

**IN THE SUPREME COURT OF PAKISTAN**  
**(ORIGINAL JURISDICTION)**

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE MUSHIR ALAM  
MR. JUSTICE MAQBOOL BAQAR

**C.M.A.No.3221/2012 in S.M.C.No.25/2009**

*(Suo Motu action regarding cutting of trees for  
canal widening project Lahore)*

**AND**

**CRIMINAL ORIGINAL PETITION NO.96/2014**

Lahore Bachao Tehrik

...Petitioner(s)

**VERSUS**

Dr. Iqbal Muhammad Chauhan etc.

...Respondent(s)

For the petitioner(s):  
(in CrI.O.P.96/2014)

Mr. Aitzaz Ahsan, Senior ASC  
Mr. M. S. Khattak, AOR

For L.D.A.:

Kh. Haris Ahmed, Senior ASC  
Mr. Israr Saeed, Chief Engineer  
Mr. M. Rashid, Director (Legal)  
Mr. Raza Hassan Rana, Asstt. Director

For Lahore Bachao Tehrik:

Ms. Imrana Tiwana

For the applicant(s):  
(in C.M.A.615/2015)

Ch. Munir Sadiq, ASC

For Environment Deptt:

Mr. Nawaz Manik, Director (Law)

Date of hearing:

14.05.2015

...  
**JUDGMENT**

**MIAN SAQIB NISAR, J.-** These two matters have genesis and direct nexus with 14 km widening of the Lahore Canal Bank Road (*Canal Road*) on both the sides thereof. The Government of Punjab initiated a project for the above purpose and in the process had already widened a part of the road when Lahore Bachao Tehrik (*LBT*) submitted an application to the Hon'ble Chief Justice of Pakistan primarily asserting therein that the said widening would entail the

cutting of trees on both the sides of the canal and the greenbelt area around the canal would be encroached which would result in environmental hazard. This project, thus, is violative of the fundamental rights set forth in the Constitution of the Islamic Republic of Pakistan, 1973, particularly the right to life. This application was treated as SMC No.25/2009 and vide judgment dated 15.9.2011 (*Judgment*) reported as **Cutting of trees for canal widening project, Lahore (2011 SCMR 1743)** it was disposed of with certain directions, which shall be mentioned in due course of this opinion.

2. We may like to mention at this juncture that for the purposes of ascertaining the effect of widening upon environment and other related issues raised by LBT, a Mediation Committee comprising of certain nobles of the city and experts was constituted (*Mediation Committee*). Such Committee had given its report which was accepted by the Government of Punjab, the applicant in toto while some objections were expressed by LBT thereto but only to the extent of permitting the Government to widen a part of the Canal Road. These objections seemingly were not endorsed by the Court and thus the afore-mentioned decision on the basis of the Mediation Committee report primarily is in the nature of a consent order. In this context this Court made certain directions in the said Judgment (*paragraph 60*) which reads as under:-

*“(i) The Bambawali-Ravi-Bedian (BRB) Canal and the green belt on both sides of the Canal Road (from Jallo Park till Thokar Niaz Beg) is a Public Trust. It shall be treated as Heritage Urban Park forthwith and declared so by an Act to be passed by the Assembly as undertaken by the respondent-Provincial Government;*

- (ii) *Widening of the road on both sides of the Canal Bank shall be in accord with the report submitted by the Mediation Committee;*
- (iii) *Necessary corrections/modification of some of the underpasses on the Canal Road shall be carried out as suggested in the report of the Mediation Committee;*
- (iv) *Proper Traffic Management Program shall be made and given effect to;*
- (v) *Further improvement in public transport system shall be ensured;*
- (vi) *Where needed and as recommended by the Committee, re-engineering of the junctions along the Canal Bank would be undertaken;*
- (vii) *The service roads along certain part of the Canal Road shall be constructed/improved;*
- (viii) *Report of the Mediation Committee shall be implemented as agreed by the respondent-Provincial Government in letter and spirit;*
- (ix) *Respondent-Provincial Government and TEPA shall ensure that minimum damage is caused to green belt and every tree cut would be replaced by four trees of the height of 6/7 feet and this replacement when commenced and completed shall be notified through press releases for information of general public, copies of which would be sent to the Registrar of this Court for our perusal; and*
- (x) *Elaborate measures/steps be taken to ensure that the Canal is kept clear and free of pollution. The steps should inter alia include throwing of liter and discharge of any pollutant in the Canal a penal offence. The Chief Secretary, Government of Punjab shall ensure that a comprehensive action*

*plan is prepared in this regard by the concerned department and report is submitted to the Registrar of this Court within six weeks of the receipt of this judgment.”*

Through the instant CMA No.3221/2012 the Province of Punjab has sought a permission from this Court to allow further widening of the road, by utilizing some greenbelt and cutting of trees, whereas the CrI.O.P.No.96/2014 seeks an action against certain officials of the Province of Punjab who statedly have violated the above Judgment.

