

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain
Mr. Justice Amir Hani Muslim
Mr. Justice Ejaz Afzal Khan

Suo Moto Case No. 16 of 2011 A/W CMAs.

(Implementation proceedings of Judgment
of this Court reported as PLD 2011 SC 997)

AND

Crl. O. Petition No. 96 of 2012

(Senator Haji Adeel Vs. Raja M. Abbas, etc)

AND

Crl. O. Petition No. 29 of 2013

(Wattan Party, etc Vs. Fed. Of Pakistan, etc)

AND

Suo Moto Case No. 14 of 2009

(Action Taken on Press Clipping
dt. 05.09.2009 the Daily "The News")

AND

Civil Petition No. 506-K of 2009

(Shaukat Hussain Vs. Muhammad Younas)

On Court Notice:

For Federation: Mr. Syed Mohsin Imam DAG.

For Govt. of Sindh: Mr. Abdul Fatah Malik, AG. Sindh.
Mr. Muhammad Shahadat Awan, PG,
Mr. Muhammad Sarwar Awan, Addl. AG
Mr. Adnan Karim, AAG, Sindh
Mr. Arif Ahmed Khan In-charge Chief
Secretary/Additional Secretary P&D.
Mr. Mohammad Naseer Jamali Additional
Chief Secretary (Services)

For Sindh Police: Mr. Shah Khawar, ASC
Mr. Ghulam Shabbir Shaikh, Acting IGP
Mr. Zakir Hussain, Addl. IGP
Mr. Rasool Bux IGP (Special Branch).
Capt (R) Tahir Naveed, DIG East
Mr. Zafar Abbas Bukhari, DIG West
Mr. Shahid Hayyat, DIG, South
Mr. Ali Sher Jakhrani, AIG Legal
Mr. Farooq Ahmed Awan, SSP, SIU,
Mr. Niaz Ahmed Khosa, SSP, AVCC

Mr. Maqsood Ahmad, SP,
Mr. Najam Tareen S.P,
Mr. Irfan Bahadur SP
(Anti-Encroachment Force)

Sindh Police Officers
on Contract basis :

Capt. (R) Salman Syed Mohammad DIG.
Mr. Rasool Bux Saand DIG.
Comdr (R) Shoukat Ali Shah DIG.
Lt. Col. (R) Nadeemullah Qazi DIG.
Lt. Col. (R) M.A. Wahid Khan SP.
Mr. Manzoor Ahmed Mughal DIG.
Mrs. Tabassum Abbasi Project Director.
Mr. Mohib Ali SP
Mr. Mohammad Hassan Dal, SP.
Mirza Abdul Majeed SP.
Syed Sahib Ali Shah DSP.
Mr. Anwar Alam Subhani PDSP
Mr. Rehmatullah DSP.
Mr. Fateh Mohammad DSP.
Mr. Saad Thaheem.

For Board of Revenue: Mr. Yawer Farooqui, ASC
Mr. Mohammad Ahmed Pirzada, ASC with
Mr. Shahzar Shamoon Secretary
Mr. Nazar Mohammad Leghari, Consultant
Syed Zulfiqar Ali Shah Member.
Mr. Saqib Soomro Member L.U.
Mr. Nawaz Sahu, DC Thatta.
Mr. Kanwar Ali Leghari DC West.
Qazi Jan Mohammad D.C.Malir.
Mir Laiq Ali, Office Superintendent LU

For DG Rangers: Mr. Shahid Anwar Bajwa, ASC with
Major Ashfaq Ahmed, DA JAG,

Applicants

Syed Mehmood Akhtar Naqvi
(Applicant in CMA.No.148-K/2013)
Mr. Fareed Ahmed Arain
(Applicant in CMA.No.148-K/2013)
Moulana Orangzeb Farooqui
(Applicant in CMA. No.108-K/2013).
Mr. Mohammad Ismail Shaheedi.
(Applicant in CMA. No.179-K/2013).
Mr. Maqsood Ahmad, SP
(Applicant in CMA. No.487-K/2013).
Mr.Ali Haider, Inspector
(Applicant in CMA. No.390-K/2013).

Date of hearing: 22-03-2013

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.- On

21.03.2013 in first half of the hearing of this case, Mr. Shahid

Hayat, DIG stated that despite all efforts made by the Police and Rangers to enter into Lyari, it is very difficult because whenever, such operation is commenced, either there is firing upon Police and Rangers or the bombs are exploded. On this, Mr. Shahid Anwar Bajwa, learned ASC appearing for DG, Rangers was directed to place on record reaction of DG, Rangers in black & white. In compliance of this direction, he presented a statement on behalf of D G. Rangers, which is reproduced hereinbelow: -

STATEMENT

It is most respectfully submitted before this Honourable Court that we have no information about any no go area. If any such area comes to our knowledge or is otherwise pointed to us, we shall use all necessary force and lawful means to clear such no go areas

Sd/-

Major General
Director General
Pakistan Rangers (Sindh)
(Rizwan Akhtar)

Station: Karachi
Dated 21 March 2013

As the above statement was not as per the substance of the order and on the other hand IGP and DIG as well SP of the area have stated that it is not possible for uniformed personnel to enter into the area of Lyari, therefore, learned counsel for DG, Rangers was ordered to submit a specific statement whether Lyari is No Go Area or not? Accordingly, he submitted second statement on behalf of DG, Rangers, which reads as under: -

STATEMENT

It is respectfully submitted:

1. That during the last one year or so, 65 operations including targeted cordon and search operations have been conducted in Lyari alone and 258 persons were arrested and handed over to Police. Almost all areas of Lyari have been covered in these operations.

2. There is no, no go area in Lyari.
3. Headquarters of one of our Wings is located in Peoples Stadium and a company is always stationed inside Lyari at Benazir University.
4. However, we will carry out specific patrolling activities to check and monitor the latest situation

Sd/-

Major General
Director General
Pakistan Rangers (Sindh)
(Rizwan Akhtar)

Station: Karachi
Dated 21 March 2013

As both the statements put up on behalf of DG Rangers were not satisfactory, therefore, following directions were issued: -

"We have handed over copy of the same to the Acting IGP enabling him to examine its contents and hold a meeting with DG, Rangers in the office of Incharge Chief Secretary and submit joint statement confirming or otherwise contents of this report so that we may pass appropriate orders by tomorrow."

