

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

Case No: W.P.No.862/2020

Muhammad Banaras **Versus** Govt. of the Punjab etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
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26.02.2024 Raja Habib-ur-Rehman, Advocate on behalf the
Petitioner.
Mr. Abid Aziz Rajori, AAG alongwith Amir
Imtiaz, District Forest Officer, Gazara,
Rawalpindi.
Barrister Ch. Imran Hassan Ali, ASC/Amicus
Curiae.

Through this petition under Article 199 of
the Constitution of Islamic Republic of Pakistan,
1973 (the “Constitution”), the Petitioner has
challenged the *vires* of impugned notification
dated 07.03.2020 issued by Respondent No.2.

2. Raja Habib-ur-Rehman, Advocate has
reiterated the submissions already made in this
petition. However, his main stress is that the
Deputy Commissioner, Rawalpindi has no power
to issue the impugned notification under the
Guzara Land Rules. He strenuously submitted
that under Rule 5 of the Guzara Land Rules, any
resident of the area, which falls within the limits
of Guzara Forest, may uproot or cut down the
trees without getting any permission or license
from the concerned authority, therefore, the
Petitioner cannot be stopped from cutting down

trees on his privately owned land under the garb of impugned notification.

3. Learned Law Officer has objected to the maintainability of this petition by submitting that the impugned notification has rightly been issued by the concerned authority strictly as per the relevant laws and the jurisprudence developed by the superior Courts of the country from time to time.

4. Pursuant to the direction issued by this Court on 27.03.2020, the answering Respondents No.2 and 3 have submitted their report & para-wise comments by defending the impugned notification under relevant provisions of the applicable law.

5. On the last date of hearing i.e. 06.10.2022, this Court appointed Ch. Imran Hassan Ali, ASC as Amicus Curiae, who submits that he has made a deep research work on the point involved by going through the relevant law as well as the jurisprudence developed by the superior Courts of the Country. He explained that the Petitioner has no real grievance to bring this petition; that the Petitioner does not specifically disclose how he is personally aggrieved of the impugned notification. He argued that prima facie, from the comments filed by answering Respondents, no interference has been made in the use of private land, which is in possession of the Petitioner. He contended that the Petitioner has not challenged the existing rules, which are already applicable to his Tehsil. He also pointed out that

impugned notification simply extends the earlier notifications issued by the concerned authority with regard to other Tehsils of Rawalpindi but surprisingly, the Petitioner has not challenged the said (earlier) notifications. He pleaded that since the trees play vital role in our climate, therefore, felling and cutting of trees will badly affect the climate regulation. He next argued that though the Petitioner has a weak case because the impugned notification puts general restrictions about falling and cutting of trees to all types of lands but the contention of his learned counsel, on which he is pressing hard, that the Deputy Commissioner, Rawalpindi lacks jurisdiction to issue the impugned notification, has some force because it is the Government, which can only impose such kind of restrictions, therefore, at the most, the matter may be referred to the concerned authority, i.e. the Secretary, Forestry, Wildlife and Fisheries Department, Government of the Punjab, for its expeditious disposal in accordance with law as well as the verdicts given by the superior Courts of the country on the issue in hand from time to time. He has referred to some decisions cited as D.G. Khan Cement Company Ltd. versus Government of Punjab through Chief Secretary, Lahore and others (2021 SCMR 834), Sheikh Asim Farooq versus Federation of Pakistan and others (PLD 2019 Lahore 664), Asif Saleem versus Chairman BOG University of Lahore and others (PLD 2019 Lahore 407) and Maple Leaf Cement Factory Ltd. versus

Environmental Protection Agency and others
(PLD 2018 Lahore 255).

6. Arguments heard and record perused.

7. Before dealing with the issue in hand, it would be fair to note down the importance of the trees. No life could exist on earth without the trees because these are the natural source of air conditioning/air filtering. By absorbing odors and pollutant gases, like nitrogen oxides, ammonia, sulfur dioxide and ozone, and filtering particles out of the air, the trees clean the air. In addition, there would be no rain without the trees as they absorb water from the soil and release it into the air through an evaporative process, providing the moisture for rain to form. In short, the trees play important role in regulating the environment and climate change, therefore, instead of uprooting or cutting trees, there is dire need of plantation of trees in order to protect the environment/climate regulation. However, trees, which may adversely affect the human health or the climate change as per the current climate change research, can be uprooted or cut down, subject to the prevailing laws/policies.