3. It may be pertinent to mention here that for the purposes of the factual backdrop and for the points which were raised, dilated upon, discussed and resolved by this Court in the said Judgment, we do not intend either to reiterate the factual background or in any manner revisit the said Judgment on the basic points which were settled therein, particularly that the canal area (*in dispute*) is a public trust and that it cannot be used for any purpose other than public purpose. Besides that the area around the canal should be declared as a heritage park. These basically are the two salutary legal and factual aspects which were settled and resolved in this matter.

4. Anyhow, now through the present application, the Government of Punjab claiming it to be a precautionary measure (*because the case of the Government of Punjab is that it has the requisite permission to widen the Canal Road even within the letter and spirit of the Judgment*) has sought permission from this Court for widening the Canal Road at certain points. The reason for the purposes of seeking permission is given in CMA No.3221/2012 and also has been supplemented by various documents submitted by the Government of Punjab in the course of the proceedings which have been taken into account by this Court.

5. Learned counsel for the applicants, Khawaja Haris Ahmed, Sr. ASC, has stated that the Project for the widening of the Canal Road pertains to two sectors. One includes widening of road and construction of a 1.3 km long underpass at Chaubucha Interchange in the sector falling between Dharampura and Harbanspura to bring it in alignment with the rest of the Canal Road and for easy merger of traffic coming out from the underpass. Whereas, the second limb of the project is addition of a third lane in the sector falling between Doctor's Hospital and Thokar Niaz Beg because of the acute difficulty faced in the merging of traffic from an already widened three-lane sector up to Doctor's Hospital onto a narrower two-lane sector from there onwards. In both the cases, it is submitted, the need for widening/construction stems from the inevitable slowing down and congestion of traffic flow in these sectors and consequent emission of pollutants dangerous to the environment on either side of the canal, and to minimize noise pollution because of prolonged traffic jams or slowing down of traffic.

With respect to the first half of the project, it has been argued that the same is in line with the recommendations of the Mediation Committee and the Judgment in light of Recommendations No.18(1) and 18(2) reproduced at pages 1771 and 1772 of the Judgment respectively. It is contended that review/re-visiting of the scope of the Judgment is not sought, rather a clarification to this effect is being asked for.

With respect to the second segment of the project i.e. addition of a third lane on the Canal Bank Road in the sector from Doctor's Hospital to Thokar Niaz Beg, it is submitted by the learned counsel for the applicant that though the same was 'not recommended' by the

Mediation Committee, it was also not categorically prohibited. Per the report of the Mediation Committee, there was no need for addition of a third lane because in its view, the traffic congestion problem could be resolved through construction of service roads, improvement of earthen shoulder and development of alternate routes. It is the case of the applicant that consequent to the report of the Mediation Committee and the Judgment, steps had been taken to implement the aforementioned recommendations, however, none of these helped in easing the traffic congestion in this sector necessitating addition of a third lane to counter the grave bottlenecks and traffic congestions faced by the commuters on account of sudden transition from three-lane traffic to two-lane traffic from Doctor's Hospital onwards. It is submitted that since the rationale behind not recommending a third lane in this sector was to ease the traffic issues through alternate means, which (*means*) had proved futile, the addition of a third lane was in essence in consonance with the purport of the recommendations made by the Mediation Committee and the letter and spirit of the Judgment of this Court.

Learned Counsel for the appellant has further submitted that the proposed project is neither violative of the provisions of the Lahore Canal Heritage Park Act, 2013 (*Act*) nor the Doctrine of Public Trust. Sub-sections (5) and (8) of section 3 of the Act imply that there may be certain contingencies necessitating use of some portion of the Heritage Park for construction or any other infrastructure development work which may be undertaken, subject however, to prior written permission from Parks and Horticulture Authority (PHA) which is to take into consideration the environment impact assessment of the proposed activity and in the instant case a go-

ahead has been given to the project by the PHA as also the Environmental Protection Agency (*EPA*). With respect to the Doctrine of Public Trust, it is contended that as was declared in the Judgment of this Court, though the greenbelt on both sides of the Canal is a public trust, the same may be used for a public purpose and in the instant case easing traffic congestion for the benefit of the public serves such a purpose.

Lastly, it is contended that since public interest litigation proceedings under Article 184(3) are inquisitorial, rather than adversarial in nature (*PLD 2013 SC1; PLD 2013 SC 501; PLD 2012 SC 664; PLD 2011 SC 997*) and the purport of exercise of powers under said Article is to protect fundamental rights of the citizens, such a power is not limited by any technicalities. Reliance has been placed on judgment reported as *PLD 2015 SC 50* to submit that a judgment that impacts the fundamental rights of the citizens or public good may be re-visited under Article 184(3) and it is therefore prayed that the widening/construction as envisaged in the Project may be allowed specifically when it also falls within the scheme of the report of the Mediation Committee and the purport of the Judgment of this Court.