Accordingly, three separate statements on behalf of Acting Chief Secretary, IGP and DG, Rangers Sindh have been filed, which read as under: -

STATEMENT

1. It is most respectfully submitted that in compliance of this Honourable Court order dated 21 March 2013, a meeting of Director General Pakistan Rangers (sindh) and Inspector General of Police was held and their reports are attached herewith.
2. Law enforcement agencies have been instructed to arrest the criminals involved in heinous crimes as soon as possible in Lyari.
3. Above is submitted for kind perusal of this Honourable Court, please.

Sd/-

Acting Chief Secretary Sindh
Arif Ahmed Khan

Station: Karachi

STATEMENT

It is most respectfully submitted in response to meeting held with Inspector General of Police Sindh in the office of Chief Secretary Sindh, following is submitted, please: -

1. That, Lyari is not a "No Go Area", however there is presence of criminal elements like in any other area of Karachi.
2. Headquarters of one Rangers Wing is located in Peoples Stadium and a company is permanently stationed inside Lyari at Benazir University. Since last year, Rangers has launched 65 operations in Lyari and have arrested 268 criminals.
3. We as part of a well thought out strategy are continuously engaged in launching information based targeted operations in various parts of the city including Lyari. These Operations are aimed at nabbing any and all criminals and bringing them to justice.

Major General
Director General
Pakistan Rangers (Sindh)
(Rizwan Akhtar)

Station: Karachi

STATEMENT

It is most respectfully submitted that in response to meeting held with Director General Pakistan Rangers (Sindh) in the office of Chief Secretary Sindh, following is submitted, please: -

1. That Lyari is not a "No Go Area", however there is presence of criminal elements like in any other area of Karachi.
2. Four police stations are located in Lyari namely Kalakot, Chaiwara, Baghdadi and Kalri. Since last year, Police has launched a number of operations in Lyari and has arrested number of criminals.
3. Police has launched targeted operation in Lyari, only last night and arrested 18 criminals.

Inspector General
Police (Sindh)
Ghulam Shabir Shaikh

Station: Karachi

Perusal of these statements, does not answer whether "No Go Area" exists in Lyari or not as these functionaries had again taken divergent stands.

2. Thus, we may point out that "No Go Area" does not mean physical obstruction on the entry point of a particular area, thereby not allowing uniformed personnel or civilian to enter and walkthrough conveniently but in substance it means the areas in which writ of the state is challenged. No Go Area is defined in the judgment in the case of Watan Party v. Federation of Pakistan (PLD 2011 SC 997) as follows: -

"Further observe that to avoid political polarization and to break the cycle of ethnic strife and turf war, boundaries of administrative units like police stations, revenue estates, etc., ought to be altered so that the members of different communities may live together in peace and harmony, instead of allowing various groups to claim that particular areas belonging to them and declaring certain areas as NO GO Areas under their fearful influence."

3. Mr. Niaz Ahmed Khosa, SSP AVCC, has voluntarily appeared and stated that there are "No Go Areas" in various parts of Karachi including Lyari, where no writ of the State exists and criminals rule those areas and despite of their best efforts, no success has so far been made. Mr. Najam Tareen S.P. Lyari admitted during the course of hearing on 21.03.2013 that for purpose of entering into the area at least 200 personnel of force are required. He further stated that since he is a local Pashtoon and speaks Balochi as well, therefore taking advantage of his personal relations, he at times enters the area. Statements of

both these officers are sufficient to negate the stand taken by DG Rangers and Acting I.G Police. Thus, in view of above circumstances, we again directed the Acting Chief Secretary, DG Rangers and IGP to put up a joint statement in terms of the order dated 21.03.2013 so that we may, after going through it, pass order as to whether the observations/directions given in the judgment in Watan Party's case (ibid) have been complied with in letter and spirit because in view of deteriorating law and order situation in Karachi we had observed that it had not been complied with in letter and spirit.

4. Subsequent to above direction, following joint statement has been filed: -

"IN THE SUPREME COURT OF PAKISTAN, KARACHI

Suo Moto Case No.16/2011

**JOINT STATEMENT OF DIRECTOR GENERAL PAKISTAN
RANGERS, SINDH INSPECTOR GENERAL POLICE
SINDH AND ACTING CHIEF SECRETARY SINDH**

In compliance of this Honourable Court's order dated 21.3.2013 and 22.3.2013 a meeting was convened today by acting Chief Secretary, Government of Sindh in his office which was attended by the Director General, Pakistan Rangers and the Inspector Police Sindh. In the previous statements dated 21.03.2013 and 22.03.2013 respectively submitted by the Director General Rangers Sindh and Inspector General Police Sindh regarding No-go Areas the contention was that there is no area in Karachi where the Pakistan Rangers Sindh or the Sindh Police cannot enter or conduct operation to curb crimes; thus, no no-go area exist as such.

Now, seeking guidance from the discussion and definition of "No-go Areas" determined by the Honourable Court according to which the areas in which writ of the State is challenged, consequently become weak and law enforcing

agencies are resisted, we conclude that such localities could be termed as no-go areas.

It is jointly resolved and stated that such areas wherever they exist shall be dealt with strictly in accordance with law. The Rangers and Police shall make their best efforts to control crime in such areas and establish writ of the State. Commanders of both forces shall maintain regular contact, share intelligence and cooperate for action against criminal elements in order to provide security to citizens in these areas.

<p>Sd/- (Ghulam Shabbir Shaikh) QPM, PSP, Acting Inspector General of Police Sindh</p>	<p>Sd/- (Major General Rizwan Akhtar) Director General Rangers, Sindh</p>
<p>Sd/- (Arif Ahmed Khan) Acting Chief Secretary, Sindh</p>	

5. The In-charge Chief Secretary was asked to explain that in view of the deteriorating law and order situation in Karachi, where life and property of the citizen is not protected, it is not the responsibility of the state/provincial government and the executive under the Constitution to guarantee the fundamental rights of the citizens as provided in the Constitution and ensure that their life, property and dignity are secured/protected. He stated that there could not be two opinions in this behalf. But to us no practical demonstration has been shown by the State/Provincial Government and Executive, although in the judgment reported as Watan Party v. Federation of Pakistan (PLD 2011 SC 997), we have already observed that any further failure to protect the life and property of the citizens is likely to cause unprecedented disaster, therefore, all efforts are to be made to avoid the same in the interest of the country which is supreme as per the mandate of the Constitution and the law. We consider it appropriate to mention here that on behalf of

