

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Criminal Original Petition No.19 of 2024

Bilal Haque ... *Petitioners*

Versus
Kamran Ali Afzal, Secretary, Cabinet Division, Islamabad and others
... *Respondents*

AND

Criminal Original Petition No.20 of 2024

Rina Saeed Khan ... *Petitioners*

Versus
*Eazaz A. Dar, Secretary M/o Climate Change & Environmental Coordination,
Islamabad & others* ... *Respondents*

For the Federation: Malik Javed Iqbal, AAGP
For the CDA: Hafiz Arfat Ahmed, ASC
Irfan Azim, DD(G), Environment
For GDA: Mr. Rashid-ul-Haq Qazi, ASC
Mr. Ehtisham Khan, AD, GDA
For Govt. of KP: Mr. Shah Faisal Ilyas, Additional AG, KP
On Court Notice: Mr. M. Ahsan Bhoon, ASC
Mr. Hafeez-ur-Rehman, ASC
a/w Luqman Ali Afzal
Date of Hearing: 07.10.2024.

ORDER

Pursuant to order of this Court dated 1 October 2024 the Capital Development Authority ('CDA') has submitted its report (CrI.M.A.No.1355/2024) which states that the structure of the restaurants that were running under the name and style of *Monal*, *La Montana* and *Gloria Jeans* ('the restaurants') have been demolished. The restaurants were constructed in the protected area of the Margalla Hills National Park ('the National Park'). Photographs have been attached with the report

which confirm this. Mr. Muhammad Umar Ijaz Gilani, the learned counsel representing the Islamabad Wildlife Management Board (**Wildlife Management Board**), also confirms this and stated that the debris of the restaurants is now being removed. On behalf of the Wildlife Management Board he undertakes that the said area, which was in possession of the restaurants, will in future be used strictly in accordance with the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 and the Islamabad Nature Conservation and Wildlife Management Act, 2023.

2. Through an application (CrI.M.A.No.1357/2024) the Wildlife Management Board has brought on record the suit filed on 21 September 2024 by one Mr. Ajab Gul against the *'Wildlife Management Board through its Chairperson'* and the contractor who was given the contract to demolish the restaurants. The plaint alleged that the Wildlife Management Board (defendant No. 1) had given the contract to demolish the restaurant, to the contractor (defendant No. 2) and to do the demolition would pay to him an amount of *'Rs. 3.8 millions'* without soliciting bids for it and by contravening the Public Procurement Regulatory Authority Ordinance, 2002 and the rules made thereunder and, therefore, the order issued by this Court ordering the demolition of the restaurants should be struck down. The learned counsel representing the Wildlife Management Board stated that no amount was paid to demolish the restaurants, and, on the contrary, bids were sought from five contractors and the one who offered to pay the highest amount to the Wildlife Management Board such contractor's bid was accepted, which was an amount of one million and seven hundred thousand rupees. The suit, for the purposes of court fee, was valued at one hundred thousand rupees and it was stated that, *'the plaintiff is ready levy [sic.] the requisite Court fee, as per direction of this Hon'ble Court fee'*.

3. As per the plaintiff's case the suit filed in the Court of the Senior Civil Judge (West), Islamabad was undervalued, court fee had not been paid, nonetheless the Presiding Officer, namely, Mr. Muhammad Inamullah, not only entertained it, but on the very same day it was filed (21 September 2024) ordered that the, *'defendants are restrained from demolishing the vacated buildings of Monal and La Montana restaurants till further orders subject to issuance of notice'*. It was further ordered that, *'the*

Bailiff of the Court is directed to visit the spot and get implemented the orders of the Court. In passing the order the Presiding Judge observed that the *'Plaintiff is "A" Class Contractor* though this was not stated in the plaint. Though it was alleged in the plaint that the Federal public procurement laws and rules had been violated in awarding the contract to demolish the restaurants but neither the authority under the said law nor the Federal Government was arrayed as a party. Nonetheless, the said Presiding Officer rushed to pass the said order, which was an apparent attempt to negate the direction of this Court to demolish the restaurants. Any judge, let alone a Senior Civil Judge, must know that decisions of the Supreme Court are *'binding on all other courts in Pakistan'* under Article 189 of the Constitution of Islamic Republic of Pakistan, and that, under Article 190, *'All Executive and Judicial Authorities throughout the Pakistan shall act in aid of the Supreme Court.'* Against the Senior Civil Judge's order dated 21 September 2024 the Wildlife Management Board preferred an appeal¹ before the Additional District Judge, Islamabad-West who *vide* order dated 2 October 2024, apparently did not appreciate what had been done as he ordered that the appellant *'may approach the learned trial Court for discharge, variation, setting aside, vacation etc. of the impugned order under Order XXXIV Rule 4 of the Code of Civil Procedure, 1908'*. Mr. Ajab Gul's learned advocate Mr. Rai Muratib Ali then sought to withdraw the suit, which was dismissed as withdrawn on 2 October 2024, and the only reason for such withdrawal appears to be our order dated 1 October 2024 whereby we had directed that copies of the *'order sheet of the civil court'* be filed before us. Every judge must abide by the law and must not fall prey to the process of the Court being misused nor should in any manner become a party.

