

JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P.No.76524 of 2022

Shah Jahan & another

Versus

Province of Punjab & others

J U D G M E N T

Date of Hearing.	06-03-2023
PETITIONERS BY:	M/s Shazib Masud, Jam Waseem Haider, Nabeel Rafaqat Ch. Haseeb Ahsan Javed, Mian Faisal Naseer, Shahzad Ahmad Cheema, Ashiq Ali Rana, Ghulam Ahmad Ansari, Ch. Sabir Ali and Ali Raza, Advocates.
	Syed Kamal Ali Haider and Ms. Hina Hafeez Ullah Ishaq, Members of Commission.
RESPONDENTS BY:	Ms. Sheeba Qaiser, A.A.G. with Muhammad Ramzan, Law Officer Forest Department, Sehar Chaudhry, Law Officer Irrigation Department, Muhammad Nawaz Manika, Director Law EPA and Kashif Sajjan Asst. Legal, EPA.

Shahid Karim, J:- This litigation engages the questions of intergenerational and climate justice. The Govt. of the Punjab notified Gujrat as the 10th Division of the Punjab. The administrative purview of Gujrat Division encompasses four districts, that is, Gujrat, Mandi Bahauddin, Wazirabad and Hafizabad. It is the case of the Govt. of the Punjab that in order to cater to the operational and administrative requirements of the newly notified Division, a purpose-built Divisional Complex to host Divisional Headquarters in Gujrat is required including offices and residences of the Divisional Administration, police etc. as well as Divisional offices of other related administrative departments (“the Project”).

For the purpose, the scheme titled ‘Construction of Divisional Complex at Gujrat (Phase-I) was principally approved by PDWP in its meeting held on 30.09.2022 with a total cost of Rs.8.805 billion and accordingly the administrative approval was given by the Board of Revenue, Govt. of the Punjab on 18.10.2022 with IDAP as the executing agency of the project. The site situated at Mauza Machhiana and Samman Pindi was selected for the construction of the Project. State land earmarked for this purpose comprised of two forest areas measuring 594-Kanals 4-Marlas (Khasra No.2431 of Mouza Machhiana) and 107-Kanals 19-Marlas (Khasra No.2225 of Mouza Machhiana) respectively. These forest areas are property of Government of Punjab through irrigation department and is being maintained by the forest and wildlife department.

2. Through Notification under Section 4 of the Land Acquisition Act, 1894 (“**the Act, 1894**”) dated 10.10.2022, issued by District Collector, Gujrat (impugned Notification) acquisition proceedings have been set in motion regarding private land measuring 184K-OM. This has been challenged in W.P.No.6063 of 2023 by the landowners. Both petitions are being decided by this common judgment.

3. Detailed replies were filed by the respondents. The Chief Secretary Punjab was required to file a report under his signatures which has been done and

which alludes to the various aspects of the Project and finally concludes that the concerns of the petitioners are unrealistic as “**drainage passage has been provided to cater to the disposal of rain water and forest regeneration activities will be carried out for environmental sustainability.** Needless to say, the construction of Divisional Complex is not only imperative for service delivery improvement of the newly created offices at Divisional level but also to facilitate the general public in the Division.” The report further states that “**maximum effort will be made by the administrative department to protect the tree cover and trees will only be removed upon absolute necessity for the execution of the development work**”. With regard to the expansive tree cover/ forest on the area proposed to be taken over for the scheme, the Chief Secretary Punjab reported that “**to ascertain the protection of tree cover and forest regeneration efforts in the area, the Committee constituted by the Forest Department would also prepare a replenishment plan for the project area. Forest Department has already finalized the replenishment cost of Rs.124 Million.**” Thus, in the opinion of the Chief Secretary Punjab, replenishment plan for the project area was sufficient compliance and would take care of the concerns raised by the petitioners regarding the forest cover on the entire land which is sought to be

acquired for the purpose of project. This statement by the Chief Secretary Punjab is in tune with the one submitted by respondent No.5 which is the Secretary Department of Forest and Wildlife Punjab. Respondent No.5 while referring to the basic facts in respect of the project area and its current nature, stated that:

"That the area along Upper Jhelum Canal at Machiana is the property of Punjab Irrigation Department but is maintained & planted by the Forest Department. Furthermore, (Eucalyptus, Kikar & Willow were planted in an area of 100 AV Miles/ 160 AV/KM (Pole crop) along Upper Jhelum Canal (UJC RD No.390-396) in 2009-10 under the Scheme afforestation on Blank Reaches along Canals in Gujrat Forest Division, Gujrat."