8. Now coming to the merits of the case, it is observed that the Petitioner has not a strong case in his favour because he has not specifically disclosed how he is personally aggrieved of the impugned notification. The prayer clause of the comments filed by the (answering) Respondents clearly depicts that no hindrance has been created in the use of private land, which is owned by the

Petitioner. Rules 5 and 6(2) of notification No.618 dated 15.01.1912 (available at page 7 of the report/comments) apply to the agricultural land in Tehsil Kahuta where the Petitioner claims to own land, already permit the residents in an estate to uproot and/or remove trees of class-B for agricultural or domestic purposes. The impugned notification does not change this situation and merely, extends the said rules to other Tehsils of Rawalpindi. Similarly, Rules 3 and 5 of notification No.343 dated 12.06.1909 (available at page 19 of the report/comments) as amended from time to time, only apply to waste and uncultivated areas of Tehsil Kahuta, entitling the village residents to wood for catering their agricultural as well as domestic needs whereas the impugned notification does not change this situation as well and merely, extends the said rules to other Tehsils of Rawalpindi. Moreover, a joint reading of Rules 5 and Rule 6(2) of aforesaid notification (No.343 dated 12.06.1909) also makes it clear that the directions contained therein relate to wood of spontaneous growth and does not apply to cultivated trees on one's own land. Most importantly, the Rules for the Conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, 1855 (the "1855 Rules") already apply to all "hill districts". Similarly, as noted above, notification No.618 dated 15.01.1912, notification No.619 dated 15.11.1912 and notification No.343 dated 12.06.1909 already apply to Tehsil Kahuta where

the Petitioner claims to own land and the impugned notification simply extends these notifications to other Tehsils of Rawalpindi but astonishingly, the Petitioner has not challenged these (earlier) notifications.

9. Suffice to mention here that the impugned notification relates to the protection of Guzara Forest and since cutting of trees may adversely affect the climate change as discussed above, the same has been issued as per the laws made by the legislature from time to time for controlling the climate change and melting of glacier on the touchstone of the principles already settled by this Court in the cases of Asghar Leghari versus Federation of Pakistan and others (PLD 2018 Lahore 364), Asim Farooq Case (supra) (PLD 2019 Lahore 664) and the recent judgment passed in the case of Pervaiz Abbasi versus Government of Punjab and others (2022 LHC 6911) (LHC Citation) in which the issue of hill razing as well as cutting trees has been highlighted and the aspect of promulgating proper legislation in this regard has been discussed. The issue of climate change and conservation of forests has also been dealt with by the Supreme Court of Pakistan in the case of Shah Zaman Khan and others versus Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others (PLD 2023 SC 340) by holding (in paragraph-22) as under:

“22. Climate change is not just a future threat but a present reality. The planet is

in crisis and disasters are accelerating disasters. Climatic events of unprecedented severity are being witnessed. The unilateral and unsustainable pillage of the earth's resources has left humanity, and all other species, vulnerable. Excessive burning of fossil fuels has heated up the earth's temperature and when forests, which sequester carbon emissions are stripped away, its effect is compounded. Carbon fuel extraction needs to correlate with the available trees, plants and phytoplankton which store emissions. The causes of climate change and the catastrophic events that it unleashes are (by now) empirically established, yet the problem is not being addressed with the requisite urgency and seriousness. Simple mitigation measures are also not implemented. Carbon emissions, and not trees, have to be cut down. The learned Judges failed to consider that the Forest Ordinance was a beneficial piece of legislation which was enacted to conserve scarce remaining forests.”