IGP with reference to the implementation of the aforesaid judgment a statement in CMA No.169-K/2013, has been placed on record, which contains details of arrested accused affiliated with different political parties and groups. It is considered appropriate to reproduce hereinbelow said statement: -

SUMMARY OF ARREST ACCUSED AFFILIATED WITH POLITICAL PARTIES AND CASES											
Party	Accused Arrested	Arms Ord.	Attempt	Encounter	Murder	Narcotics	Explosive	Dacoity	Rioting	Extortion	Total
ANP	13	6	2	4	9	1	-	-	-	-	22
Gang War	17	10	-	2	4	-	2	-	-	-	18
L.J	2	-	-	-	5	-	-	-	-	-	5
MQM-A	81	51	3	5	83	3	1	2	4	-	152
MQM-H	4	1	-	-	1	-	-	-	-	-	2
PAC	6	4	-	1	8	-	1	-	-	-	14
PPP	4	3	1	1	1	-	-	-	-	-	6
PTI	9	8	1	-	-	-	-	3	-	-	12
SMP	4	2	-	-	5	-	-	-	-	-	7
SSP	14	3	2	-	16	-	-	-	-	-	21
ST	38	15	1	3	21	1	-	3	8	3	55
TTP	27	22	-	1	9	-	-	-	-	-	32
Jund Allah	5	5	-	-	-	-	-	-	-	-	5
Total	224	130	10	17	162	5	4	8	12	3	351

6. At this juncture it would not be out of context to note that in the Watan Party's case (supra) we have observed in following paras that the criminals have succeeded in making their way in political parties, therefore, the political parties should denounce their affiliation with them: -

“Further observe that as per material brought before the Court, there are criminals who have succeeded in making their ways in political parties notwithstanding whether they are components or non-components of government, and are getting political and financial support allegedly from such parties, therefore, the political parties should denounce their affiliation with them in the interest of the country and democratic setup and they should not allow them to use their names as militant outfits of the political parties. Failure to do so may entail consequences of a penal nature against the

party or person responsible, whether in office or not;"

7. Similarly with reference to violence in Karachi we have also observed in the said judgment as follows: -

"Observe that violence in Karachi during the current year and in the past is not ethnic alone but it is also a turf war between different groups having economic, socio-political interest to strengthen their position/aggrandizement, based on the phenomenon of tit for tat with political, moral and financial support or endorsement of the political parties, who are claiming their representation on behalf of public of Karachi including components and non-components of Provincial Government/Executive;

AND

Declare that recent violence in Karachi represents unimaginable brutalities, bloodshed, kidnapping and throwing away dead bodies and torsos in bags; as illustration, indicating toll of 306 lives in one month; detection of torture cells video of which has been produced; receiving *bhatta* to strengthen the ranks of one group against the other; grabbing land; drug mafia etc., destroying moveable and immovable properties of the citizens, establishes that the Fundamental Rights of the citizens enshrined in Articles 9, 14, 15, 18 and 24 of the Constitution have not been protected/enforced by the Provincial Government/Executive authority and this failure has made the lives and properties of the citizens insecure, inasmuch as Federal Government/Executive has also not protected Province of Sindh against internal disturbance, thus the government of Province of Sindh on this account

too, failed to carry out functions in accordance with the provisions of the Constitution {Article 148 (3)};"

8. In the meanwhile, during the hearing of the case from time to time particularly in our order dated 07.02.2013 following observations were made: -

"5. We have also observed in our judgment that "to come out of the instant grave situation...the police force being principal law enforcing agency has to be de-politicized and strengthened". In respect of this observation, we are somewhat surprised to learn that out of one lakh employees in the police force of the province, not a single one of such employees has been identified as having been appointed/promoted/posted on the basis of political influence/considerations. We also note that during the hearing of another petition (Crl. O.P.89/2011) which was listed for hearing yesterday and is again listed for hearing today, a number of appointments in various departments of the Sindh government including police, were *prima facie* shows to be based on considerations other than merit. We, therefore, note with regret that a serious attempt appears not to have been made to identify such functionaries in the police department who owe their posts to political interference. The reply given in CMA 270 of 2013 is thus *prima facie* wholly unsatisfactory.

7. We have noted that as per material brought before the Court "there are criminals who have succeeded in making their way into political parties". In CMA 270 of 2013, we have been provided a list of 5 FIRs in South range

and 11 FIRs in West range but the details/particulars of the persons involved, the nature of offences and most importantly the affiliation, if any, of the accused with a political party have not been mentioned. Mr. Shah Khawar requests for sometime to provide the requisite details. Let him do so within this week."

9. We may observe here that in the joint statement which has been reproduced hereinabove, it appears that a resolve has been shown to deal with No-Go Areas strictly in accordance with law. Firstly, in this behalf it is to be noted that Law Enforcing Agencies both Police and Rangers vide order dated 06.10.2011 had been directed to protect the life and property of the citizens but unfortunately the law and order situation was further deteriorating day by day in the city. We do blame to both these forces for such situation because it was their constitutional, legal and moral duty to take care of the high handedness and exploitation of the citizens of this city by the criminals during the last more than about 15 months, but despite all directions and observations, the Court has granted time to the law enforcing agencies and now they have provided a strange definition of No-Go Area and seemingly with reluctance they had accepted to the definition, as incorporated in the Watan Party's case(ibid). Any how, such academic discussion whether interpreted by us in the judgment and agreed by the executive, would not solve the problem of the ordinary citizens. They want security of life and property from the State, Law Enforcing Agencies and the Executive and their demand in this direction is

increasing day-by-day as the rate of crime has increased whereas the relevant forums have no control over it and no solution has been provided by the State functionaries. Secondly, we believe that the Provincial Government/State must have fulfilled their constitutional duty but it is the other way round as no improvement in the law and order and in protecting life of citizens is visible either on ground or on papers as it has been demonstrated during the hearing of the case. Therefore, statement submitted in the Court today, which has been reproduced hereinabove, would be of no help in view of above observations as well as observation made earlier in the judgment of Watan Party(supra) and is not sufficient to redress the grievance of the general public. It is also to be noted that the general elections/polls are due in the coming month i.e. May, 2013, therefore, it is duty of the State/Chief Secretary, IGP and DG, Rangers to take all steps to ensure that life and property of the citizens are secured and protected.