6. The respondent, Lahore Bachao Tehrik, which was party to the earlier matter has vehemently opposed the application. It is submitted that the report of the Committee, referred to above, was conclusive and was accepted by the Government of Punjab. Since the Judgment in fact is a compromise judgment which has attained finality, the applicant cannot withdraw such consent and is estopped by its own conduct.

It is also argued that the canal area throughout has been declared as Heritage Park and pursuant to the above, The Act came

into force. Accordingly *per* the force of law, it is now impermissible for the applicant to, in any way, widen the road, to encroach upon the greenbelt or cut any trees, as there is/are a strict prohibition to that effect in the said law. It is also argued that the extension/widening of the road is no solution of the traffic problem as has been highlighted in various documents produced before us rather the applicant should come up with alternate means to overcome the traffic congestion in the area.

It is further submitted that there is no justification for widening of the road. There is no need or requirement to revisit the said Judgment. The applicant in the garb of the present application intends to undo the said judgment and is in fact seeking review of the said judgment, but no case in this regard (*for review*) at all has been made out. Besides, the review power of this Court has but a limited scope and no appeal (*review*) is available against a consent order. In making this submission the judgments reported as **Muhammad Tufail Vs. Abdul Ghafoor** (PLD 1958 SC 201), **Syed Arif Shah Vs. Abdul Hakeen Qureshi** (PLD 1991 SC 905), **Amin Badshah Vs. Nargis Saleem** (2000 SCMR 1641), **Rashida Vs. Aziz Begum** (1998 SCMR 1340) and **Sajjad Hussain Vs. Musrat Hussain** (1989 SCMR 1826) have been relied upon by the learned counsel.

It is also stated that the Canal Park is a Public Trust and cannot be encroached upon only for the benefit of 8% of the population of Lahore which has vehicle ownership and fundamental right to life of the public at large cannot be compromised by cutting of age old trees (*that are now part of the heritage park*) as the same will have serious ecological impact.



Lahore Bachao Tehrik has also submitted through Criminal Original Petition No.96/2014 that as the respondents in disobedience/breach of the judgment of this Court *ibid* have already cut certain trees, they are guilty of violating the Judgment, therefore, criminal action be initiated against them.

7. On account of the pleadings and hearing of both the parties, the main propositions which emerged for our consideration are:-

- i) Whether *per* the judgment of this Court reported as **Cutting of trees for canal widening project, Lahore (2011 SCMR 1743)** and the Act, the widening of the road, the cutting of the trees and destruction of the greenbelt is not permissible and whether the permission being sought by the applicant is violative of the aforesaid Judgment and the Act;
- ii) Whether there is such acute need for widening of the road as has been propounded by the applicant and whether the canal road having been declared heritage park is protected by the doctrine of public trust;
- iii) Whether the judgment in question being in the nature of a consent order precludes the applicant from seeking permission of this Court for carrying out the proposed project including widening of the Canal Road by utilizing some part of the green belt deemed as the Heritage Park and whether the application filed by the applicant is one requiring review of the Judgment and Court while exercising its jurisdiction in terms of Article 184(3), by itself can permit the inclusion of the greenbelt for widening of the road and cutting of trees upon some conditions;
- iv) Whether on account of the allegations leveled in CrI.O.P.No.96/2014, the applicants have committed disobedience/violation of the judgment of this Court calling for contempt proceedings against them.

**PROPOSITION NO.1:**

8. In order to cater to this proposition, we will follow a two pronged process. Our first step will be to assess whether either limb of the project infringes upon any of the recommendations of the Mediation Committee as embodied in the Judgment of this Court and whether the same prohibit construction/widening of the Canal Bank Road in its totality. We will then proceed on to see whether any part of the project is violative of the Act and whether there is room for implementation of the project and if so, whether there are any conditions/prerequisites.

**COMPLIANCE OF THE PROJECT WITH THE RECOMMENDATIONS OF THE MEDIATION COMMITTEE AND THE DIRECTIONS GIVEN IN THE JUDGMENT OF THIS COURT**

9. For the purposes of resolving this contention, we find it expedient to reproduce the relevant features of the consensus Recommendations of the Mediation Committee (*Recommendations*), which read as follows:-

“.....