4. Thus, it is admitted on all hands and more particularly by the concerned administrative department and by its Secretary that the area is along Upper Jhelum Canal and has extensively been planted by the Forest Department. Different species of trees have been referred in the portion set out above in an area of 100 AV Miles/ 160 AV/KM along Upper Jhelum Canal (UJC) during the year 2009-10. These are now fully grown-up and mature trees. In the year 2022, the Assistant Commissioner/ Land Acquisition Collector, Gujrat vide letter dated 25.10.2022 requested the Divisional Forest Officer Gujrat to provide the demand notice / cost estimation of buildings, crops and trees as mentioned in the Notification under Section 4 of the Land Acquisition Act, 1894 to remit replenishment cost as well as compensation/ value involving pole crops/ plants

hindering in acquisition proceedings and for the grant of NOC for the construction of Commissioner/ Divisional Complex Gujrat. In the same vein, the Secretary in the reply referred to the importance of protected forests and their role in environmental sustainability in the following words:

“Protected Forests are important to maintain and enhance biodiversity as well as to conserve landscapes and provide recreation opportunities, these are either demarcated or un-demarcated, based on whether the limits of the forest have been specified by a formal notification. A protected forest is land notified under the provisions of the Forest Act, 1927. In protected forests, all activities are permitted unless they are expressly prohibited. A protected forest is land that is a reserved forest, and over which the government has proprietary rights, as declared by a government under section 29 of the Forest Act, 1927...”

5. In the final analysis it was concluded by the Secretary Department of Forest and Wildlife that there is no apprehension of serious implications on the flood mitigation for the area because as per approved plan of outfall channel of Machiana Siphon, there are 141 different types of hydraulic structures on UJC and Machiana Siphon. The purpose for which the Siphon is built was also given in paragraph 4 of the reply filed by respondent No.5.

6. In furtherance of the above, the Addl. Chief Secretary Irrigation Department appeared before this Court and submitted a report dated 10.02.2023 which is based on the report regarding transfer of land required for the construction of the project along Upper Jhelum Canal and prepared by the Chief Engineer Irrigation Pothohar Zone Rawalpindi/

Islamabad. It has been mentioned in the report that an NOC was issued by the Department which was conditional upon exclusion of the area comprising 292 Kanal for the purpose of flood channel. The report goes on to state that:

"3. Accordingly, a meeting was convened with Chief Potohar Zone along with his field staff relevant to the concerned area wherein, findings of the Report submitted by the commission as referred at para 1 were deliberated. Chief Potohar Zone, while contending that NOC issued by the Department was conditional upon exclusion of the area comprising of 292-K for the purpose of flood channel, shared his report contents of which are reproduced as under (Annex F):