10. We have inquired from the Chief Secretary as to whether the joint statement, filed in Court, is a sufficient measure to ensure that law and order is fully controlled and the citizens of Karachi would have the sense of security. He stated that three weeks to one month's time may be granted for addressing the issue. Without commenting upon the request so made, we initially grant two weeks' time from today onward to do the needful. After two weeks, Chief Secretary, IGP and DG, Rangers shall submit a joint statement through Registrar showing the progress in protecting citizens and maintaining law and order in Karachi.

11. It has been informed that police is investigating the case of murder of Arshad Puppoo and two others, who were reportedly murdered in a brutal manner and their dead bodies were allegedly cut into pieces and then burnt to ashes. The progress so far made by the police has been shared with the Court confidentially. The report submitted by Mr. Shahid Hayat, DIG is ordered to be kept in sealed envelope. It has been requested for more time to complete the investigation, Request is allowed to complete investigation of the case without being influenced from any quarter, strictly in accordance with law.

12. An application bearing CMA No.181-K/2013 has been filed by family members of deceased Arshad Pappu. Copy of the same has been handed over to Mr. Shahadat Awan, Prosecutor General, Sindh with direction to pass on the same to IGP and the concerned DIG and SP for proceeding in accordance with law.

13. On 21.3.2013 in view of our observation that no IGP has been posted in the Province of Sindh and the vacancy is lying vacant since 6.3.2013 when the then IGP was surrendered to the Federal Government as per the statement of Government of Sindh after the incident of Abbas Town. Now it has been informed that vide Notification dated 21.03.2013, Government of Pakistan, Cabinet Secretariat, Establishment Division, Mr. Shahid Nadeem Baloch has been posted as Provincial Police Officer (PPO), Government of Sindh.

14. In response to our order dated 21.3.2013, whereby directions were given to produce summaries of the re-employed Police Officers, Mr. Muhammad Naseer Jamali, Secretary Services, Sindh has placed on record a report containing

summaries of the persons, who have been re-employed/inducted in police department after retirement including Lt. Colonel Nadeemullah Qazi, who is a retired Army Officer and had never served in Police and also the case of Ms. Tabassam Abbasi, IT Consultant. We may observe that re-employment in disciplinary force like Police or for that matter in any other department has to be made subject to section 14 of the Civil Servant Act, 1973, read with instructions contained in Estacode, Vol.1, Edn, 2007 under the heading "Re-Employment".

15. This Court in Suo Motu Case No.24 of 2010 (PLD 2011 SC 277), has held that re-employment of such persons in services on their retirement must be made in public interest because re-employment against a sanctioned post is likely to affect the junior officers, who are waiting for promotion to the next higher rank as their right of promotion is blocked. And they have to wait till such re-employed officer completes his contract. In the meanwhile, they have to face difficulties in maintaining their seniority etc. It is a settled principle of law that the promotion of an employee is not to be blocked to accommodate a retired officer, however, if the right of promotion is not blocked by re-employment, then such powers can be exercised, that too in an exceptional case. Surprisingly, the Government of Sindh had not supported re-employment of the police officers and it is stated that whatever order is passed by this Court, same shall be implemented. It is to be noted that it is the prerogative of the Government to look into all such cases, applying relevant provisions of law noted hereinabove and the observations made by this Court from time to time. For ready reference reliance can

be placed on Suo Motu Case No.24 of 2010 (ibid), a judgment, which has been delivered by an 8-Member Bench of this Court.

Relevant para therefrom is reproduced herein below: -

"5. Learned Attorney General has also placed on record summary of some of the Police Officers who are re-employed on contract basis. A perusal whereof indicates that prima facie while they were re-employed, the provisions of law i.e. section 14 of the Civil Servants Act, 1973 as well as instructions contained in Esta Code in Volume-1, Edition 2007 under the heading "Re-Employment" and the judgments of the superior courts on the subject were not considered/adhered to. It is to be noted that for establishing rule of law and Constitutionalism, it is necessary that the relevant provisions should be followed strictly in letter and spirit otherwise it would not be possible to provide an effective machinery in law particularly in Police Department to ensure law and order, so the peace in the country, at the same time to avoid violation of the relevant provisions of law noted hereinbefore, which is tantamount to blocking the promotion of the Officers who have also served in the Forces and are waiting for their promotion but they are not getting chance because of the re-employment/contract awarded to the retired Officers. This is not only in the Police Department but for the purpose of achieving good governance; the same principle should be followed and strictly applied in other Departments as well. Be that as it may, we are adjourning this case and in the meanwhile learned Attorney-General shall take up the matter with the Government/Competent Authority so it may take necessary steps to rectify if any omission has been committed, before the next date of hearing. Similarly, the learned Attorney-General shall convey this order to the Secretary, Establishment Division and the Chief Secretaries of the Provinces to ensure that if any Civil Servant or other person who has been re-employed, his case be also examined in terms of the provisions of law and both Federal and Provincial Governments should take necessary steps to ensure that re-employment or employment on contract basis are not made in violation of the relevant law."

16. Mr. Yawar Farooqi, learned ASC appearing on behalf of Chief Secretary, Sindh has stated that a summary for cancellation of the contract of police officers/officials was moved but final orders could not be passed because of the opinion of the learned Advocate General that their appointments were not contrary to law. On this, Mr. Abdul Fatah Malik, learned Advocate General has contradicted to his statement and he produced photocopy of the summary moved by the competent authority for approval by the Chief Minister of Sindh. On having gone through the summaries of respective police officers, who were re-employed after retirement it is observed that there is not a single word in any of the summaries, showing that their services were hired in the public interest. On this, learned Advocate General stated that two days' time be given to him so that he may get the summary approved from the Caretaker Chief Minister for terminating the contracts of the re-employment in police department so that the juniors, who are entitled to promotion to next grade on merits are promoted and they may get their due rights according to law.

17. Undoubtedly, it is the Government, which has to perform its function strictly in accordance with law but, *prima facie*, it is noticed that re-employment of these police officers is not in conformity with the law and the aforesaid judgment of this Court. Therefore, learned Advocate General has been asked to seek instructions in this behalf from the concerned quarters during the course of the day.

