

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT: Mr. Justice Jawwad S. Khawaja
Mr. Justice Iqbal Hameedur Rahman

C.M.A.No.3854/14 in SMC No.3/09

(Implementation of the order dated 5.06.2013 passed in SMC 3/09)

AND

C.M.A. No.4341/14 in CMA No.3854/14 in SMC No.3/09

(Concise statement on behalf of respondent-Bahrai Town)

Voluntary Appeared: Malik Muhammad Shafi, In person
Dr. Shafiq ur Rehman, In person

On Court's Notice: Mr. Razzaq A. Mirza, Addl.A.G.
Mr. Nadee, Ashraf, Sr. Member, BOR
Mr. Muzaffar Mehmood, Member, BOR
Mr. Sajid Zafar, DCO, Rwp.
Mr. Arif Raheem, ADC, Rwp.
Mr. Tasneem Ahmad Khan, A.C. Rwp.
Cap. (R) Jahanzeb Khan, Secy. Forests
Mr. Iftikhar Ahmed, Conservator, Rwp.
Mr. Ejaz Ahmed, DFO, Rwp. South
Mr. M. Maqsood, Gardawar
Mr. Kala Khan, Gardawar
Mr. M. Ishfaq, Gardawar
Malik Noor Zaman, Tehsildar
Mr. Mustansar Ali Gill, Tehsildar
Malik Mumtaz Ahmad, Naib Tehsildar
Malik Nisar, Naib Tehsildar
Mr. Waqar Ahmad, Naib Tehsildar
Mr. M. Safdar, Naib Tehsildar
Mr. Sajid Mahmood, Naib Tehsildar
Mr. Abdul Shakoor, Naib Tehsildar
Mr. Ameer Anwar, Patwari
Mr. Tariq Mehmood, Patwari
Mr. Mehmood Ahmad, Patwari
Mr. Abdul Aziz, Patwari

For Bahria Town: Ch. Aitzaz Ahsan, Sr. ASC
Mr. Gohar Ali Khan, ASC
(on behalf of Syed Ali Zafar, ASC)
Raja Zafar Khaliq, ASC
(on Court call)
Raja Abdul Ghafoor, AOR

Date of Hearing: 31.03.2015

ORDER

Jawwad S. Khawaja, J. The case has been called in the supplementary cause list at Sr. No.1. Mr. Aitzaz Ahsan, learned Sr. ASC has informed us that Syed Ali Zafar, learned ASC who is out of country has told him firstly, that he is on general adjournment and

secondly, that he has moved an application to Hon'ble the Chief Justice of Pakistan. Our Office shows that presently there is no such application pending with the Office, although there appears to be some application which has been provided to the press which has reported in respect of such application in today's newspapers. An inquiry from the Office has revealed that an application was filed but was returned to Raja Abdul Ghafoor AOR for Bahria Town on 28.3.2015 with Office objections and has not been refilled after removal of objections. A copy of the application has now been supplied to us in Court by Mr. Aitzaz Ahsan Sr. ASC.

2. Let the matter come up after 11:30 am.

3. It is now 1:30 p.m. when the matter is again being taken up. On 25.03.2015, this matter i.e. CMA No.3854/14 & 4341/14 in CMA No.3854/14 came up for hearing and an order was passed wherein we noted that almost two years ago, on 5.06.2013 we had directed that the Collector, Rawalpindi being the competent functionary of the Punjab Province shall proceed promptly in accordance with law to assert/secure such rights as according to him are vested in the Province. We also noted that proceedings which were pending before the civil and revenue forums shall be decided by the competent forums expeditiously. A report was also sought within thirty days from 5.06.2013. Thereafter through a chamber order we were constrained to note that our order of 5.06.2013 had not been complied with and as a result the report sought had not been submitted. An order dated 18.12.2013 was then passed in chambers by Mr. Justice Ejaz Afzal Khan wherein it was recorded that *"we do not understand why demarcation of property is procrastinated [sic] on one pretext or another. Issuance of stay order or its refusal will not have much bearing on the determination of demarcation of boundaries. We are also at a loss to understand as to why the spade work facilitating the resolution of the dispute, is avoided. Let show cause notices to all concerned be issued requiring them to explain their position in this behalf. "* A period of more than 16 months has elapsed since the aforesaid chamber order. It is for this reason that when we had ascertained that action had not been taken in compliance with our order of 5.06.2013 we directed that the matter be fixed in Court.

