

Qazi Faez Isa, J. Criminal Original Petition No. 57/2015 has been filed by Muhammad Asjad Abbassi, Muhammad Fiaz and Muhammad Imran bringing to the notice of the Court that the order dated July 31, 2007 of this Court ("**the petition**", "**the petitioners**" and "**the said Order**" respectively) passed in Suo Motu Case No. 10 of 2005 (published in 2010 SCMR 361) was and is being violated. The officers stated to be disobeying the said Order are the Secretary Environment of Punjab, the Director General Environment Punjab and the Commissioner, Rawalpindi Division, arrayed by name as respondent Nos. 1, 2 and 3 respectively. In addition, the Chief Executive Officers of Commoners Sky Gardens (Pvt.) Ltd. and Commoners Development (Pvt.) Ltd., who are stated to be raising construction in the area which had been prohibited by the said Order, are arrayed as respondent Nos. 4 and 5 respectively.

2. The said Order of this Court was passed exercising jurisdiction under Article 184(3) of the Constitution as it involved a matter of public importance affecting the Fundamental Rights of the people on the basis of a note initiated by Justice Tassaduq Hussain Jilani (as he then was), which is reproduced in the said Order. This Court had commenced proceedings because the Government of Punjab had decided to construct a project, the New Murree Project ("**the Project**"), in a forested area, which if allowed to go ahead would have resulted in clearing a portion of the Muree forest, including cutting a large number of trees, degrading the rainfall catchments of the Simly and Rawal dams, causing silting and pollution of water channels, adversely impacting wildlife and consequently being a detriment to the environment. The

apprehensions that were noted were further elaborated and confirmed by experts, therefore, the Government of Punjab decided not to proceed with the Project and also dissolved the New Murree Development Authority. This Court, however, apprehended that other projects may be launched, therefore (in paragraph 3 of the said Order) and after noting that the Project had *"been disbanded"* and *"the New Murree Development Authority has been dissolved"* queried, *"What measures the Government of Punjab has taken to ensure that in future no project detrimental to the environment would be launched?"*. In response to the query this Court was informed that, *"the following measures had been taken"* and enumerated twelve of them (reproduced in paragraph 4 of the said Order). The stated undertakings given to the Court by the Government of Punjab were incorporated in the said Order.

3. The original five respondents were issued notices on October 19, 2015 and all of them have filed replies thereto. Respondent Nos. 1 and 2 filed their reply through Crl. M. A. Nos. 1201/2015 and 55/2017, they have also filed Crl. M. A. Nos. 1888/2016 and 56/2017. Respondent No. 2 also filed a report in compliance with this Court's order dated January 14, 2016 through Crl. M. A. No. 208/2016. The respondent No. 3 has filed his reply through Crl. M. A. No. 1216/2015. The respondent No. 4 has filed his reply through Crl. M. A. No. 1192/2015. The respondent No. 5 has filed his reply through Crl. M. A. No. 1222/2015. The respondent Nos. 4 and 5 in their respective replies have not denied any of the facts alleged by the petitioners and also admit that they were raising construction, however, they state that they did so, *"only after obtaining NOCs from the relevant departments and with the*

permission of competent authority". The petitioners have also filed their objections to the reply filed by the respondent No. 2.

4. This matter was heard for about an hour. At the outset Syed Rifaqat Hussain Shah, the learned AOR for the petitioners, stated that two out of the three petitioners have filed Cr. M. A. Nos. 1292 and 1293 of 2017 seeking to be disassociated from the petition. Their respective applications, which are identical, state that they are, *"satisfied from the report of the Environmental Protection Agency Punjab Lahore that the Commoners Sky Garden has obtained NOC from the Environmental Protection Agency (EPA) Punjab Lahore and under the supervision of EPA Punjab as well as the Rawalpindi Development Authority (RDA) ... the petitioner do not wants to pursue the case and want to withdraw the same"*. In response to the query as to why these petitioners wanted to withdraw the learned AOR stated that they had settled their dispute with the private respondents. To the query, whether in a public interest case, and after this Court had issued notices, did the petitioners have a *'right'* to bring the proceedings to an end, the learned AOR had no answer.

5. In matters of public interest and where some wrong doing is observed, as in the present case, and after notices have been issued to the respondents the matter is one between the alleged contemnor and the Court. Moreover, the public interest cannot be bartered for private gain or ulterior motive, nor can a petitioner be harried to withdraw his petition. Sheela Barse v Union of India (AIR 1988 SC 2218) was a public interest case which the petitioner wanted to withdraw, but her request was declined. In a public

interest case or litigation there is no '*right*' in a petitioner, nor initiating such a case creates a '*right*' in the petitioner, entitling him or her to determine the course of the proceedings. A petitioner in a public interest case is unlike a private litigant pursuing his/her private claim which he/she can elect to withdraw. In the case of Muhammad Alam v Planning and Development Department (PLD 2014 Balochistan 1) a Division Bench of the Balochistan High Court, of which I was a member, did not permit some of the petitioners to withdraw their petition because, "*if such 'right' is recognized it may create a dangerous precedent and with it the attendant mischief.*" In matters of public interest if it be accepted that a petitioner has such a '*right*' or a '*right*' is created in the petitioner because he/she advocated a cause or complained against some wrongdoing then this '*right*' may be used for personal ends, and the public interest jeopardized, therefore, it can not be accepted or sanctioned.