In **D.G. Khan Cement Case** (*supra*) (2021 SCMR 834), the Supreme Court of Pakistan has also highlighted the significance of environment and ecosystem of the Country by holding (in paragraph-19) of said judgment as under:

“19. Another important dimension of climate change is intergenerational justice and the need for climate democracy. The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them?⁴¹ This Court and the Courts

around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times. Democracy, anywhere in the world is pillared on the rule of law, which substantially means rights based rule of law rather than rule based; which guarantees fundamental values of morality, justice, and human rights, with a proper balance between these and other needs of the society.⁴² Post climate change, democracies have to be redesigned and restructured to become more climate resilient and the fundamental principle of rule of law has to recognize the urgent need to combat climate change. Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. Janine Benyus⁴³ suggests we learn from nature's 3.8 billion years of evolution. How is it that other species have learned to survive and thrive for 10,000 generations or more? Well, it's by taking care of the place that would take care of their offspring, by living within the ecosystem in which they are embedded, by knowing not to foul the nest. We must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature. To us there is no conflict between environmental

protection and development because our answer would be sustainable development. Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs and it is in step with our constitutional values of social and economic justice.”

10. Now, the only point to be determined by this Court is whether the Deputy Commissioner is empowered, under the law, to issue the impugned notification. This power can only be exercised by the Government and the Deputy Commissioner does not come within definition of the Government. Rules 4 and 7 of the 1855 Rules empower the Civil Authorities to impose certain prohibitions or restrictions on felling of trees on any land in a hill district. It is also important to mention that the 1855 Rules are saved by Section 3 read with Schedule I of the Punjab Laws Act, 1872 (the “1872 Act”). The term “Civil Authorities” could possibly mean the Deputy Commissioner of a district. However, Rule 76 of the Forest Act, 1927 [amended 2016] (the “1927 Act”), empowers the Government to make rules. Under Section 2(j) of the 1927 Act, Government means the Government of the Punjab. As per Second Schedule to the Punjab Government Rules of Business, 2011 (the “2011 Rules”), the Forestry, Wildlife and Fisheries Department is entrusted with the powers to administer the 1927 Act and the rules made thereunder whereas Rule 20 of the 2011 Rules

provides that the Law and Parliamentary Affairs Department shall be consulted by other departments on matters concerning delegated legislation, such as, rules and regulations etc. Furthermore, under Rule 3(3) of the 2011 Rules, the business of the Government is distributed amongst several Departments in the manner indicated in the Second Schedule and Secretary, Forestry, Wildlife and Fisheries Department, Punjab can take cognizance of the matter in terms of Rule 10 of the 2011 Rules, which clearly states that the Secretary shall be the official head of the Department and be responsible for its efficient administration and discipline, for the conduct of business assigned to the Department and for the observance of laws and rules, as has recently been developed by this Court in the case of PIA Officers Cooperative Housing Society Limited versus Province of Punjab etc. (2023 LHC 5208) (LHC Citation). Therefore, keeping in view the importance of forests in connection with climate change, a copy of this writ petition alongwith all the annexures is remitted to Secretary, Forestry, Wildlife and Fisheries Department, Punjab with a direction to first determine the validity of the impugned notification and then, if he/she feels necessary, may initiate the process of framing of requisite rules or extension of the existing rules to various Tehsils of District Rawalpindi in consultation with the Law & Parliamentary Affairs Department as required by Rule 20 of the 2011 Rules, and thereafter, pass a speaking order

in the matter after granting fair opportunity of hearing to all concerned, including the Petitioner, by also keeping in mind the rationale rendered in the judgments mentioned above. The Secretary, while consulting the matter with the concerned department(s), shall also consider the guidelines/parameters provided in the following:

1-A. Statutes, Rules and (relevant) Notifications:

- i.** The Punjab Forest Act, 1927
- ii.** The Punjab Plantation and Maintenance of Trees Act, 1974
- iii.** The Rules for the Conservancy of Forests and Jungles in the Hill Districts of the Punjab Territories, 1855
- iv.** Notification No. 618 dated 15.01.1912
- v.** Notification No. 619 dated 15.11.1912
- vi.** Notification No. 343 dated 12.06.1909
- vii.** Punjab Village Forest Rules, 2013

1-B. Policies:

- i.** The Punjab Forest Policy, 2019
- ii.** The National Climate Change Policy, 2021

11. With the above observations and directions, this writ petition is **disposed of**. Before parting with this order the Court appreciates the valuable legal assistance rendered by Barrister Ch. Imran Hassan Ali, ASC/Amicus Curiae.

(JAWAD HASSAN)
JUDGE

Approved for reporting.

JUDGE