The land in question is situated at right bank of Upper Jhelum Canal (UJC) at RD 393+250 (Machiana Siphon). Upper Jhelum Canal off takes from Mangla Dam with design discharge of 8975 Cusec at its head. It was constructed during 1904 to 1915 to provide irrigation supplies to AJK, Districts Gujrat, Mandi Bahauddin and Sargodha. There are 141 different types of hydraulic structures on UJC and Machiana Siphon at RD. 393+250 UJC, is one of them. It was constructed to drain off rain water of Pubbi hills/adjoining catchment area and spill over water of Nullah Bhimber with discharge capacity of approximately 8500 Cusec. It has 6 number of barrels and each barrel having width of 12 feet. Given the fact that that the entire structure was built over a century ago, surrounding areas came under cultivation and urbanized in the past and to control spill water of Nullah Bhimber, flood protection bunds were constructed by this Department on both sides of Nullah, resulting in reduced water supply from catchment area. Visit of the existing structure and the surrounding area showed that due to continuous low flows barrels are silted up and choked. Furthermore, outfall channel of Machiana syphon which is passing through land proposed for the construction of Divisional Complex is heavily silted up and its bed level is at Natural Surface Level (N.S.L). Furthermore, Forest Department has carried out plantation during 2009-2010 under scheme afforestation on banks reaches alongwith canal by Gujrat Forest Division Gujrat. The aforesaid plantation was done on the land in question. It is pertinent to mention that, as per approved design of outfall channel of Machiana syphon, initial width of outfall channel is 150 ft and tail 350 ft in width with 20 ft width of both banks. Area under outfall channel is 292-K out of total area of 704-K 03-M. The remaining area comprising of 412-K 03-M in Khasra No.2225 and 2431 was, therefore, considered surplus as per the due diligence

conducted by the field staff keeping in view design parameters and history of past floods in the last decade, while issuing the conditional NOC. For a more accurate assessment, a detailed study may be conducted if deemed necessary.”

7. The above report gives a much more explicit depiction of the land which is proposed to be acquired for setting up the Project. As explicated above, the report alludes to the fact that there are 141 different types of hydraulic structures at UJC (Upper Jhelum Canal) and Machiana Siphon is one of them. It was constructed to drain off rain water of Pubbi hills and adjoining catchment area and spill over water of Nullah Bhimber with discharge capacity of approximately 8500 Cusec. Further the outfall channel of Machiana Siphon which is passing through the land proposed for the construction of Divisional Complex is heavily silted up and its bed level is at Natural Surface Level (NSL). It also refers to the plantation under the scheme afforestation on banks reaches along canal by Gujrat Forest Division Gujrat. The total land to be acquired for the purpose and which belongs to Irrigation and Forest Department comprises an area of 704 Kanal and 3 Marlas. More importantly, the report clearly stated that a more accurate assessment was required and for which a detailed study may be conducted.

8. We now come to the report filed by the Environmental Protection Agency (EPA). It makes it mandatory for any project to be commenced and constructed by submission of IEE or EIA for

obtaining environmental approval prior to its commencement. This is the requirement of section 12 of the Punjab Environmental Protection Act, 1997 which obliges the proponent of project to do so. This has not been done by the proponent in the instant case and this fact is also admitted by all the respondents in this case and more particularly in the report submitted by the Chief Secretary Punjab who has stated that "**the project will be executed on the basis of recommendations discerned in the pertinent studies to minimize the environmental, geo-technical and drainage / seepage / flood impacts.**" Further that "**execution of the project will be commenced after finalization of detailed design of the Complex in the light of the environmental and other relevant assessment studies of the site.**" The report also attaches a letter dated 20.12.2022 written to the Govt. of the Punjab, S&GAD Lahore by the Environmental Protection Department, Govt. of the Punjab which categorically states that the scheme falls in Schedule-I of the Review of IEE/EIA Regulations 2000 and hence the project proponent is supposed to submit IEE report to obtain environmental approval as required under Section 12 of the Act, 1997. Thus, these petitions could receive a short shrift and be allowed on the simple and short question that the approval under Section 12 of the Act, 1997 has not been given by EPA to the Project. The proponent has not submitted

IEE/ EIA which is a *sine qua non* and no project can be initiated or commenced for construction unless a prior approval has been granted by EPA under the law. The mandate of section 12 is clear and cannot be undermined by any proponent of a project. It states that neither the project shall be constructed nor commence operation unless an EIA has been prepared and submitted to the provincial agency where the project is likely to cause an adverse environmental effect, an environmental impact assessment and an approval has to be obtained from the provincial agency. The term ‘operation’ used in section 12 is wide enough to include the acquisition process for, any approval by the provincial agency must be placed before the Collector in order to enable the Collector to form an opinion that a land in a locality is needed for a public purpose. It may be that the approval is withheld by the provincial agency underlying a certain project or it may impose conditions which should be fulfilled prior to commencing, construction and operation of the project. Unless mitigatory and compensatory measures in respect of a certain project have been taken by the proponent, there is no cause for acquisition to be made and for the persons to be deprived of their proprietary rights.