4. On the last date of hearing i.e. 25.03.2015 we were informed by Mr. Gohar Ali Khan, ASC that Syed Ali Zafar, learned ASC for M/s Bahria Town was unavailable because he was on general adjournment. We noted that no request for general adjournment was before

us but nonetheless, we extended courtesy to Mr. Gohar Ali Khan, ASC although he was not counsel in this matter, and adjourned the case for today in order not to cause any prejudice to Syed Ali Zafar's client. We may record that because the request for general adjournment was not before us and we were not even informed that the general adjournment had been granted, that we directed that this matter be listed for hearing today i.e. 31.03.2015. Today Raja Abdul Ghafoor, who is AOR and has instructed Syed Ali Zafar, learned ASC in the matter, is present. He was not present on 25.03.2015 but stated that he was in the Court room but could not hear when the case was called. We accept this submission as a statement made at the Bar but what is still not understandable is as to why the application for general adjournment had not been placed before us. This aspect of the case is being dealt with in some detail because Ch. Aitzaz Ahsan, learned Sr. ASC has appeared on behalf of Syed Ali Zafar, learned ASC and informed the Court that he had received telephonic instructions from Syed Ali Zafar, ASC in which he stated firstly, that he was on general adjournment and secondly, that an application had been filed by him addressed to Hon'ble the Chief Justice.

5. At this point we have to take note of the fact that reference to the said application addressed to the Chief Justice had appeared in various newspapers and was noticed by some functionaries of the Supreme Court this morning. We find this to be somewhat surprising because firstly, Rule 164 of the Legal Practitioner and Bar Councils Rules, 1976 states that *"publications in newspapers by an advocate as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned"*. We, however, will not comment further on this aspect of the case because Syed Ali Zafar, ASC is not present today and only he may be able to explain this circumstance. Let him submit his explanation.

6. We also inquired and were informed by the Office that no such application is pending as it was returned to the AOR on 28.3.2015. Something may now be said about the aforesaid application itself. Para-8 of the said application being relevant is reproduced as under:-

"8. That it is an established principle of law that **"justice must not only be done but seen to be done"**. The CM of the M/s Bahria Town in which the M/s Bahria Town is challenging the very jurisdictional basis in law

under which the court is conducting these post decision proceedings and wherein the M/s Bahria Town is submitting that this honourable court does not have any jurisdiction in law to direct the respondent to take action against the M/s Bahria Town without a fair trial which is pending and has to be first decided, yet the honourable judge Justice Jawad S. Khawja again and again directed and threatened the officer concerned of the Government to take action against the M/s Bahria Town otherwise his service may be harmed. This has created reasonably in the mind of the M/s Bahria Town as a litigant that the learned judge has already made up his mind to dismiss/has effectively negated the CM filed by the M/s Bahria Town and is proceeding with the case regardless. This coupled with the fact that the Hon'ble Judge Mr. Justice Jawad S. Khawaja refused to accept the general adjournment of undersigned and has passed various observations and even passed order and also fixed the next date of hearing as 31st knowing that undersigned is not available, all of which has serious impact on the final decision. The M/s Bahria Town has serious apprehension that the Hon'ble Judge has already made up his mind to decide the case against the M/s Bahria Town in the absence of the its counsel and hence it is in the interest of justice if the case is put up before another Bench. The learned judge even at one stage remarked that he will not record the order of direction to the government officials and the oral observations should be sufficient." (emphasis supplied)