6. After filing the petition the petitioners filed additional documents showing that the National Park and forest were being devastated, as under:

Cr. M. A. No. 1726 of 2016 brought photographs, newspaper reports, complaints and other documents on record; the photographs show forested land being cleared by bulldozers accompanied by men armed with automatic weapons.

Cr. M. A. No. 58 of 2017 brought documents, maps and photographs on record showing that the said Order of this Court was being violated; a notification dated September 15, 2009 issued under section 17 of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974 declaring Murree, Kotli

Sattian and Kahuta areas as a National Park and prohibiting the, *"clearing or breaking up any land for cultivation, mining or for any other purpose"* was also attached. The notification was issued under the orders of the Governor of Punjab through the Secretary Forest, Wildlife and Fisheries Department.

Cr. M. A. No. 1229 of 2016 through this application the petitioners strongly objected to the veracity of the reply filed by the Environmental Protection Agency, Punjab ("**EPA**"). They state that EPA intentionally violated the said Order, and more specifically that the "approval" dated October 9, 2015 granted by the EPA contravenes the said Order. Photographs are attached with the application which show forest land is being cleared of trees and all undergrowth, bulldozers are being used extensively for flattening and compacting forest land, building activity is being undertaken and debris is being disposed of in water channels.

7. Mr. Aitzaz Ahsan, the learned senior counsel represents the persons who are stated to have invested in the projects of respondent Nos. 4 and 5. The learned senior counsel states that he has certain concerns with the said Order, however, answered in the negative when asked if its review was sought. He then stated that his clients had invested their money in the projects and if the projects are not allowed to proceed they will lose their investment. To a query whether his clients could not recover the money from the companies and the persons to whom the same was paid, if the projects were undertaken in disobedience of the said Order, and whether their private rights, if any, could be considered to prevail over public rights and whether their purported rights could be considered by this Court while exercising contempt jurisdiction, he

stated that his clients were not heard before passing of the said Order. This Court had decided a public interest matter and an extraordinary effort to inform the public was also made in the said Order (as per clauses (vi) and (vii) of paragraph 4 of the said Order). If anyone is effected, it does not mean that the said Order can not or should not be implemented, more so when the matter is one where the public interest is seriously undermined. In any event if the said respondents were duped into investing in the projects of the respondent Nos. 4 and 5 they could seek remedies against them in other appropriate forums.

8. The petition was filed on June 16, 2015 and today is the thirteenth date of hearing; twenty seven months have elapsed. On the last date of hearing (January 19, 2017), which was over eight months ago, the matter was adjourned on the request of the learned senior counsel Mr. Aitzaz Ahsan, when this Court observed, *"let it be a final chance for all. Interim order of status-quo shall continue in the meanwhile. In case, if anyone does not turn up, we will proceed in this case being a matter of public importance..."*. But, still there has been no real progress. From the stance taken by all the learned counsel as well as by the representatives of the Government of Punjab it appears that all interests have coalesced. The Advocate General of the province was directed to be present *vide* order dated November 15, 2016, but after appearing once disregarded the order. Surprisingly, even Mr. Razzaq A. Mirza, the learned Additional Advocate General of Punjab, supports the action of the various functionaries which negate the Government of Punjab's undertakings given to this Court and is in apparent disregard of the said Order. The learned Additional Advocate

General refers to the reply filed by respondent No. 3 (Cr. M. A. No. 1216/2015) and the documents filed therein, including the "sanction" accorded to Commoners Sky Gardens (Pvt.) Ltd. on January 26, 2015 by Mr. Jamshaid Aftab, Director of the Metropolitan Planning and Traffic Engineering Directorate of the Rawalpindi Development Authority, and the "approval" dated September 17, 2015 regarding its infrastructure design. He also refers to the "decisions" of the Punjab EPA dated May 28, 2014 and October 9, 2015 approving construction activity.