**2. Correct the "Incorrect Underpasses" on the Canal Road**

*During the proceedings of the Committee, it became clear that the design of the underpasses at Jail Road and Ferozepur Road (the "Incorrect Underpasses"), ....were not in accordance with appropriate traffic engineering solutions and that these Incorrect Underpasses constitute a serious traffic safety hazard.*

*The Incorrect Underpasses are incorrectly situated in the slower/left lanes. International design standards and conventions stipulate that underpasses are to be located in the fast lane. Due to this flaw, the through traffic movement towards the Incorrect Underpasses is suddenly diverted to the left lane instead of flowing straight in the right lane as is the case with all the other underpasses later correctly constructed along the Lahore Canal Road....*

*(.....) the fast-moving traffic going through and coming out*

*of the Incorrect Underpasses criss-crosses with slow moving traffic and creates direct conflict points (red circles) instead of smooth weaving and merging. This raises serious road/traffic safety issues and destructs the smooth flow of traffic....*

*(....) The Incorrect Underpasses, therefore, need to be re-aligned and reconstructed in accordance with internationally accepted design standards and parameters.*

*Similarly, the Committee noted that the bypasses at the Jinnah and Doctor's Hospital intersections required geometric improvements as the fast and slow-moving traffic do not smoothly weave and merge. This causes traffic conflict points and creates traffic safety hazards. A representation of the problem is given below:*

### **3. Re-engineer the Junctions along the Canal Road**

*There are, broadly, two (2) categories of intersections along the Canal. These are:*

#### *(1) Roads traversing through the Canal Road*

*With respect to these types of intersections, the Committee noted the fact that, in all, there were twelve (12) such intersections over the Lahore Canal and that several of these intersections carried significantly higher traffic volumes across the Canal Road than the traffic that flowed on the Canal Road.*

*The straight and turning traffic movement along the Canal Road that does not go through the underpasses also uses these intersections. It was observed by the Committee that the designed capacity of these intersections is not sufficient to accommodate the large traffic volumes and that as a result, there are bottlenecks on these intersections. It is recommended that these intersections are re-modelled after a traffic capacity analysis and designed in accordance with standard geometric design. This will help to have a smooth flow of traffic at these intersections and will reduce congestion. In addition, signals along the corridor and at intersections over the Canal Road should be gully actuated and traffic signage should be of international standard.*

#### *(2) Roads and streets connecting to the Canal Road*

*These roads and streets connect the Canal*

*Road and predominantly emanate from housing schemes and individual houses. The Committee noted that these were unplanned access routes built for a variety of reasons, which provide connectivity to the housing schemes or private residences along the Canal Road. The traffic entering and exiting from these intersections slows traffic movement along the Canal Road. This leads to undue stoppages and causes congestion.*

*The Committee is of the opinion that there should not be direct connections of the Canal Road to housing schemes and private residences. Traffic generated and attracted by these housing schemes and residences requires the construction of a network of service roads, preferably in a one-way loop system, with proper geometries to enable smooth weaving and merging of traffic from and onto the Canal Road.*

*Also, bus bays constructed along the length of the Canal Road require redesigning in order to facilitate the smooth entry and exit of vehicles and to minimize traffic turbulence.*

#### **4. Construct Service Roads along Certain Parts of the Canal Road**

*(...) The Committee is of the opinion that there is an immediate requirement to provide a one-way loop service road system along the entire length of the Canal Road (except the Punjab University premises between the Campus underpass and the Jinnah Hospital underpass) with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion....*

#### **12. Cleaning and Improving Water Quality of Canal**

*The sources of effluent, sewage and waste into the Lahore Canal should be identified. Civil society as well as government agencies should team up to clean the Lahore Canal so that exposure to its water is not harmful or dangerous to health and with an aim of bringing the quality of the water of the Lahore Canal to the minimum guidelines determined by the World Health Organization for recreational water use...*

#### **13. People-Centric Planning**

*...The Committee would like to recommend a change in the urban agenda to include a more people friendly and people-*

centric development. Pedestrians and cyclists are routinely ignored in road planning. This orientation needs to be balanced.

**16. Ambulance/Medical Emergencies**

The officials of Rescue 1122 emergency services repeatedly stressed the importance of removing encroachments along the Canal Road and ensuring a smooth flow of traffic at all times for the purpose of facilitating emergency vehicles taking patients to hospitals. The officials were of the view that while it was acceptable that alternative routes to hospital and healthcare facilities should be identified and developed in the long term, there was a strong need for a short term solution to the congestion along the Canal Road such as selected widening of the Road.

**17. Limited Widening of Road**

The total distance on one side of the Canal Road from Dharampura to Thokar Niaz Beg is 14.5 km. Out of these different sections, 6.59 km road has already been widened before the reference of this matter to mediation.

The congestion on the remaining about 8 km is particularly acute in certain locations, leading not only to prolonged delays but also causing safety hazards because ambulances and rescue vehicles are caught up in traffic and unable to move swiftly.