7. We find it extremely disconcerting that so many wrong assertions have been made in the application, probably on the basis of some hearsay which someone or the other may have conveyed to Syed Ali Zafar, ASC who is abroad. The first thing which we need to comment on is the statement that the Judge has already made up his mind. On what basis this assertion has been made is noted in the excerpt of the application reproduced above but it is quite baseless as it does not even remotely mean that the Court has made up its mind to dismiss the CMA filed by the M/s Bahria Town. The second patently false assertion is that Justice Jawwad S. Khawaja refused to accept the general adjournment of the undersigned (Syed Ali Zafar) and that the hearing was adjourned to 31.03.2015

knowing that Syed Ali Zafar is not available. This is a patently false assertion causing aspersion not only on the Judge but the entire Court and judiciary of this Country. The order passed on 25.03.2015 shows that neither Syed Ali Zafar, ASC was present nor was the learned AOR Raja Abdul Ghafoor and there was definitely no application for general adjournment placed before the Court on that date. It is only as a matter of courtesy which the Court extended to a member of our Bar that information given by Mr. Gohar Ali Khan was noted in our order of 25.03.2015 to the effect that Syed Ali Zafar, ASC was on general adjournment. Mr. Gohar Ali Khan, ASC did not give any indication as to when the general adjournment of Syed Ali Zafar would end. We, therefore, directed that in order not to prejudice the client of Syed Ali Zafar, ASC the case be adjourned to 31.03.2015 (today). It is only today that we have been informed that Syed Ali Zafar, ASC will not be available till 1.04.2015. Ch. Aitzaz Ahsan, Sr. ASC stated that the Court should have extended a further courtesy to the absent advocate and should on its own initiative have inquired from the office if there indeed was an adjournment application and the date upto which adjournment had been allowed. With great respect to the learned Sr. ASC, this is wholly untenable and unjustified and is also not in conformity with the Rules and practice of the Court. Courtesy is always extended to the members of the Bar, as it was extended in this case to Mr. Gohar Ali Khan, ASC. However, it is always for the party or the ASC to ensure presence of the AOR at the hearing and it is for the AOR to inform the Court that the learned counsel is on adjournment or at the very least to file an application giving intimation of the general adjournment. Ch. Aitzaz Ahsan, learned Sr. ASC then pointed out that in the order of 25.03.2015 it had been recorded that State land be recovered although the report itself relating to demarcation was inconclusive. He also stated that the order of 25.03.2015 was prejudicial to M/s Bahria Town client of Syed Ali Zafar, ASC. Syed Ali Zafar, ASC shall have the opportunity to explain the patently false and scurrilous assertion made in his application. Let him do so. We may however, reiterate that in our order of 5.06.2013, we had stated as under:-

"Since, we are not to record evidence and make a determination in these proceedings as to the respective rights/title of the parties in the land in question or as to the criminal liability of delinquent individuals, the Collector, Rawalpindi who, as noted above, is the competent functionary of the Punjab Province shall proceed promptly in accordance with law to assert/secure such rights as according to him are vested in the

Province. The pending proceedings before the Civil and Revenue forums shall be decided by the competent forums expeditiously and a report of the status of these proceedings be submitted for our perusal within 30 days. SMC No. 3 of 2009 stands disposed of."

The third allegation in the application of Mr. Ali Zafar is the most egregious and scandalous. When the Court comes to the conclusion that its order which was passed almost two years ago and which had directed that the Collector, Rawalpindi shall proceed promptly in accordance with law has not been complied with, it becomes incumbent upon the Court to take action as has been done in the present case. Ensuring compliance of our order of 5.6.2013, two years after the same was passed or our chamber order of 18.12.2014 after the lapse of almost 16 months is necessary for the effective enforcement and execution of Court orders. No person can feel threatened by the efforts made by the Court to ensure compliance of its orders. We may also add that the government functionaries, in particular Mr. Sajid Zafar, Collector Rawalpindi was directed to comply with our orders. Referring to this effort on the part of the Court as a threat to the officer concerned, is wholly uncalled for.