9. EPA "decisions" require the proponent of the project to, "*avoid cutting of trees*", however, it is inexplicable how a project can be undertaken without cutting trees. Photographs have been filed showing that many trees have been cut, and forest land cleared, flattened, bulldozed and compacted. EPA "decisione" further stipulate that the proponent of the project, "*shall plant at least 20000 trees of minimum height 6-7 feet especially of indigenous species within six months*". Considerably over six months have elapsed but there is no evidence whatsoever of the planting of even a single tree. EPA thus demonstrates that it has no desire to ensure that even its own *decisions* are complied with. The National Park and forest land are being decimated. The referred to permissions, approvals, sanctions and decisions were issued after the said Order. The EPA "decisions" apparently disobey the undertakings given to this Court and the said Order. It also appears that to benefit private parties at the cost of the public and the environment, which EPA is mandated to protect and conserve, EPA is instead resorting to novel devices which may be categorized as a fraud on its own statute.

10. The aforesaid purported *sanctions, approvals and decisions* are in apparent disregard of the undertakings given to a fourteen member Bench of this Court, reproduced hereunder:

- (1) *"Tehsil Murree, Kahuta and Kotli Sattian have been declared environmentally sensitive areas under the Pakistan Environment Protection Act, 1997"* (clause (i) of the undertaking, reproduced in paragraph 4 of the said Order);
- (2) *"All Kinds of construction and development activities are banned in these areas"* (clause (ii) of the undertaking, reproduced in paragraph 4 of the said Order);
- (3) *"Across the board application of sections 12 and 16 of the Act is being ensured in these areas. The District Officer (Environment), Rawalpindi has been directed to carry out effective monitoring of these areas"* (clause (iii) of the undertaking, reproduced in paragraph 4 of the said Order);
- (4) *"All kinds of development activities are banned along both sides of Murree Express Way"* (clause (iv) of the undertaking, reproduced in paragraph 4 of the said Order);
- (5) *"No construction is allowed within 100 meters along both sides of the Murree Express Way"* (clause (v) of the undertaking, reproduced in paragraph 4 of the said Order);
- (6) *"District Administration and Local Administration Authorities have been taken into loop for implementing directions / restrictions"* (clause (viii) of the undertaking, reproduced in paragraph 4 of the said Order); and
- (7) *"Establishment of a National Park at Murree, Kahuta and Kotli Sattian is also in pipeline"* (clause (xii) of the undertaking, reproduced in paragraph 4 of the said Order).

11. The Government of the Punjab subsequently issued a notification dated September 15, 2009 declaring the aforesaid areas as a National Park under section 17 of the Punjab Wildlife (Protection, Preservation, Conservation and Management) Act, 1974. The following, amongst other acts, are prohibited in a National Park: "*felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree there from*" and to "*clear or break any land for cultivation, mining or for any other purpose*" (clauses (iii) and (iv) of subsection (4) of section 17) and violations attract criminal liability (section 21).

12. Many of the documents that have been filed, including photographs, show that large tracts of the forest and a designated National Park are being destroyed and different projects are coming up with the apparent connivance of those who are supposed to safeguard the public interest and to protect the forest and the National Park. Significantly, the documents filed by the Secretary Environment and Director General EPA point out that, other than the projects of respondent Nos. 4 and 5, there are yet others carrying out "unapproved" construction and making "encroachments" into the designated National Park and the protected forest area, but still nothing is being done to safeguard them.

13. Having gone through the documents on record, including photographs and maps, it appears that the areas which were required to be protected are being destroyed at an alarming rate and the authorities designated to protect these areas are actively facilitating such destruction. The apparent disobedience of the said

Order continues and the tactics employed by the respondents is to waste the time of this Court and delay the matter indefinitely; in this regard to an extent they have succeeded as twenty seven months have elapsed since the filing of the petition. With each passing day the forest and the National Park is further destroyed. The concerned authorities, who are paid from the public exchequer, are apparently disregarding the said Order and the law, the consequence of which the people of Pakistan and future generations bear and will suffer forever. We can also not be unmindful of the fact that there are commercial interests at play which appear to have made inroads amongst the personnel of the departments of the Government of Punjab and designated statutory authorities to serve private profit at the cost of the public interest.

14. The documents on record disclose that the official respondents (respondent Nos. 1, 2 and 3), the Secretary Forest, Wildlife and Fisheries Department, Government of Punjab, the District Officer (Environment) Rawalpindi and Mr. Jamshaid Aftab, Director of the Rawalpindi Development Authority have violated the undertakings given to this Court and disobeyed the said Order whereas respondent Nos. 4 and 5 have apparently violated the said Order.

15. Therefore, the respondent Nos. 1 to 5, the Secretary Forest, Wildlife and Fisheries Department, Government of Punjab, the District Officer (Environment) Rawalpindi and Mr. Jamshaid Aftab, Director of the Rawalpindi Development Authority are directed to be in attendance on the next date of hearing so that they may be

proceeded against in accordance with Article 204 of the Constitution of the Islamic Republic of Pakistan and the Contempt of Court Ordinance, 2003.

16. The Advocate General of Punjab was earlier directed to be in attendance and he is cautioned to abide by the direction and to be in attendance himself on the next date and future dates, unless his attendance is specifically dispensed with.

Qazi Faez Isa, J.