9. The Notifications as well as NOCs issued for the project are liable to be struck down and declared

ultra vires on account of failure to submit IEE by the proponent of the project to the provincial agency.

10. Notwithstanding the above, it is imperative to proceed to discuss the strands of issues of far reaching impact on the environmental aspect which the proposed project is likely to generate in view of the suggestions by proponent of the project to acquire land which includes precious land of standing crops and grown up trees. In order to ascertain the true facts and to have a non-partisan and independent view on the ground, a Commission was constituted by this Court to visit the project area and to file a report. The Commission constituted the following eminent persons:

1. *Dr. Masood Arshd, Senior Director, WWF.*
2. *Ali Hassan Habib, IGC (International Grown Centre)/ Managing Director Himareate.*
3. *Ms. Hina Hafeezullah Ishaq, Advocate.*
4. *Syed Kamal Ali Haider, Advocate.*

11. The Commission filed its report on 27.1.2013 and in the section relating to summary, the following statement was set out:

1.0 Summary

The Lahore High Court Commission members visited the disputed site on 12 December 2022, met with the local government representatives and with the representatives of the petition applicants and affected villagers.

This Commission concluded that the Machianna Siphon area of 702 Kanals is a critical flood mitigation facility that has prevented loss and damage to the Upper Jhelum Canal and 17 upstream villages, which therefore needs to remain intact and undisturbed. The existing tree plantation further enhances the protective flood mitigation function and therefore should remain intact without infringement or cutting.

12. The report thereafter stated that the area of 702 Kanal is under the legal ownership of Punjab Irrigation Department and contains Machiana Siphon designed for 8500 cusec for flash flood mitigation and protection for Upper Jhelum Canal and upstream urban areas. More importantly, the representative of the Punjab Irrigation Department clearly stated that the department does not agree to handing over the whole area of land for the construction of the Project since it includes critical flood mitigation area of 290 Kanal. The representative of the Punjab Environmental Protection Department reiterated that Initial Environment Examination (IEE) before design and construction of the project is essential which approval has not been obtained for the project. The officers representing the Punjab Forest Department made the following statement:

3.4 Punjab Forest Department was represented by Divisional Forest Officer (DFO) and newly posted Conservator Forest (CF). Both the officers explained that it is not a protected forest, but this area is part of the floodplains. The plant species include 90% of Eucalyptus (Eucalyptus Camaldulensis) trees on 702 Kanals of land, whereas the other species include Shisham (Dalbergia sissoo) and Willow (Salix spp.)

13. According to the above statement, although the area is not a protected forest but is part of the floodplains. All 702 Kanal land has been planted with trees of different species mentioned above and which are grown up over the years and are mature trees. The Members of the Commission made visual observations regarding mature trees on 702 Kanal of

land, ponds, wet lands, Marshy areas which were visible in the forest area and which is the true representation of a forest/ wetland ecosystem and helps mitigate flash floods. The entire population of the adjoining villages was against the proposed project. It has further been stated in the report that the surrounding area is a fertile land for multi-purpose cropping which ensures food security for the local population. Finally, the Commission made the following conclusions and recommendations:

6.0 Conclusion and Recommendations

6.1. The Commission strongly recommends that this site is not feasible for the construction of Gujrat Divisional Headquarters.

6.2. This 702 kanals of land is a critical infrastructure for mitigating the impacts of flash flood in the region.

6.3. District Administration, while planning for this project ignored the provision of the following Acts, Policies and Regulations:

. Punjab Floodplain Regulation Act 2016.

. Clause 6 Environmental Integrity of basin, Clause 20, 20.1 Water related hazards under the National Water Policy.

.Punjab Forest Policy 2019

.Claus 4.7, 5.4 and 6 “Disaster Preparedness, Urban Planning & Waste Management, Capacity building & Institutional strengthening” under the national climate change policy.