4. The conduct of the Presiding Officer raised serious questions, including whether he had committed contempt of this Court. Article 203 of the Constitution stipulates that *'the High Court shall supervise and control all courts subordinate to it'*, therefore, the matter to this extent is referred to the Islamabad High Court to ascertain the facts and determine whether action needs to be taken. The office is directed to send a copy of this order to the Registrar of the Islamabad High Court, which should be placed before its Chief Justice.

¹ First Appeal Against Order No. 264 of 2024.

5. A Notice was issued to Mr. Luqman Ali Afzal to show cause why contempt proceedings should not be initiated against him *vide* order dated 15 August 2024. He has submitted reply (Crl.M.A.No.1136 of 2024) and is represented by M/s Muhammad Ahsan Bhoon and Hafeez ur Rehman Chaudhary and Mr. Luqman Ali Afzal is also in attendance. Learned counsel state that Mr. Luqman Ali Afzal did not do anything to scandalize this Court or its Judges and he holds the Court and its Judges in the highest esteem. He further categorically submitted that he had never reached out to his brother Mr. Kamran Ali Afzal, the Cabinet Secretary, to have the notifications issued whereby the Chairperson of the Wildlife Management Board was removed nor to place the Wildlife Management Board under the Ministry of Interior by removing it from the Ministry of Climate Change and Environment Coordination. Leaned Additional Attorney-General states that both the notifications were subsequently withdrawn and endorsed Mr. Luqman Ali Afzal's statement, that he had nothing to do with the issuance of the said notifications. Under the circumstances the show cause notice issued to Mr. Luqman Ali Afzal is withdrawn.

6. Learned Additional Advocate-General Khyber Pakhtunkhwa states that pursuant to order dated 15 August 2024 he filed concise statement (Crl. M.A.No. 1174/2024) and that another was filed at the Peshawar Registry. He states that the recorded status of the land was (واجب العرض) of the National Park in the territory of Khyber Pakhtunkhwa of the year 1946-1947 shows the said land, situated in *mouza Kotla*, Tehsil Khanpur and the villages in the Makhniyal, to be a protected *guzara* forest. *Guzara* forest is defined in section 2(23) of the Khyber Pakhtunkhwa Forest Ordinance, 2002 and its section 44 stipulates that '*No person shall, in a guzara forest or wasteland*' shall do the following:

'(a) break up or cultivate or occupy or construct any building or enclosure, or make any other kind of encroachment, or being the owner of the land or a joint owner thereof, permit the breaking up, or cultivation or occupation, or construction of the shed, building or enclosure or any other kind of encroachment in any wasteland'

7. The Galiyat Development Authority ('**GDA**') of Khyber Pakhtunkhwa, however, has granted approvals to raise construction in respect of

designated *guzara* forests that fall within the area of GDA. The GDA has filed concise statement (CrI.M.A.No. 1128/2024) stating that it is governed by the Khyber Pakhtunkhwa Galiyat Development Authority Act, 2016 (**'the Act'**) which empowers GDA to carry out development works and, subject to the approval which GDA may grant, construction therein is permissible and in this regard reference is made to section 6 thereof.

8. The learned AAG responded to the contention of GDA and stated that GDA cannot grant permission to raise construction in respect of land situated within a forest, *guzara* forest or wasteland. Furthermore, section 6(4)(a) of the said Act amongst the functions of GDA requires it to ensure '*forest conservation*' and the '*preservation of wildlife*'. We inquired from the learned counsel representing GDA whether GDA undertakes *forest conservation* and *preservation of wildlife* and were told that GDA does not do so.

9. GDA's does not have a proper understanding or appreciation of its own law nor that of the Khyber Pakhtunkhwa Forest Ordinance, 2002. GDA cannot approve construction in lands which prohibit it, including in *guzara* forest nor in the National Park. GDA is also required to undertake *forest conservation* and the *preservation of wildlife*. GDA must also serve and protect the National Park. GDA must withdraw any permission which had already been granted pursuant to which construction has not been completed and should stop issuance of permissions/approvals in respect of the said lands.

10. An application has been filed by Mr. Hameed Nawaz Khan (CrI.M.A.No.1358/2024) wherein it is stated that his only interest is the preservation of the National Park and that an illegal society by the name of '*Northridge Housing Society*' is being raised in Zone-III of Islamabad where construction is prohibited but where illegal construction is taking place. Photographs in support of his application are attached.

11. It is stated that the said area is situated within certain markers (*burji 21 to burji 27*), however, if any difficulty is encountered in this regard the Survey General of Pakistan's assistance may be obtained. In view of the serious allegations levelled in respect of Northridge Housing Society CDA and the Chief Commissioner of Islamabad are directed to ascertain the following about the *Northridge Housing Society*: (a) who owns

the subject land, (b) whether construction is permissible on the said land, and (c) whether building that are being constructed therein, or which may be built, have obtained the requisite permission, and if so whether the same was issued by the authority legally authorized to do so. After ascertaining the facts, CDA and the Chief Commissioner of Islamabad shall proceed in accordance with law.

12. In conclusion we reiterate that it must be ensured that the National Park remains a protected area and all concerned are directed to ensure its preservation. Resultantly, these petitions are disposed of in the above terms.

Chief Justice

Judge

Judge

Islamabad
25.10.2024
(*Muhammad Asif*)

Approved for reporting