

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Irfan Saadat Khan
Justice Naeem Akhtar Afghan

Civil Petition No. 304/22 and CMA Nos. 891 and 1251/22

The Monal Group of Companies, Islamabad. ... *Petitioner*

Versus

*Capital Development Authority through its
Chairman and others.* ... *Respondents*

AND

Civil Petition No. 305 of 2022 and CMA No. 892 of 2022

The Monal Group of Companies, Islamabad. ... *Petitioner*

Versus

*Capital Development Authority through its
Chairman and others.* ... *Respondents*

AND

Civil Misc. Application Nos. 887 and 888/22 in CP NIL/22

*Federation of Pakistan through Secretary, M/o
Defence, Govt. of Pakistan and others.* ... *Applicants*

Versus

*M/s The Monal Group of Companies,
Islamabad and others.* ... *Respondents*

AND

Constitution Petition No. 3 of 2024

*Islamabad Wildlife Management Board through
its Chairperson, Islamabad.* ... *Petitioners*

Versus

*Capital Development Authority through its
Chairman and others.* ... *Respondents*

For the Petitioners:

Mr. Salman Akram Raja, ASC.
(in CP.304/22)

Mr. M. Makhdum Ali Khan, Sr. ASC.
Mr. Saad Mumtaz Hashmi, ASC.
(in CP.305/22)

Mr. Umar Ijaz Gilani, ASC.
Ms. Rina Saeed, Chairperson.
(in Const.P.3/24)

For the Applicants:	Mr. Hassan Irfan Khan, ASC. Mr. Hamad Naqi, DG NWFP Additional Attorney-General for Pakistan. Mr. Anis M. Shahzad, AOR. Mr. Asif Hayat, Dy. MEO. (in CMAs. 887 & 888/22)
For CDA:	Hafiz Arfat Ahmed Ch., ASC. Mr. Irfan Azeem, Dy. DG (Environment)
For MCI:	Mrs. Misbah Gulnar Sharif, ASC Raja Abdul Ghafoor, AOR
For Federation:	Mr. Mansoor Usman Awan, AGP. Malik Javed Iqbal Wains, AAGP. Mr. Zafar Mehmood, Military Estate Officer, Iftikhar Ahmed Dy. MEO.
For M/o Defence:	Col. Faran Tariq, Dy. Director Military Forms Lt. Col. Irfan, Asstt. Director (legal)
For M/o Comate Change:	Ms. Parveen Ejaz, Dy. Director.
Date of Hearing:	21.03.2024.

ORDER

The learned Attorney General for Pakistan ('AG') has (pursuant to the last order) filed CMA No. 2236 of 2024. However, copy of the relevant file pertaining to the purported Lease Agreement dated 30 September 2019 entered into between the Monal Group of Companies ('Monal') and the Remount, Veterinary and Farms ('RV&F') Directorate ('the Directorate') has not been filed nor brought to the Court. Therefore, we kept this case aside and took it up again after the break, when learned AG stated that it could not be traced but if one week's time is granted it will be produced. Let the copy of the entire file pertaining to the said Lease Agreement, including all internal and external correspondence, payments received in respect thereof and proof of their deposit be filed within one week, and the original thereof be brought on the next date of hearing.

2. We were surprised to note that the Lease Agreement with Monal was executed by the Directorate, a component of the Pakistan Army, which is part of the Ministry of Defence, and forms part of the Federal Government. Since the Directorate is clearly not a legal entity, we asked for the opinion of the learned AG who candidly stated that the Lease Agreement could not have been executed by the Directorate, resultantly it was void. He further stated that if at all, the Lease Agreement could have been entered into by the Federal Government itself.

3. The learned AG has referred to the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 ('**Ordinance**') and its section 21, which does not permit setting up and running restaurants in the area of Margalla Hills National Park ('**National Park**'). He has also referred to Regulation 4(3)(b) of the Islamabad Capital Territory (Zoning) Regulations, 1992 ('**Regulations**') and states that no change in land-use is permissible in the National Park except for projects which relate to conservation, preservation, afforestation and recreation.