18. As regards, case of Ms. Tabassam Abbasi, Project Director, IT is concerned, though she has been appointed on

contract against a vacant post of Superintendent Police (SP, BPS-18) and allowed to draw salary equal to the post of SP by abolishing three posts of constables, her appointment too is not in accordance with law because against this post, a DSP in regular service is required to be promoted as SP. For such a position the Police Department or Government of Sindh may create a post of Project Director, IT Department and instead of accommodating her against the post of a police officer, she may be declared holder of an independent post against the budgetary provision of the Police Department. The Chief Secretary may, if feasible, create a separate post of Project Director, IT in the Police Department and this post will not be converted into any other post of regular police service nor the incumbent shall be posted against anyone of the sanctioned post of police department.

19. Learned Advocate General, during proceedings of the case, produced copies of two notifications as per the commitment made by him in first half of the hearing of case. The In-charge Chief Secretary has informed that Chief Minister has agreed to the cancellation of the contracts and he has issued Notification No.SOIII(S&GAD)POL-6-VII/2008 dated 22nd March, 2013, contents whereof are reproduced hereinbelow: -

NOTIFICATION

In pursuance of Orders dated 08.03.2013 passed by the Honourable Supreme Court of Pakistan in respect of C.M.A. 1145/2013 in Suo Moto Case No.16/2011 (Suo Moto Action on the news clippings published on 04.03.2013 in daily "The News, Dawn and The Nation" Islamabad regarding incident of Bomb Blast in Abbas Town, Karachi on 03.03.2013) and with the approval of

the Competent Authority i.e. Chief Minister Sindh, the contract appointments of the following police officers are hereby terminated with immediate effect: -

- i) Capt. (R) Salman Syed Mohammad*
- ii) Mr. Rasool Bux Saand*
- iii) Cdr (R) Shoukat Ali Shah*
- iv) Lt. Colonel (R) Nadeem Ullah Qazi*
- v) Lt. Col. (R) M.A. Wahid Khan*
- vi) Mr. Manzoor Ahmed Mughal*
- vii) Mr. Mohib Ali.*
- viii) Mr. Mohammad Hassan Dal*
- ix) Mirza Abdul Majeed*
- x) Syed Sahib Ali Shah*
- xi) Mr. Anwar Alam Subhani*
- xii) Mr. Rehmatullah*
- xiii) Mr. Fateh Mohammad*

20. Similarly one of the officers re-employed on contract namely Mr. Waseem Ahmed, Additional Chief Secretary (BS-21), Home Department, who was also a former Police Officer and on retirement has been appointed by the Government of Sindh, has also tendered his resignation, which has been accepted by the competent authority with immediate effect. Such Notification has also been placed on record.

21. in compliance with our directions issued vide order dated 21.3.2013 Syed Zulfiqar Ali Shah, Member BOR has given presentation of satellite imagery of Karachi Division Lands. Extracts/script whereof have also been produced for our perusal which hereby is made part of the record of instant proceedings. He has selected detailed satellite imagery of Deh Nimano Jokhio, District Malir, Karachi. After watching the presentation, we are of the opinion that it is quite possible to identify the lands, which have been grabbed/encroached unauthorizedly.

22. Mr. Mohammad Ahmed Pirzada learned ASC/special counsel of the Board of Revenue is directed to collect information on the basis of satellite imagery for whole of the Karachi to

identify the encroachment of the lands. He is required to collect credible information with the assistance of Mr. Zulfiqar Ali Shah, Member Board of Revenue to the following effect:

- (i) Out of estimated area of 6,81,000.00 acres of land in 93 Dehs of all the five districts of Karachi, how much of its portion is occupied by authorized owners/allottees/leaseholders and the law under which they are enjoying such status?
- (ii) What is the status of remaining area of land?
- (iii) Whether the government functionaries have control over the entire area of land owned by the Provincial and or Federal Government?
- (iv) Whether any action to retrieve the property has been taken against unauthorized persons?
- (v) How many cases have been filed against the land grabbers/encroachers before the Tribunal or Special Court constituted under the Sindh Public Property (Removal of Encroachment) Act, 2010 and the present status of the cases?
- (vi) Whether the competent authority has taken steps to approach the Tribunal under the aforesaid Act of 2010 for retrieval of the property which has been forcibly encroached upon by the land grabbers?

23. It has been informed that Anti Encroachment Force has also been created, which is headed by SP Irfan Bahadur. We have enquired from him to explain to us the manner in which he is discharging his functions for removal of the encroachments, unauthorized structures, etc. He under instructions from Mr. Nazar Muhammad Laghari stated that Government of Sindh Revenue Department under section 9 of the Sindh Public Property (Removal of Encroachment) Act, 2010 conferred powers upon the authorized officers and under section 3(3) of the Act all

the Assistant Commissioners and Mukthiarkars or Collectors on behalf of Government of Sindh are empowered to remove such encroachments together with the structure, if any raised by anyone on the public property within a period not less than two days as may be specified by order in writing and if such person refuses to remove encroachment on the structure raised thereon, after the expiry of the notice period, the authorized officer shall require the incharge of a police station for police assistance within the local limits of which the property is situated. On such requisition the required assistance shall be provided under section 5(2) of the Act, 2010 and the matter shall be sent to the Tribunal or the Special Court for action against the land-grabber according to law. He further stated that under the provisions of Act, 2010 the Provincial Government has so far retrieved 10,690 acres of land and 9 kilometer railway track and at present 62 cases are pending before Special Court constituted under the Act of 2010. The SP Encroachment Cell is directed to submit his report within 7 days as to whether the encroachments by the land-grabbers have been cleared within his jurisdiction.

24. Mr. Shahadat Awan, learned Prosecutor General Sindh stated that from the date of promulgation of the Act, 2010, 145 FIRs were registered and put up before the Special Court, out of which 62 are pending decision whereas the remaining have been disposed of as 'A' Class or 'C' Class. We could not understand as to how such like cases can be disposed of in A or C class. The SP Encroachment Cell shall submit details

of each case, which was disposed of either as 'A' or as 'C' class during investigation. He shall also submit report about the cases, which were quashed. The learned Prosecutor General may also submit the details of such cases with his comments separately as to whether any further action in this behalf has been taken or not and if the cases have failed in Court for want of sufficient evidence, he would fix responsibility on the investigation team or other concerned. He would further point out whether the properties in possession of encroachers/land-grabbers have been retrieved or are still in their unlawful possession along with its complete details.