. Punjab Forest Policy 2019

6.4. Considering the unpredictability of the climatic extreme events due to climate change, the precautionary measures must be followed to maintain this flood mitigation syphon.

6.5. Gujrat Divisional Headquarters should be a green and smart building which can be a multistory within the Gujrat Urban Area. It should be model green and smart building following principles of climate resilience structures.

6.6. The Green Building Council of Pakistan should provide the technical assistance for this project.

6.7. Landuse figures of the District Gujrat, Tehsil Gujrat and Machianna Village are attached as figure 1, 2 and 3 respectively for assessing the meager forest cover of the city and its surroundings in addition to the land use of the area.

6.8. At the UN COP-27 Conference in November 2022, Pakistan led the discussion on loss and

damage due to floods. In this context, it would create international embarrassment to the government of Pakistan if the largest provincial government itself compromises any existing flood mitigation facilities.

6.9. The commission further recommends that the irrigation Department provide the honourable Lahore High Court a list of all the flood management facilities and infrastructure in Gujrat District and Punjab and point out any encroachments of shortcomings in these considering the critical importance of flood management in the coming year due to Climate Change. The 2010 Lahore High Court Flood Tribunal report should be consulted for this purpose.

14. According to the recommendations of the Commission, the site was not feasible for the construction of Gujrat Divisional Headquarters and the area of 702 Kanal of land is a critical infrastructure for mitigating the impact of flash floods in the region. The Commission commented that the District Administration ignored the provisions of various statutes and laws as also policies and regulations formulated over the years to which a reference has been made in the conclusion drawn by the Commission. No objections were filed to the Commission's Report.

15. To reiterate, in the view of the Members of the Commission, the Project was not feasible to be constructed at the site which has been proposed by the proponent department of the Govt. of the Punjab. Critically the land on which the project site has been proposed comprises of 702 Kanal of precious agricultural and forest land and which ought to be protected under all circumstances. Unless the measure is absolutely necessary in the national

interest which takes priority over all other interests no agricultural land and forest land can be acquired for the purpose of setting up of any infrastructure project. In this case, the respondents have not put forth any compelling reasons for acquisition of the land in question and have also not come up with a host of conditions which would justify the acquisition of the land in question. Clearly, the respondents would have alternate proposals for the setting up of Divisional Headquarter Complex on a land which does not require the acquisition of pristine agricultural and forest land. It would be an egregious act of insensibility to cut down mature trees on land consisting over 702 Kanal and which is also a critical flood mitigation facility that has been preserved to prevent loss and damage to Upper Jhelum Canal and 17 upstream villages and therefore needs to remain intact and untempered.

16. In a recent judgment rendered by this Court in W.P.No9429 of 2021 titled ‘Public Interest Law Association of Pakistan v. Environmental Protection Agency Punjab through Director General and others, the various provisions of the Land Acquisition Act, 1894 have been read down in such a manner that no acquisition of agricultural and cultivable farmlands can be done on the basis that it offends Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. The relevant extracts of that

judgment would shed further light on the proposition and are set out below:

“139. Based upon the above report which has gone unrebutted, the food security situation and the issues confronting Pakistan paint a dismal picture as can be seen from the facts explicated above. Pakistan ranks 80 out of 113 countries on the global food security index and food safety score of 43.5 which is below average score of 60.4. This means simply that Pakistan has to take measures on an emergency basis to curtail the loss of agricultural and cultivated land in order to protect its food security paradigm. Aaminah Qadir, Advocate alludes to similar facts in the bundle submitted by her. Pakistan has a level of hunger that is categorized as ‘serious’ with a score of 24.7 according to Global Hunger Index. 44% of those under the age of 5 are stunted in Pakistan. In the case of Ahmad Pansota v. Federation of Pakistan (PLD 2020 Lah. 229) a learned Single Judge of this Court observed that food insecurity exists when people lack secure access to sufficient amounts of safe and nutrition food for normal growth. The Court noted that this is caused by unavailability of food, insufficient purchasing power etc. Reference has also been made to several international treaties (ratified by Pakistan) that guarantee that all citizens will be provided with a basic standard of living that includes food. The right to life under Article 9 has been invoked by the petitioners and supported by the amici curiae to contend that acquisition of agricultural and cultivated farmland cannot be permitted to be continued without statutory framework which would encompass the entire set of circumstances under which such farmland can be acquired and which should also provide for alternatives and other options. There is no doubt that such a statutory framework must underscore the need for preservation and sustenance of agricultural and cultivated farmland. Only under dire circumstances can a piece of land which is under cultivation be acquired and in case it has to be done the statutory framework must provide for a proportionate area of land to be allocated and which may be brought under cultivation so that the balance of food security should not be disturbed. Aaminah Qadir, Advocate cited two recent cases, one from the Lahore High Court and the other from the Sindh High Court which have taken note of these issues and have underscored the need for addressing the issue of food shortage resulting from a prime agricultural land.”