4. Learned senior counsel Mr. Makhdoom Ali Khan represents Monal and states that earlier Monal had entered into a Lease Agreement on 10 March 2006 with the Capital Development Authority ('**CDA**'), which was for a period of fifteen years and was renewable for a further period of fifteen years, but since the Directorate started demanding and compelling Monal to enter into a lease agreement with it Monal was constrained to do so. Learned counsel further states that Monal has been singled out whereas there are a number of other restaurants running in the National Park with the permission of CDA which has issued them leases.

5. CDA is directed to file a list of all those to whom leases have been issued including restaurants and other commercial projects in the National Park detailing: (1) the name and address of the party, (2) the date of agreement, (3) duration of the agreement and copies of the lease agreements, (4) the monthly/annual rent payable. The same be filed through concise statement within one week. Upon receipt of the said list the office to issue notices to the tenants/lessees mentioned therein, as any order passed herein may affect them.

6. Learned Mr. Umar Ijaz Gillani, represents the Islamabad Wildlife Management Board ('**the Board**'). He and Ms. Rina Saeed, Chairperson of the Board, state that restaurants and other commercial activities being undertaken in the National Park violate section 21 of the Ordinance and that over the years deforestation has taken place, its lands have been encroached upon and the National Park's status degraded. He further states that the CDA has assumed all regulatory powers with regard to the National Park despite the fact that section 4 of the Ordinance stipulates that it is to be managed by the Board. He further states that any amount generated from the use of the National Park should be spent on the National Park and not for the general development works of CDA in Islamabad City.

7. The World Wildlife Foundation Pakistan ('WWF') has moved an application (CMA No. 1251 of 2022) seeking to join as a party to these cases. Learned counsel Mr. Hasan Irfan Khan represents WWF, and he and WWF's Director General, Mr. Hamad Naqi Khan, state that the only interest of WWF in becoming a party is to ensure that the Ordinance is strictly complied with, to stop the further degradation of the National Park and also to help restore it to its original position. The representative of WWF has produced aerial photographs and images showing the encroachments and deforestation in the National Park over a twenty year period, showing its position in 2005, 2010, 2015 and 2020. Since WWF wants to prevent encroachments, degradation and deforestation of the National Park and wants to help restore it, it would be appropriate to array it as a party, therefore, CMA No.1251 of 2022 is granted.

8. Learned counsel Hafiz Arfat Ahmed represents CDA and states that CDA spends far more on the National Park than it receives in revenue from it. Therefore, let CDA file a concise statement showing receipts and disbursements with regard to the National Park and the number of CDA employees employed in the National Park and the amount spent on them.

9. During the hearing it was pointed out that the boundaries of the National Park have not been properly earmarked and that a survey is being conducted by the Survey of Pakistan for some time. CDA is directed to file a copy of survey report, and if the survey has not been completed to file it when the survey is completed. CDA should also state if it has earmarked the boundaries of the National Park.

10. The Ordinance stipulates that the National Park has to be protected, preserved, conserved and managed and can be made accessible to the public only for recreation, education and research purposes. This Court has interpreted the Fundamental Right to life (Article 9) to living a meaningful life, including having access to parks and to avail of benefits deriving therefrom. If the National Park is not preserved it will have a number of adverse environmental consequences, including increasing greenhouses gases, exacerbating climate change, reducing the natural habitat of animals, birds and biodiversity. This Court is also concerned with the encroachments being made, the degradation and the deforestation of the National Park, its pollution and the pollution of streams running through it. The National Park can only be used as mandated in the Ordinance. But in violation of the law commercial activities are taking place in the National

Park which have been increasing and if this trajectory continues it will not be long until this blessing and gift of nature will be lost forever. There can be no compromise on the necessity to preserve the National Park. However, we are not unmindful of the fact that running businesses are operating in the National Park which may need to be dismantled and relocated. Therefore, we look to all parties to propose solutions for restoring the integrity of the National Park in a systematic manner and that it be used only as is permissible under the Ordinance; proposals may be submitted in writing.

11. In view of the urgency and importance of this matter no request for adjournment will be entertained, and if any counsel is not available, alternative arrangements be made. To come up on Monday 29 April 2024.

Chief Justice

Judge

Judge

Islamabad:
21.03.2024
(M. Saeed)