25. In the context of land-grabbing and encroachment of land one Mohammad Ismail Shahidi has moved CMA No.179-K of 2013 and stated that there is an old dispute of encroachment of the property in KDA Scheme No.36 and the property owned by the lawful allottees etc. has been taken over forcibly by the land mafia. Mr. Mohammad Ahmed Pirzada, ASC has informed that the case, reference of which he has made in this application, is sub-judice before the Sindh High Court and learned Chief Justice after holding full-fledged hearing has reserved the judgment. As the matter is sub-judice before the High Court, therefore, we would not pass any order in this behalf except making an observation that it would be in the interest of justice if the High Court decides the case expeditiously so that the rights of the parties arising out of the litigation may be determined and settled. Mr. M.A. Pirzada, ASC shall produce copy of the petition which has been filed along with annexures as well as judgment of the High Court if announced by that time, so that we may

have benefit of the same for the purpose of deciding the other matters relating to the land-grabbing and encroachment. Notice of the application be given to the Board of Revenue, Land Utilization Department as well as to the parties named therein.

26. The Senior Member Board of Revenue stated that at the time of assassination of Mohterma Benazir Bhutto, the land record of 872 Dehs had burnt and under the directions of the Board of Revenue, an Inquiry Committee was appointed to reconstruct the record. It is to be noted that reconstruction of the revenue record shall only be considered, if it is established on record that the record actually has been destroyed, burnt etc. Therefore, we have directed the Senior Member Board of Revenue to place on record evidence to establish that the revenue record in different districts was burnt and matter was reported to the respective Police stations by giving details of the relevant record. In respect of mechanism for reconstruction of the record the relevant documents on the basis of which record can be reconstructed, they have to consider the Land Record Office, Hyderabad, where reference of allegedly burnt record should be available and record from the officer of Survey Superintendent as well as Micro Filming Unit or from the office of Sub Registrars etc, the Board of Revenue should not have reconstructed the record in absence of aforesaid material, because there is likelihood that the Government property may be claimed by those persons, who are not the owners of the such land, as it is the duty of Board of Revenue/ Government functionaries to save its properties. Be that as it may, Senior Member Board of Revenue may submit claims which have been

received by the Deputy Commissioner(s) and or the Inquiry Officer along with comparative statement showing difference, if any, in the claims of the owners of lands from the original claims and whether the property owned by the Government has been protected and no claim is based on fictitious documents and whether such claims have been accepted or not, if so, to what extent.

27. In CMA No.183-K of 2013, applicant has stated that an area of 1446 Acres and 34 Ghunta of land situated in Deh Shah Bukhari, Taluka Qasim Abad, District Hyderabad meant for reserved forest vide notification dated 23rd January, 2012 has been converted from reserved forest and was further allotted to the 100 fictitious persons, 14 acres each for lease of 99 years. He has prayed that record of the case may be examined and appropriate orders to save the national interest be passed.

28. Mr. Shah Zar Shamhoon, Senior Member of Board of Revenue present in Court was directed to procure the record from the office of Member, Land Utilization. Accordingly, record was produced. A perusal whereof indicates that the total area of reserve forest of Shah Bukhari is 1681 Acres out of which the forest department purportedly under "the Agro Forest Lease Policy 2010" has retained 895 acres and allotted on lease. whereas 1446 Acres a summary was put up before the Chief Minister, Sindh on 16.12.2011, signed by Ghulam Mustafa Phul, then Secretary to the Government of Sindh, Land Utilization Department. Before it the defunct District Officer Revenue Hyderabad vide letter No. HQM/K/-18/- of 2010 dated 2nd July, 2010 has reported that Forest Land under Pacca track out of

protective Bund of River Sindh measuring 1446.24 Acres in Taluka Qasimabad, District Hyderabad is lying uncultivated and vacant at the site but the same is in possession of concerned Forest Department. However, Land Utilization Department proposed to de-notify the land in favour of Land Utilization Department, so that the same may be disposed of under the Statement of Conditions notified vide Notification No.09-294-03/SO-1/336 dated 25.02.2006 in the interest of Government ex-chequer. The Chief Minister accordingly approved the summary and the Member Land Utilization vide letter dated 23.1.2012 de-notified the forest lands in Pacca area, which are not actually under Forest Department. Subsequent thereto this land was transferred on lease for 30 years in favour of different persons, detail of which is available on record. However, it is informed by the Senior Member Board of Revenue that before materializing the transfers the order de-notifying the reserve forest has been cancelled on 16.3.2012. But, he was not aware whether money had been received from the allottees or not?

Prima facie we have noted that de-notifying reserved forest was contrary to the provision of section 27 of Sindh Forest Act, 1927.

29. It is also an admitted fact that except the letter dated 23.01.2012 there was no notification by the Secretary to the Government of Sindh, Land Utilization Department for the change of status of the land in question. It is to be seen that Government functionaries being the custodians of its properties are bound to follow a legal and transparent procedure for disposal of the lands owned by the Forest Department or

Revenue Department, but perusal of the file suggests that no such procedure was followed and the lands were allotted in favour of 100 persons in an arbitrary manner.

30. Applicant stated that construction work on the land has also commenced unauthorisedly but he could not substantiate his contention.

31. As a valuable property owned by the Government of Sindh is involved, therefore, we direct that let the District and Sessions Judge, Hyderabad appoint a judicial officer not below the rank of Senior Civil Judge, who shall be required to visit the site in presence of the President of District Bar Association, Hyderabad and prepare a report indicating the status of land on spot and state whether land is being utilized by any person for any purpose. The Senior Civil Judge shall notify his proposed visit to the D.C Hyderabad who shall accompany him with relevant revenue record to identify the land.

32. In the public interest we also direct the Member Land Utilization to visit the site independently and submit his report. However, if any construction work has commenced over there, he would submit details of the persons, company etc. who had occupied the same for utilization and report shall be submitted within 7 days to the Registrar for our perusal and passing appropriate orders in Chambers, if in the meanwhile case is not fixed for regular hearing.

33. The Senior Member Board of Revenue is directed to submit the relevant file with the Registrar against a valid certificate/receipt. In the meanwhile notice of this application be also issued to the Advocate General, Senior Member Board of

Revenue, and Member Land Utilization for filing reply on the next date of hearing.