143. There is no doubt that changes need to be made in the Act, 1894 to cater for evolving socio-economic imperatives as also to deal with environmental issues confronting Pakistan. The scheme of the Act, 1894 does not envisage a structure which would oblige the Collector of a

district to refuse the acquisition of an agricultural and cultivated farmland. No distinction has been made in the entire Act, 1894 for placing the agricultural land as a separate set of land to be treated differently from lands which are not under cultivation. As and when the government seeks to acquire land, the Collector of a district acts mechanically in proceeding to issue a notification under Section 4 of the Act, 1894 and thereafter the proceedings are merely restricted to the determination of compensation and the steps leading towards that. The officers under the Act, 1894 are not empowered to draw a distinction on the basis of agricultural and non-agricultural lands and no discretion lies with such officers to refuse to acquire lands which in their opinion are under cultivation and are being used for agricultural purposes. In short, the issues related to food security and the need to preserve agricultural land do not arise before the Collector of a district at any stage of the process of acquisition. Once the process starts, the entire focus is on determination of compensation to be disbursed to the persons whose lands are under acquisition. There is a need for a paradigm shift in the entire system of acquisition related to agricultural and cultivated farmland. This cannot be achieved under the present dispensation of the Act, 1894. The Govt. of the Punjab will have to initiate legislation for the purposes of laying down an elaborate framework and a statutory regime will have to be put in place to deal with the issue of acquisition of agricultural land keeping in view the ground realities and the impact of acquisition that such land will have on the socio-economic and ecological development of the Province. The matter cannot be left unattended anymore as we have crossed a threshold where we are threatened with looming food insecurity and which is likely to aggravate in the coming years. This is not only a matter within the purview of Article 9 which ensures right to life but also is a matter of national security which is a concept which must be enlarged to encompass not only armed conflicts and military defence but also issues such as food insecurity and economic stability. Human security must be at the heart of any National Security Policy.

“147. Doubtless, the conversion of farmland to other uses presents a real and present danger to food security, environment and social well-being. It is a problem that is wide-spread and afflicts not only Pakistan but has global footprint.

148. Thus, the Act, 1894 in its present form offends Article 9 of the Constitution, in that, it fails to deal with the issue of acquisition relating to agricultural and cultivated farmlands. It will have to be read down on this aspect.”

17. In the same judgment, the rules regarding acquisition of reserve forest land under the Forest Act, 1927 was referred and reliance was placed on various studies which concluded that 85% of the land in forest has vanished from the study area. This study was carried out in the year 2014 and was conducted in the Lahore District area called ‘Modeling Land Use Patterns of Lahore’. As a result, this rapid urban extension has changed the land use profile of different districts from agriculture to urban. Over the past few decades, the urban expansion has successfully modified the land use patterns of areas comprising the Province of Punjab and built up area has increased remarkably at the expanse of agricultural and forest land. Although according to the reports filed by the departments, the area has not been declared either as a protected forest or reserve forest under the provisions of the Act, 1927, this does not make any difference since the area qualifies to be treated as such and notifications ought to have been issued in this regard by the Forest Department. This failure to do so will not detract from the fact that the area under acquisition is a reserve forest and cannot be put to any other use unless the provisions of section 27 of the Act, 1927 are scrupulously followed.

