

2024 S C M R 1563

[Supreme Court of Pakistan]

Present: Qazi Faez Isa, CJ, Jamal Khan Mandokhail and Naeem Akhtar Afghan, JJ

The MONAL GROUP OF COMPANIES, ISLAMABAD and others--Petitioner

Versus

CAPITAL DEVELOPMENT AUTHORITY through its Chairman and others --- Respondents

Civil Petition No. 304 of 2022 and C.M.A. No. 891 of 2022, Civil Petition No. 305 of 2022 and C.M.A. No. 892 of 2022, Civil Misc. Application Nos. 887 and 888 of 2022 in C.P. NIL of 2022 and Constitution Petition No. 3 of 2024, decided on 11th June, 2024.

Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance (LXX of 1979)---

---S. 21 & Preamble---Margalla Hills National Park---Preservation, conservation and permissible use of the Margalla Hills National Park ('the National Park')---Any lease, license, allotment or permission granted by Capital Development Authority (CDA), or by the Remount, Veterinary and Farms Directorate ('the Directorate') or any other department/authority to operate restaurants in the National Park was contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979---Therefore, the same were declared to be of no legal effect and set aside---Observations and directions recorded by the Supreme Court in the matter stated.

Any lease, license, allotment or permission granted by the Capital Development Authority (CDA), or by the Remount, Veterinary and Farms Directorate ('the Directorate') or any other department/ authority to operate restaurants in the Margalla Hills National Park ('the National Park')was contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. Therefore, the same are declared to be of no legal effect and set aside.

Accordingly, three months' time is granted to all the restaurants on and around the Pir Sohawa Road in the National Park to vacate them. Small kiosks situated on or around the Pir Sohawa Road in the National Park may continue to operate provided they are licensed by the Islamabad Wildlife Management Board ('the Wildlife Management Board') and strictly abide by their terms of license, which must include collecting of all garbage generated by each and their respective customers and disposing it outside the precincts of the National Park and, if they are permitted to have a stove then they must also have a fire extinguisher. [p. 1566]

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For the proper management of the National Park, CDA shall assist the Wildlife Management Board whenever required. If an officer of CDA well conversant with conservation and environment is not already a member of the Wildlife Management Board, it would be appropriate that one is appointed as a member of the Wildlife Management Board. Moreover, since the World Wildlife Foundation Pakistan ('WWF') came forward to facilitate the preservation and protection of the National Park the Government may also consider nominating it on the Wildlife Management Board.

Salman Akram Raja, Advocate Supreme Court for Petitioner (in C.P. No. 304 of 2022).

Saad Mumtaz Hashmi, Advocate Supreme Court along with Luqman Ali Afzal, owner of Petitioner Monal Group of Companies (in C.P. No. 305 of 2022).

Umar Ijaz Gilani, Advocate Supreme Court for Petitioner (in Const. P. No. 3 of 2024).

Hafiz Arfat Ahmed Ch., Advocate Supreme Court, Muhammad Ali Randhawa, Chairman CDA, Naeem Dar, DG Law, Irfan Azeem, Dy. DG (Environment), Kamran, Director, Law and Raja Abdul Ghafoor, Advocate-on-Record for CDA.

Mrs. Misbah Gulnar Sharif, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-on-Record for MCI.

Malik Javed Iqbal Wains, Addl. A.G., Brig. (R), Falak Naz, Legal Advisor, Col. Faran Tariq, Dy. Director Military Forms, Lt. Col. Irfan Asghar, Asstt. Director (legal) and Zafar Mehmood, MEO for Ministry of Defence.

Muhammad Naqi Khan, DG/CEO (via video link from Lahore) for WWF Pakistan.

Muhammad Aqib, Dy. Director for Survey of Pakistan.

On Courts Notice

Nabeel Rehman, Advocate Supreme Court for Capital View Restaurant.

Sikandar Bashir Mohmand, Advocate Supreme Court for Margalla Motel.

Tariq Mehmood Sajid Awan, Advocate Supreme Court for Trendy Amusement.

Khurram Mehmood Qureshi, Advocate Supreme Court for Lok Virsa.

Rizwan Shabbir Kiyani, Advocate Supreme Court for Jumper Castle in Lake View Park.

Maqbool Ahmed Chaudhry, Manager Admn for Islamabad Club.

Taimoor Aslam Khan, Advocate Supreme Court for Des Pardis.

Ms. Parveen Ejaz, Dy. Director for Ministry of Climate Change.

Date of hearing: 11th June, 2024.