The Committee, after a detailed site visit to these stretches of the Canal Road and discussion with the concerned officials, recommends that this short-term congestion can be relieved to some extent if the third lane is allowed to be added at the following locations on both sides of the Canal:

- |   |        |           |
|---|--------|-----------|
| • Mall Road to Jail Road ...              | 525 M  | (Eastern) |
| • Jail Road to F.C. College...            | 460 M  | (Western) |
| • University Campus to Jinnah Hospital... | 550 M  | (Eastern) |
| • Jinnah Hospital to Doctors Hospital...  | 1,700M | (Western) |
|   | 700 M  | (Eastern) |

750 M

(Western)

*These stretches totalling a maximum of 3.525 km on each side, as shown in Annexure J/1 to J/4, have 642 trees. And 60% (about 385) of these trees are of eucalyptus specie. Every effort should be made to build the third lane in these stretches on the edges of the existing road to reduce to a minimum the area taken from the green belt on both sides of the Canal Road. The last stretch from Doctors Hospital to Thokar Niaz Beg (2.6 KM) is getting increasingly congested because of the volume of traffic generated from housing colonies like M.A. Johar Town and a large number of other colonies beyond Thokar Niaz Beg and areas on and around Raiwind Road. However, with the construction of service roads, as per Recommendation No. 4, the flow on the Canal Road can be reduced. In addition, some improvement can be achieved without encroaching on the green belt, if the trees on the edges of the road causing bottlenecks (about 460 trees including about 310 eucalyptus) (Annexure K), are removed to improve earthen shoulders and bus bays are provided at suitable points. The Committee does not recommend the widening of the Canal Road through a third lane in this stretch.*

*For each tree felled in any sector of the Lahore Canal Road, the Punjab Government will plant at least a hundred (100) mature trees in replacement.*

#### **18. Sector-Specific Recommendations**

*Although the mandate of the Committee from the Supreme Court was only for the Canal Bank Road from Dharampura to Thokar Niaz Beg, our recommendations cover, because of the interdependence of urban planning issues, the area upstream of Dharampura as well as downstream from Thokar Niaz Beg in the following, sector-specific recommendations:*

##### *(1) Jallo Mor to Dharampura Underpass*

*The Committee recommends a moratorium on all new commercial activity and draws attention to the ongoing unplanned development and encroachment (of green belt) activity in this sector. Service roads in this sector deserve special attention.*

*The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector*

*but its future planning should be guided by the Recommendations of the Committee.*

(2) *Dharampura Underpass to Mall Road Underpass*

*The Committee is of the opinion that this sector is working well but indicates that the encroachments and restrictions along the service road should be removed in order to facilitate a smooth flow of traffic.*

*The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.*

(3) *Mall Road Underpass to Jail Road Underpass*

*The Committee is of the opinion that entry and exit points along this sector may be streamlined to promote smooth entry and exit from the Canal Road and to minimize traffic turbulence.*

(4) *Jail Road Underpass to F.C. College Underpass*

*In addition to its Recommendation No. 2 above, the Committee recommends the enforcement of land-use and zoning laws in the areas adjacent to the Lahore Canal in this sector.*

(5) *Campus Underpass to Jinnah Underpass*

*As per the recommendation of the Committee, this sector of the Canal will be subject to traffic diversions to Multan Road on the north of the Canal and Usmani Road on the South of Canal. Appropriate signage will also be necessary to announce these diversions. These diversions will also benefit from the signal free corridor being constructed at Kalma Chowk for traffic flowing from Garden Town to Liberty Market.*

(6) *Jinnah Underpass to Thokar Niaz Beg*

*The Committee reiterates its Recommendation No. 7 above, namely that traffic to the Old CBD and New CBD should be diverted from the Canal Road and onto the Multan Road and the Southern Bypass respectively. The Committee also recommends the construction of radial/arterial roads along a northwest-southeast axis as proposed by the 1991*

*JICA Lahore Urban Transport Master Plan. These radial/arterial roads will also assist in diverting traffic from the Canal Road as envisaged in Recommendation No. 4 above.*

*The Committee is also of the view that the results of the current Lahore Urban Transport Master Plan study being conducted by the Transport Department of the Government of the Punjab will be instructive in this regard.*

(7) *Beyond Thokar Niaz Beg*

*The Committee recommends a moratorium on new commercial development as well a check on unplanned development along this sector of the Lahore Canal just as it recommended in No.(1) above.*

10. Whereas, the Project (*construction of underpass and widening of road in the sector falling between Dharampura Underpass and Harbanspura Interchange and addition of a third lane in the sector falling between Doctor's Hospital and Thokar Niaz Beg features*) for which permission has been sought by the applicant vide CMA No.3221/2014 includes the following construction/widening activities (*project features*):-

- i. U-turn Bridges and remodeling of underpasses through the entirety of the Canal Road;
- ii. Storm water/draining chutes and walkways along the whole of Canal Road;
- iii. Realignment of Jail Road Underpass;
- iv. Provision of service roads for the stretch between Thokar Niaz Beg to Doctor's Hospital.
- v. Construction/widening of road by 6 metres for the stretch between Mall Road to Harbanspura Interchange;
- vi. Construction/widening of road by 6 metres by way of adding a third lane on either side of the Canal for the stretch between Thokar Niaz Beg to Doctor's Hospital;

11. Having perused the basic Project features as also the Recommendations, it is clear to our mind that there can be no doubt



that the project features mentioned above are compliant with rather pursuant to the Recommendations and directions issued by this Court vide the Judgment in question and not in derogation thereto. Our view is based on the analysis provided below.