34. IN CMA 164-K/2013 reference of Human Rights case No.40539-S/2012 has also been made. The file has been procured from the office, which indicates that in this case one Amir Mustafa filed application in which he has alleged that some persons with the support of some political figures have established an office where SP Anti Enforcement Police and all the Revenue Officers/Officials remain present with revenue record and to implement the illegal orders regarding revenue work, put pressure on the innocent people to give them money otherwise their lands will be cancelled or they will be ejected from the lands. Report was called from the Chief Secretary, Sindh and Senior Member, Board of Revenue but despite issuance of reminder dated 8.3.2013 no report has been submitted. This HRC be treated as Civil Miscellaneous Application and be clubbed with the instant case. The Chief Secretary and Senior Member Board of Revenue and the SP Encroachment Cell are directed to submit reply within 7 days for our perusal in Chambers. Notice to the Advocate General may also be issued.

35. In CMA 184-K/2013, it has been stated that project is under construction on 41 Acres of the land on preparing 4 khatas. Copy of the application has been handed over to the Senior Member, Board of Revenue with direction to file reply within seven days.

36. It is to be noted that CMA 73-K/2013 on behalf of Board of Revenue was filed as compliance report of para 131(8)(11) of the judgment in the case of Watan Party v.

Federation of Pakistan (PLD 2011 SC 997) and orders dated 25.10.2012, 31.10.2012 and 28.11.2012 passed in the instant case. There are three parts of this CMA including appendix-III titled "Detail of Fresh Allotment Regarding 99-Year Leases under Land Grant Policy Notified On 25.2.2006 w.e.f.25.2.2006 to 28.11.2012", which contains names of 542 allottees to whom property has been transferred on lease from time to time commencing from the year 2006 onward.

37. It is to be seen with reference to above property this Court vide judgment dated 09.09.1999 in Criminal Petitions No.36 &37-K/1999 directed for preparation of list of the case, where lands were granted in Sindh in violation of rules etc. Concluding para therefrom is reproduced hereinbelow: -

"8. We consider it appropriate to direct the Chief Secretary and Secretary Land Utilization Department, Govt. of Sindh to prepare a list of cases where lands were granted in Sindh in violation of rules, conditions and ban and provide this list with all necessary details to the Registrar of this Court positively within three months from today so that this Court may consider taking further action against the defaulting and corrupt parties, and also send copy of such detailed information to the Chief Ehtesab Commissioner for such action against the concerned grantees/allottees and officials and authorities concerned as may be required under the Ehtesab Act, 1997, or any other law."

38. As no action was taken by the concerned officials, therefore, an article was published in daily "News" under caption, "Officers do not care two hoots about SC Judgment".

This Court took suo moto notice (Suo Moto Case No.14/2009) of the issue highlighted in the article and passed orders on different dates. In the meanwhile, vide order dated 6.10.2009, Mr. Yousaf Leghari, the then Advocate General was asked to look into the matter on case to case basis. He submitted a report titled "STATEMENT SHOWING THE DETAILS OF STATE LAND LEASED OUT/ALLOTTED TO VARIOUS PERSONS IN KARACHI", which contains somewhat identical details/description of the persons/allottees of the land as is referred to in Part-III of CMA 73-K/2013.

39. It is to be noted that this Court vide order dated 6.11.2009 passed in SMC 14/2009 made following observations: -

"5. We have noted painfully that in some of the cases the property has been allotted even without determining whether it would be in the public interest or just for the purpose of commercial activity to facilitate specific person/organizations. We may clarify here that the provincial Government as well as the Federal Government being custodian of the interest of the public, are not supposed to act in any manner which is against the public interest. While discharging such functions the prime consideration should be nothing but the public interest. However, we will wait for the report from the AG Sindh who is authorized even to summon the parties/allottees after issuing notices to them to appear and justify their cases. After hearing their view point he shall submit a report for our perusal in Chambers. He is also authorized to appoint any one else, if need be,

who shall visit the site for the purpose of submitting physical report about the properties of the State. The Board of Revenue shall cooperate with him and all the necessary files/material/documents shall be examined by him.

6. Another statement showing the cases regularized under the Ordinance III of 2001 has also been filed but on having seen some of the cases without pin pointing them, we are of the opinion that the regularization has not been made keeping in view the nexus of the Ordinance and the price has not been charged and the purpose of the property which was allotted has also not been utilized. Learned AG Sindh is also authorized to look into this case well in detail and submit report as has been observed hereinabove. He is also directed to place on record relevant laws relating to the allotment/lease etc. prevailing in the province of Sindh.

40. It seems that without showing respect to the order dated 9.9.1999 passed in Criminal Petitions No.36-K & 37-K/1999, the government property has been allotted or transferred on lease basis etc. *prime facie* without following the principle of transparency and in this manner a huge valuable property, price of which statedly runs into billions has been transferred on throw away prices in the names of the persons of their own choice.

41. As in the instant case same question has arisen, therefore, SMC 14 of 2009 has been ordered to be clubbed with the instant case.

42. It is to be seen that there had been question marks on the allotments of the lands at the rates lower than market value, therefore, on 3rd January, 2001, in pursuance of Sindh Urban State Land (Cancellation of Allotments, Conversion and Exchanges) Ordinance, 2000, the allotments, conversions or exchanges of urban state lands obtained or granted for residential, commercial or industrial purposes at the rates lower than the market value in violation of law or ban from 01.01.1985 were cancelled. However, a committee under section 4(2) of the Ordinance was constituted for carrying out the purposes of the Ordinance and it was mentioned therein that after making such inquiry as is deemed fit, if the government is satisfied that the allotments, conversions or exchanges of the urban state land are obtained or granted for residential, commercial or industrial purposes at the rates lower than the market value in violation of law or ban, it shall determine the amount of loss caused to Government and call upon the person concerned to pay such amount within the specified period. The Committee so constituted, reportedly, has not concluded its task so far.

43. Needless to observe that 542 allottees, whose description is available in appendix-III in the reply of Board of Revenue (CMA 73-K/2013) succeeded in getting the allotments in their favour under the policy on the basis of statement of conditions mentioned therein obtained land at lower rates instead of at the market rates as is mentioned in the Policy of 2006. Mr. Yawar Farooqi, learned ASC stated that files of aforesaid 542 allotments are available for perusal of the Court.