ORDER

Qazi Faez Isa, CJ. Learned counsel Hafiz Arfat Ahmad representing the Capital Development Authority ('CDA') states that pursuant to order dated 21 March 2024, CDA has filed C.M.As. Nos. 3088, 3089 and 3090 of 2024. We have examined them wherein all those carrying out commercial and other activities in Islamabad are mentioned, which is not what we had sought. On the last date of hearing learned senior counsel Mr. Muhammad Makhdoom Ali Khan had stated that the owner of the petitioner Monal Group of Companies, namely, Mr. Luqman Ali Afzal has been singled out, however, others too are running restaurants in the area. Therefore, to ascertain this we had sought details about such restaurants, but CDA misunderstood or misconstrued the order and filed the said CMAs. Resultantly, notices were unnecessarily issued to all those mentioned by CDA. This case pertains to the preservation, conservation and permissible use of the Margalla Hills National Park ('the National Park'). Accordingly, all the said notices are discharged, except notices issued to the restaurants.

2. Learned counsel Mr. Saad Mumtaz Hashmi along with Mr. Luqman Ali Afzal states that his client is the petitioner (in C.P.L.As. Nos. 304 and 305 of 2022) and may be permitted to vacate the premises (Monal Restaurant) within three months. Learned Mr. Nabeel Rehman represents La Montana and Gloria Jeans restaurants and states that they will also vacate their premises in three months. Learned counsel further submits that CDA may give them preference in the leasing/allotting/ licensing of premises/land for the running of restaurants where it is permissible, as their businesses will be affected. The Chairman CDA present in Court states that he will designate an officer to consider the request and if there are premises/land available for this purpose, and if the law permits, preference will be given to those who are voluntarily vacating restaurants from within the National Park.

3. We appreciate those who have voluntarily agreed to remove their restaurants as it will help preserve and conserve the National Park. Accordingly, three months' time is granted to all the restaurants on and around the Pir Sohawa Road in the National Park to vacate them. Small kiosks situated on or around the Pir Sohawa Road in the National Park may continue to be operated provided they are licensed by the Islamabad Wildlife Management Board ('the Wildlife Management Board') and strictly abide by their terms of license, which must include collecting of all garbage generated by each and their respective customers and disposing it outside the precincts of the National Park and, if they are permitted to have a stove then they must also have a fire extinguisher.

4. Any lease, license, allotment or permission granted by CDA, or by the Remount, Veterinary and Farms Directorate ('the Directorate') or any other department/ authority to operate restaurants in the National Park was contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. Therefore, the same are declared to be of no legal effect and set aside. The petitioner in CPLAs Nos. 304 and 305 of 2022 is stated to have deposited in court rent/fee to which only the Wildlife Management Board could be entitled for the preservation, conservation and proper utilization of the National Park, therefore, the same shall be paid to/withdrawn by the Wildlife Management Board.

5. The Directorate is a component of the Pakistan Army, which operates under the Ministry of Defense of the Federal Government. The Directorate has no separate legal existence yet it acted as if it was a legal entity, executed the said 'Lease Agreement' dated 30 September 2019, which was countersigned by its Director-General, Maj. General Muhammad Samrez Malik. Vide orders dated 11 and 21 March 2024 the original record was directed to be produced by the senior most officer of the Directorate. The representative of the Directorate did not abide by the said orders, therefore, was given another opportunity to produce the original file of the Directorate by the end of the day, but still this was not done. Such intransigence will be attended to in the detailed reasons. The Legal Advisor to the Ministry of Defense, namely Brigadier (retired) Falak Naz, rather than advocating that the direction of the Court should be complied with made completely uncalled for excuses for the Directorate. It is not understandable why the Federal Government has deemed it necessary to appoint a retired Brigadier, who has demonstrated little understanding of the law, to advise it on the law. The original record of the Directorate may have disclosed who was instrumental in ordering the execution of the said 'Lease Agreement'. The conduct of the Directorate and the Legal Advisor makes us question where their loyalty lay.

6. For the proper management of the National Park, CDA shall assist the Wildlife Management Board whenever required. If an officer of CDA well conversant with conservation and environment is not already a member of the Wildlife Management Board, it would be appropriate that one is appointed as a member of the Wildlife Management Board. Moreover, since the World Wildlife Foundation Pakistan ('WWF') came forward to facilitate the preservation and protection of the National Park the Government may also consider nominating it on the Wildlife Management Board.

7. The impugned decision of the Islamabad High Court is sustained, subject to what is stated above and any clarification/ amplification and direction that may be given in the detailed reasons to follow. Resultantly, all the petitions and CMAs are disposed of.

MWA/M-26/SC Order accordingly.

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