8. On the last date of hearing also, we had directed that the Collector shall make sure that action according to law is taken and our orders are complied with. We may also at this point note that it was as far back as 5th June, 2013 almost 22 months ago that we had passed our order and it is only because of non-compliance thereof that we had passed the chamber order of 18.12.2013 and had also directed the issuance of show cause notices to all concerned requiring them to explain their conduct in this behalf. Only one of the persons has filed a reply to the show cause notice i.e. respondent No.2 namely, Sher Alam Mehsood. It is for this reason that in CrI. P. No.110/14 notices were issued to the respondents other than respondents Nos.2,5,6 &23. Ch. Aitzaz Ahsan, learned Sr. ASC then emphasized that according to Syed Ali Zafar, ASC the application addressed to Hon'ble the Chief Justice has been received in the office. In this behalf we have already ascertained from the Office as noted above.

9. Coming back to the aforesaid application addressed to Hon'ble the Chief Justice and the extract therefrom which has been reproduced above, it has been stated by Syed Ali Zafar, ASC that the action of Justice Jawwad S. Khawaja *"has created reasonably in the mind of*

the M/s Bahria Town as a litigant that the learned judge has already made up his mind to dismiss/has effectively negated the CM filed by the M/s Bahria Town and is proceeding with the case regardless.". This apprehension on the part of the M/s Bahria Town has been repeated further in the extract of the application reproduced above. We may note that the M/s Bahria Town is merely a corporate entity and it has no mind of its own and can have no apprehension of its own. It only acts through natural persons such as its directors, chief executive etc. Syed Ali Zafar, ASC may therefore, explain to the Court as to who has the apprehension and on what basis. In any event *prima facie*, there appear to be some significant breaches of the Supreme Court Rules, 1980 and of the Code of Conduct prescribed for Advocates under the Legal Practitioners and Bar Councils Act, 1973. These apparent violations include violation by an Advocate *"to uphold at all times the dignity and high standing of his profession as well as his own dignity and high standing as a member thereof"*.

10. It may be added that an Advocate is not a tool or a puppet in the hands of his client, obliged to pander to the desires of the client, right or wrong. Rule 156 of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 states that *"nothing operates, more certainly to create or foster popular prejudice against Advocates as a class, and to deprive the profession of [the] public esteem ... which belongs to the proper discharge of its duties"*. The Rule further stipulates that *"the Office of an Advocate does not permit, much less does it demand of him ... the violation of any law or any manner of fraud or chicanery. In doing his professional duty to his client he must obey the voice of his own conscience and not that of his client"*. An honest, upright and ethical Bar is absolutely essential for the just dispensation of justice, particularly in our adversarial legal system. This has to be ensured at all cost if an independent Bench and Bar are to be maintained.

11. We may also point out at this stage that this Court has been hearing a number of cases involving M/s Bahria Town or its directors. It can be recalled that 4, 5 or even more cases were filed against the M/s Bahria Town by various individuals. Syed Ali Zafar, ASC was representing the M/s Bahria Town in those cases also. A number of those cases were decided in favour of the M/s Bahria Town and no apprehension was ever expressed at that time although some cases were decided in a manner not strictly in accordance with the wishes of the M/s Bahria Town. The office shall trace those cases also and place the same on record.

12. Since Syed Ali Zafar, ASC is on general adjournment till 01.04.2015, let this matter be listed for hearing on 2.04.2015. Syed Ali Zafar, ASC will be given full opportunity to give his explanation in respect of the matters noted above so that appropriate orders can be passed.

Judge

Judge

ISLAMABAD
31st March, 2015
(Nasir Khan)