44. In the light of the above, following questions are required to be determined: -

- (i) As to whether in terms of lease agreement under the statement of policy issued by Government of Sindh under section 10 of the Act, the allottees or the lessees whose names have been filed in the appendix-III (CMA 73-K/2013) and all those allottees/lessess to whom such properties have been transferred upto 15.3.2013, have utilized the same as per the terms and conditions within stipulated period?
- (ii) If not, as to whether in terms of sub-section (5) of section 10 of the Colonization Act, any action has been taken by reversing the entry in their names. The allotment or lease in respect of land mentioned hereinabove from 2006 onward upto 15th March, 2013 in Karachi Division has been made in a transparent manner on receiving the market price following the phenomena of willing seller and willing buyer, or otherwise?
- (iii) If any irregularity has been committed, the responsibility shall be fixed on the officer by the Commission?
- (iv) Whether granting lease or making allotments of government lands in Karachi in transparent manner can prove to be helpful in future for the development of the Karachi?
- (v) Any other issue, which the Commission considers needs to be addressed?

To ascertain, *inter alia*, the above questions, we direct the Chief Secretary to constitute a Commission headed by Mr. Nazar Muhammad Leghari, Consultant of Revenue Department and depute two officers from the Revenue Department of his choice to provide him assistance. The Commission, if need be, may increase manpower at its own option and the Chief Secretary shall cooperate fully with the Commission. He would also settle fee of the Commission with its Chairman, which shall be paid in advance. In addition to it, he shall also place a reasonable amount at the disposal of the Commission to meet day-to-day

expenditure. He would also issue directions to all the Mukhtarkars and Deputy Commissioners/Revenue Officers of Karachi to provide all necessary assistance to him. The Chief Secretary shall also provide logistic support to the Commission to complete the task. The Commission is required to complete its task within a period of two weeks after receipt hereof.

45. Thus, in view of the above discussion and observations, it is ordered as follows: -

- (a) In the Watan Party's case (ibid), it has already been directed that "there must be no 'No Go Area' at all but despite the probe made by us during hearing, heads of both the functionaries were not agreeable on the existence of 'No Go Areas' in Karachi but it has been established on record by means of credible information that 'No Go Areas' do exist in Lyari, therefore, in pursuance of our earlier judgment, the IGP himself and if necessary the DG, Rangers shall also personally lead the operation into such areas to make Karachi free of 'No Go Areas' and peaceful city to protect and also provide them a congenial atmosphere free from hold of the criminals so that they may live peacefully and also participate in forthcoming general elections, polling of which has been scheduled to be on 11th May, 2013. They have to complete the task within a period of two weeks and report compliance shall be submitted to the Registrar for our perusal in Chambers, if in the meanwhile instant case is not listed for further hearing.
- (b) Mr. Shahid Hayat, DIG/Police authorities are hereby directed to conduct honestly and fairly investigation in the murder case of Arshad Pappu and others strictly in accordance with law, without sparing any person involved in the commission of crime. DG, Rangers, if required, shall also provide adequate assistance to the police in view of the mandate, which has been given to the Rangers under section 5 of the Anti Terrorism Act, 1997, so that the real culprits are brought to book and writ of government as well as rule of law is fully established.
- (c) Notice of CMA 181-K of 2013 be issued to IGP, DG, Rangers as well as to the Editor and Publisher of the Newspaper, Daily Josh to place on record the original

extract of Daily "JOSH" Karachi dated 21st March, 2013, copy of which has been appended with the application.

- (d) The Government of Sindh may create an independent post of Project Director, IT in Police Department as it has already been observed in the para supra.
- (e) The SP Encroachment Cell is directed to submit his report within 7 days as to whether the encroachments by the land-grabbers have been cleared within the Karachi area and land has been retrieved.
- (f) The Prosecutor General, Sindh is directed to submit the details of the cases, which were filed before the Tribunal or the Special Court under the Sindh Public Property (Removal of Encroachment) Act, 2010 and state the reasons for their failure of the cases by fixing responsibility upon the officers involved in these cases and action, if taken against any one of them. He would further state as to whether the properties encroached/grabbed have been retrieved or not?
- (g) Mr. Muhammad Ahmed Pirzada, learned ASC shall procure and produce in Court copy of the petition pending before the High Court in respect of cases of KDA Scheme No.36 and the judgment, if has been announced by the learned High Court enabling this Court to have the benefit from the same.
- (h) Notice of CMAs No. 164-K/2013, 156-K/2013, 179-K/2013 and 93/2013 be issued to Board of Revenue, Senior Member Land Utilization for next date of hearing.
- (i) Senior Member Board of Revenue is directed to put up details of the claims submitted by the alleged owners, allottees, lessees of the agricultural properties, filed by them before the Revenue authorities, Mukhtarkar etc. during re-construction of the revenue record while examining/handling the cases of 872 Deh, in respect whereof it has been alleged that record has been burnt.
- (j) Notice of CMA No.183-K/2013 be issued to the Senior Member Board of Revenue, Member Land Utilization as well as the Secretary Forest.

- (k) The District & Sessions Judge Hyderabad is directed to appoint a judicial officer not below the rank of Senior Civil Judge along with President District Bar Association Hyderabad to visit Deh Shah Bukhari, Taluka Qasimabad and prepare a report indicating as to whether on the land, which is meant for reserved forest, who is in the possession and whether any construction work is going on, on the said land.
- (l) The Member, Land Utilization will also independently visit the above-said land and submit his report whether any construction work has commenced over there and detail report shall be submitted by him within two weeks.
- (m) Notices of CMA 164-K, HRC No. 40539-S/2012 and CMA 184-K/2013 be issued to the Senior Member Board of Revenue and other persons who are party in this case as per its proceedings.
- (n) Notice of SMC No.14/2009 be issued to the Board of Revenue.
- (o) In CMA No.148-K/2013 applicant has prayed for providing protection and action against one Muhammad Asad Thanvi. Notice be issued to Advocate General and IGP, Sindh to submit report before the next date of hearing.
- (p) CMA No.108-K/2013 has been filed by Maulana Aurangzeb Farooqi. Notice be also issued to the IGP, Sindh for filing reply.
- (q) Comments of CMA 390-K/2013 be obtained from IGP, Sindh

Put up for hearing at Karachi on 4th April, 2013.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Karachi, the
22nd March, 2013.
Nisar/*

Approved For Reporting