18. In a recent judgment of the Supreme Court of Pakistan passed in C.A Nos.329 to 346 of 2022 (CA No.329 of 2022 Shah Zaman Khan v. Govt. of

Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others) and arising out of a judgment of the Peshawar High Court, Peshawar, the issue which engaged the Supreme Court of Pakistan related to section 29 of the Act, 1927. The challenge was laid to the Notification issued on 17.2.1976 under Section 29 of the Forest Act, 1927. The following observations by Qazi Faez Isa, J. are relevant for our purposes:

"The Forest Ordinance was enacted, amongst other reasons, for the protection and conservation¹⁹ of forests in the Province and this was done in the public interest. Pakistan has been denuded of its forests and not nearly enough has been done to protect the remaining forests. An academic-scientific report states that Pakistan lost 14.7% of its forest habitat between 1990 and 2005.²⁰ And, from 2000 to 2020, Pakistan experienced a net change of 94.8 thousand hectares (4.5%) in tree cover.²¹ The importance of forests is by now well established. Forests are necessary to promote headwater conservation for the alleviation of floods and water shortages.²² Forests aid in the prevention of disasters and provide a stable supply of water (one tree can retain ground water up to 30,000 liters²³). Denuding land of forests and trees has catastrophic effects including avalanches, flash floods, silting up of rivers, lakes and dams, the accumulation of carbon dioxide (a greenhouse gas) and climate change. Forests and trees remove carbon dioxide; over a one-year period a mature tree absorbs about 22 kilograms of carbon dioxide from the atmosphere, and in exchange releases oxygen.²⁴ The European Environmental Agency has determined that in a year, 1.3 million trees are estimated to remove more than 2,500 tons of pollutants from the air.

20. The Forest Ordinance was also enacted to preserve ecological significance, ²⁶ the integrity of the ecological system²⁷ and to promote the understanding of environmental significance.²⁸ Reduction in forest and tree cover harms ecosystems and consequently the animals, birds and insects dependent on them, and results in the loss of biodiversity. The Forest Ordinance is a beneficial piece of legislation, but this important aspect was not considered by the High Court before it proceeded to negate the bar of jurisdiction provision (section 92 of the Forest Ordinance).

21. We must also not lose sight of a most startling fact. Pakistan is amongst a score of countries which are disproportionately vulnerable to the consequences of climate change.²⁹ To ignore the reality of climate change is to be unjust and it disregards future generations.

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.

23. The natural world is an epiphany yet the extraordinary bounty of nature and creation's perfect balance³¹ has been disrupted. The warning not to tamper with nature's balance is not heeded.³² Some view nature as an inert repository of resources to subdue, remove and deplete, and profiteering as their right. 'As the land becomes impoverished so too does the scope of their vision'.³³ Reverence for the natural world has become peripheral. Humanity needs to regain its lost consciousness and its primordial link to nature.³⁴ Humans must assume their responsibility as trustees of the earth³⁵ and of all of creation;³⁶ and, not to be deaf and dumb, engulfed in darkness.³⁷ The trees of the forest are sentient beings³⁸ and, like human beings, part of the biotic community. In regaining their trusteeship humans also salvage their humanity, and save themselves and their progeny."

19. The observations set out above aptly apply to the facts of the present case and the respondents-departments have failed to establish facts which would justify the setting up of the project on an area which comprises agricultural and forest land. The respondents have no reasonable cause to change the

nature of forest land and carry out construction for setting up of a Divisional Headquarter. It is also unjustified to cut trees which are standing on the forest area and to change the status of land used for flood mitigation in any manner. The act of the respondents contravenes the holding of this Court in *Public Interest Law Association of Pakistan* as well as of *Shah Zaman Khan* by the Supreme Court of Pakistan. The impugned notifications issued under Section 4 of the Act, 1894 and the other acquisition proceedings in respect of disputed land are hereby declared without lawful authority and of no legal effect. These are struck down. **Petitions allowed.**

(***SHAHID KARIM***)
JUDGE

Approved for reporting.

JUDGE

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Rafaqat Ali