system in January 1975. This has been a deliberate attempt aimed at creating controversy and misleading the nation. This is not so. It is a matter of relief that our Law Minister has already clarified this issue by pointing out that the 12<sup>th</sup> and other Amendments had scotched that possibility.

We have to understand that the importance of this decision arises from the fact that it is restoring the spirit of the 1972 Constitution and also asserting that imposing martial law or usurping power through any extra-constitutional means will always be treated as illegitimate.

The Fifth Amendment, to one like me,

has always remained as a symbol of mis-governance whereby ratification was granted to actions that not only destroyed the basic character of our Constitution but also made it subordinate to iniquitous martial law proclamations, orders and regulations. That allowed the young nation to become captive to politics based on religion and also provided sanctuary and political rights to anti-Liberation War forces and war criminals. In turn, this permitted the growth and evolution of communal politics.

One needs to conclude by appreciating the courage shown by our Judiciary and their affirmation that turmoil or crisis in a country cannot be the excuse for 'any violation of the Constitution' on any pretext. It is reassuring to see the highest court of our country observing that any turmoil or crisis within our body-politic 'must be faced and quelled within the ambit of the Constitution and the laws made thereunder, by the concerned authorities, established under the law for such purpose'.

Muhammad Zamir, an Advocate, is a former Secretary and Ambassador and can be reached at mzamir@dhaka.net

## Enacting law to regulate use of arable land

The need for enacting a law to regulate the use of arable land can hardly be over-emphasised. It is not unlikely that a powerful lobby may be active against enactment of such a law. But, it is expected that the government will seriously consider enactment of such a law as early as possible.

M. ABDUL LATIF MONDAL

**O**n January 21, Agriculture Minister Matia Chowdhury told the Parliament that the government was planning to have a law requiring its permission to build any structure on farmland. Earlier on May 19, 2009 the parliamentary standing committee on the planning ministry recommended that the government legislate against construction on arable land.

Why is it necessary to enact a law to regulate the use of arable land?

The need for a policy to regulate the use of agricultural land was felt within a few years after independence. The Third Five-Year Plan stated that per capita availability of land was the lowest in Bangladesh in the South-East Asian region and it was continuously declining due to population growth. Since the availability of arable land was declining even faster because of demand for land for other uses such as for homesteads, industries, and roads, a forward looking land use policy was of great importance.

Despite steady progress towards industrialisation, agriculture remains the most important sector in Bangladesh. About 21 percent of GDP (according to Bangladesh Economic Review 2009, in the FY 2008-09, contribution of agriculture to GDP was 20.60%) of the country comes from agriculture sector. Besides, it has indirect contribution to the overall growth of GDP. Many sectors included in broad service sector such as wholesale and retail trade, hotel and restaurants, transport and communications are strongly supported by the agriculture sector. According to Preliminary Report on Agriculture Census (PRAC) 2008 (published in 2009) of Bangladesh Bureau of Statistics (BBS), agriculture sector provides employment for around 50 percent of

the total labour force (15 years +), and it is striving hard to feed about 150 million people of the country.

As per Two-Year Plan (1978-80), total agricultural land in the country was about 90.80 lakh hectares. The agriculture minister informed the House on January 21 that cultivable land in 2002-03 stood at 80.31 lakh hectares which, according to data given for 2007-08 by the BBS, dwindled to 77.65 lakh hectares. This means that the agricultural land is decreasing at 0.66 percent a year in the current decade. Towards the end of 2007, agriculture adviser to the caretaker government, CS Karim, said that the annual rate of loss of agricultural land was one percent for its use for other purposes such as, human settlements, rapid urbanisation, industrialisation, construction of new roads and broadening of the existing ones and various other development activities. Experts also claim it to be 1 percent. In that case, the country is losing every year around 80 thousand hectares of land suitable for cultivation.

Of all the users of agricultural land for non-agricultural purposes, housing sector is probably causing the highest loss. "A household" as defined in the Agriculture Census 1996, "means a group of persons normally living together and eating in one mess (i.e. with common arrangement of cooking) with their dependents, relatives, servants, etc." A look into the Agriculture Census reports of 1983-84 and 1996 shows that in 1996, total number of households in the country stood at 17,828,187 against the total number of 13,817,646 in 1983-84, which means an increase of 29.02 percent. The PRAC-2008 shows a total of 28,670,000 households, which means 60.81 percent increase over 1996. Out of the total 28,670,000 households shown in 2008 PRAC, 25,360,000 (88.45%) are in rural areas and only 33,10,000 (11.55%) are



in urban areas.

Town planning system exists in City Corporation and municipal areas, but there is no land zoning policy for rural areas. The increasing number of unplanned households in rural areas is causing a colossal loss of cultivable land.

While this is the situation of losing agricultural land for other uses, the more alarming is the scientific forecast of loss of land from sea-level rise due to global warming. According to IPCC's forecast, just a one-metre rise in sea level due to global warming might cause around 17 percent of Bangladesh's landmass to go under water, displacing some 20 million people in coastal areas.

The process of industrialisation in the countryside in a haphazard and unplanned way is not only causing loss of huge amount of croplands and water bodies but also polluting environment as these industrial establishments lack mechanism for treatment of effluent and wastage.

The annual population growth rate is outpacing the food production growth rate in the country. According to various studies, the population will double to around 280 million at the current rate of growth (1.4%) by 2080 and reach about 180 million as early as 2020. To feed this huge popula-

tion, we shall have to restrict, if not stop, the use of arable land for purposes other than agriculture, and go for mechanised farming in a large-scale.

It is good to see that the Executive Committee of the National Economic Council (ECNEC) recently approved a project at an estimated cost of Tk.149 crore for speeding up the process of farm mechanisation in order to boost crop production and minimise post-harvest wastage. The implementation of the project brooks no delay.

In view of what has been stated above, the need for enacting a law to regulate the use of arable land can hardly be over-emphasised. It is not unlikely that a powerful lobby may be active against enactment of such a law. But, it is expected that the government will seriously consider enactment of such a law as early as possible. Since the proposed law will encompass almost all strata of the society, the government may solicit opinion of the civil society members, legal experts and the media on the draft law. This will ensure people's participation in the process of decision-making, which is a characteristic of good governance.

M. Abdul Latif Mondal is a former Secretary to the Government. E-mail: latifm43@gmail.com