12. As regards, Project feature (i) (*U-turn bridges and re-modeling of underpasses*, Recommendation No. 3 *supra* clearly stipulates the need for re-engineering of Junctions/intersections along the Canal Road so as to ensure removal of bottlenecks leading to traffic congestion on these intersections whereas directions no. (iii) and (iv) by this Court in the Judgment *supra* require necessary corrections/modifications of underpasses and re-engineering of junctions.

13. Project feature (ii) (*Storm water/draining chutes and walkways*) is pursuant to Recommendations No. 12 and 13 *supra*. Recommendation No. 12 identifies the need to implement a plan for the cleaning up of the Lahore Canal and improving the water quality of the Canal which is also in line with direction No. (ix) *supra* whereas Recommendation No. 13 mandates a people-centric development of the Canal Road which takes into account the needs of pedestrians and cyclists.

14. With regards to Project Feature (iii) (*Jail Road Underpass*), there can be no cavil that it is in furtherance to the agenda laid out in Recommendation No. 2 *supra* which is to correct to the design of the underpass at Jail Road as currently this incorrect underpass poses a serious traffic safety hazard. This project feature is also in line with direction No. (iii) *supra*.

15. Project feature (iv) (*provision of service roads*) is clearly in accordance with Recommendation No. 4, i.e. construction of service

roads with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion. Direction No. (vii), on the other hand, also supports this project feature.

16. Project feature (v) (*Construction/widening of road by 6 metres for the stretch between Mall Road to Harbanspura Interchange*) entails actual widening by adding a third lane from Dharampura to Harbanspura and 1.3 KM underpass that covers the railway crossings at Chabucha Interchange and Griffin Park.

It is the case of the applicants that this widening and construction of underpass is envisaged and tacitly allowed throughout the length of the Canal Road from Mall Road Underpass right up to Jallo More vide Recommendations No. 18(1) and 18(2). Widening of road and construction of underpass in the sector falling between Dharampura to Harbanspura falls within the sector considered by the Mediation Committee under Recommendation 18(1) i.e. the heading "Jallo Mor to Dharampura Underpass" which states that a moratorium on all new commercial activity be placed and draws attention to the ongoing unplanned development and encroachment activity in this sector. It also, however, adds that the Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendation of the Committee.

It is submitted that the widening of the Canal Road between "Jallo-Mor to Dharampura Underpass" and "Dharampura Underpass to Mall Road Underpass" was not specifically discussed in the Recommendations as at that time, the Punjab Government did not have any plans for construction or widening in the said sectors. In light of the above and the overall scheme of the Recommendations

and Judgment of this Court, we are of the view that, from the wording used in Recommendations No. 18(1) and 18(2), it is clear that the Mediation Committee was fully conscious of the traffic problems along these sectors and envisioned works in these sectors in the future and therefore since this project feature is in line with the overall Recommendations and directions of this Court, it is allowed provided there is minimal environmental intrusion.

17. Coming now to project feature (vi) (*Construction/widening of road by 6 metres by way of adding a third lane on either side of the Canal for the stretch between Thokar Niaz Beg to Doctor's Hospital*), Recommendation No. 17 *supra* is of importance. Though it is acknowledged by the Mediation Committee in its Recommendations that the stretch from Doctor's Hospital to Thokar Niaz Beg is getting increasingly congested because of various housing colonies surrounding this stretch, widening of the Canal Road through addition of a third lane in this stretch was not recommended. Instead, this problem was recommended to be tackled through construction of service roads and by removing trees on the edge of the road for improving earthen shoulders and by providing bus bays at suitable points.

It is however clear from the submissions made by the learned counsel for the applicants (*and documents/information brought on the record*) during the course of hearing regarding this last stretch that the alternatives proposed by the Mediation Committee have been tried and tested and it has become clear that these solutions were not sufficient for relieving the traffic congestion problems in this stretch. From a reading of Recommendation No. 17, it is also clear that there in fact persisted a serious traffic issue in this sector and the only reason why addition of a third lane was not allowed was because at

that time, it was the view of the Mediation Committee that alternative solutions for countering this problem could be successfully employed.

Owing to the sudden transition from three-lane traffic to two-lane traffic from Doctor's Hospital onwards, however, the traffic problems have persisted and addition of a third lane at this point is the only solution to the problem at hand as alternative solutions have also proved futile. On account of the above we are of the view that provided there is minimum environmental intrusion and the Heritage Park is duly protected, addition of a third lane will significantly benefit the people of Lahore by enabling smooth flow of traffic in this stretch which is the purport of the Recommendations of the Mediation Committee and the Judgment of this Court.

18. Having said that, leaving apart the prohibitions and permissions granted in the Judgment, we are making it clear that other than the construction/widening activities for which permission has expressly been granted herein, the applicant shall not in the future engage in any construction/widening activities along the Canal Road without first applying to this Court and seeking its permission. All activities other than those specified in this opinion are prohibited and barred; no activities shall be construed as being tacitly allowed by the applicant which (*activities*) have not expressly been permitted. The applicant may, however, carry out repair and maintenance works of the Canal Road.

**COMPLIANCE OF THE PROJECT WITH THE PROVISIONS OF THE LAHORE CANAL HERITAGE PARK ACT, 2013**

19. While making their submissions regarding whether the Project is violative of the Act, learned counsel for the parties have

referred to various provisions of the Act. The relevant Sections whereof are as follows:-

2. *Definitions.– In this Act–*

(d) *“canal tree” means a tree in the Heritage Park*

3(5) *Subject to subsection (8) and except with prior permission in writing from the Authority, the following acts shall be wholly prohibited in the Heritage Park–*

(a) *construction or any other infrastructure development work, clearing or breaking up any land for cultivation, mining or for any other purpose;*

(b) *felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or canal tree;*

(c) *polluting water flowing in and through the Heritage Park;*

(d) *hunting, shooting, trapping, killing or capturing of any animal or bird;*

(e) *using firearm or doing any other act which may disturb any animal or bird or acting in a manner which is likely to interfere with the breeding places; and*

(f) *such other prohibitions as the Government may notify in the official Gazette.*

3(8) *The permission mentioned in subsection (5) shall be subject to such conditions and in such manner as may be prescribed and while granting such permission, the Authority shall, among other things, take into consideration the following:-*

(a) *amenity value of the canal tree;*

(b) *character of the area;*

(c) *necessity of the action;*

(d) *possibility of an affordable alternative;*

- (e) *mitigation measures to reduce the impact of reducing canal tree cover;*
- (f) *expediency of the proposal or work requiring the felling, lopping, trimming or otherwise cutting of the canal tree; and*
- (g) *environmental impact assessment of the proposed activity.*

6(2) *The Advisory Committee may also advise the Authority on any other matter ancillary to the discharge of its functions under the Act.*

6(3) *In the performance of its functions under this Act, the Authority shall take into consideration any advice of the Advisory Committee.*

7. *Action by the Authority.— (1) The Authority shall take appropriate action on the recommendations of the Advisory Committee within reasonable time and shall communicate to the Advisory Committee the reasons for not accepting any of its recommendations, and the Advisory Committee may, in the prescribed manner, submit a representation to the Government for appropriate orders.*

From the sections reproduced above, it may be seen that per Sub-section (5) of Section 3, construction or any other infrastructure development work in the Heritage Park is wholly prohibited. This prohibition, however, is not absolute and definitive, rather the Sub-section itself clarifies that it (*Sub-section 3(5)*) is applicable only where permission from PHA has not been sought and that further it is subject to the provisions of Sub-section (8) of Section 3 and has to be read in accordance.

Sub-section 3(8) lays down the factors that have to be taken into account by PHA before it grants permission for any construction

activity in the Heritage Park. Sub-section 3(8) read with Sub-sections 6(2), 6(3) and 7(1) read together mandate that permission may only be granted under Sub-section 3(8) after Environmental Impact Assessment and requisite approval from EPA and once Advisory Committee constituted under Section 5 has been consulted.

In the instant matter, through the documents/information produced before us and brought on the record, we have been apprised that Environmental Impact Assessment of the proposed project was conducted and the EPA accorded its approval vide Approval Letter dated 15.12.2014 subject to certain conditions. Consequent to such approval, the matter was raised before the Advisory Committee which too approved the project in principle with the condition that a sub-committee would be constituted to formulate the Master Plan for Canal Trees Management which is evident from the Minutes of the 6<sup>th</sup> Meeting of Lahore Canal Advisory Committee held on 27.1.2015. Finally, after seeking approval of EPA as also the Advisory Committee, the matter was put before and approved by the Board of Directors of PHA in its 6<sup>th</sup> Meeting held on 6.2.2015.

In view of the above we find no merit in the proposition that the Project infringes upon the protections accorded to the Heritage Park vide the Act and find that the applicant is fully compliant with the mandate of the Act.

Before parting with this proposition, we would also comment upon another submission made by the learned counsel for the respondent that per Section 2(d) of the Act, canal tree means any tree in the Heritage Park and therefore each and every tree which falls within the Heritage Park has to be protected and substitutionary approach cannot be taken; trees in the Heritage Park may be felled

provided their replacements are planted elsewhere is not the mandate or purport of the law. As regards the above, suffice it to say that Section 2(d) is a definition clause and it cannot be read in isolation and has read to be read in conjunction with the substantive clauses of the Act; Section 2(d) is subservient to, dependent upon and must be interpreted/construed in line with Sub-sections 3(5) and 3(8) and therefore we do not find any merit in this submission either.

**PROPOSITION NO. 2:**

20. We have considered the arguments as mentioned earlier and without in any manner, as has been stated, affecting the ratio of the judgment noted above, we find that the extension and widening of the road partly has provided a proper flow to the transport passing by but at the places where the road is narrowed, traffic congestion takes place. This congestion is undoubtedly against the public good as considerable residential localities have been made across Thokar Niaz Baig and also the main connection to the Motorway is also through the canal bank road.

It is, therefore, the canal bank road which has attained considerable importance and most of the time it has been noticed that the traffic congestion has been experienced not only by the people who have to bring their children to the main city for education, rather as the main hospitals are also in the main city, ambulances also cannot pass through when there is a congestion at the places where the road is narrowed.

The concern of the respondents is only that some trees will be cut and on account of the above, the green areas would be reduced and shrunk significantly impacting the ecology of the area and since the Canal Road is a public trust, the same cannot be tampered with.



We have been apprised that for each tree cut, the government is going to plant ten trees. Not only the above, it is a matter of public knowledge that in the city of Lahore, number of trees have been planted in different parts and on account of such, the environment has improved. Therefore, the cutting of trees would in no way be a hazard to the environment but to disallow such widening in fact is causing great trouble and inconvenience to the public at large and on account of congestions it has become in fact hazardous for the movers/commuters on this very important road; their life quality is being affected. Therefore, there is no reason as to why the applicant should not be allowed to execute the work and to correct the crooked part of the road i.e. skewed which in fact has become a traffic hazard.

Moreover, with regards to the application of the doctrine of public trust, suffice it to say that as had been settled in the earlier Judgment of this court (*see paras 32 to 35 thereof*), a public trust resource cannot be converted into private use or any other use other than a public purpose and in the instant case the widening of the road to ease traffic congestion and facilitate the commuters was/is a public good. Specifically when a limited area is being affected by the proposed widening/construction to ease the greater problem of bottlenecks and traffic blockages and when the applicant has also undertaken to replace trees, as mentioned above, which are felled as a consequence of the proposed widening to ensure that no adverse ecological impacts are faced, we do not find a reason to deny the request of the applicant.

**PROPOSITION NO. 3:**

21. We now turn to the argument propounded by the learned counsel for the respondents that the noted Judgment is a consent

judgment and, therefore, the applicant is estopped from asking for the widening of the road which was not permitted per the report of the Mediation Committee or Judgment and, therefore, the application should be dismissed on this score alone.

We have pondered over the objection/plea but are of the considered view that the present is not an adversarial litigation between the parties, rather it has genesis in a social action litigation initiated by LBT and this Court in exercise of its powers under Article 184(3) accepted the report of the Mediation Committee and made it part of its Judgment with the consent of the parties. But such consent or judgment does not in any way denude this Court of its jurisdiction in social action litigation to subsequently pass appropriate orders where it becomes imperative and expedient and where information has been provided to the Court which necessitates appropriate orders. From the facts which have come on the record and as has been held by us, we find that on account of limited widening of road, further complications have emerged and in order to cater for those, this Court, leaving apart the consent, does have ample and absolute power and jurisdiction to permit widening for appropriate and justified reasons and for the cutting of 1372 number of trees and use of green belt to the extent of 30.85 acres needed for the Project, therefore, this consent part would not come in the way of the court's empowerment.

Moreover it may be pertinent to mention here that in the facts and circumstances the rules of acquiescence, waiver, estoppel, past and closed transaction or any other rule having nexus to these concept and theory would not at all be relevant when we are exercising jurisdiction under Article 184(3).

With regards to the contention of the learned counsel for the appellant that since the Judgment was a result of consent reached between the parties, it cannot be reviewed, suffice it to say that we in no way are considering the application before us to be one requiring review of the earlier Judgment of this Court. It is at best a case of re-visiting for the purposes of clarification of the Judgment. Even otherwise, in such public interest litigation, we, having been provided with requisite information, have the inherent power to re-visit our orders/decisions. In such a case, therefore, the rigors of review jurisdiction shall *stricto sensu* not be attracted.

**PROPOSITION NO.4:**

22. In light of what has been discussed above, we do not find that the Judgment of this Court has been violated warranting criminal action against the applicant. Even otherwise permission for widening/construction to the extent aforementioned has been granted vide this judgment and since contempt is a matter between contemnor and Court, we do not find it necessary or expedient to take any action against the respondents of CrI.O.P.No.96/2014.

In view of the above, C.M.A.No.3221/2012 is allowed, while CrI.O.P.No.96/2014 is dismissed.

JUDGE

JUDGE

Announced in open Court  
on 5.8.2015 at Lahore  
Approved For Reporting  
Waqas Naseer/\*

JUDGE