

IN THE SUPREME COURT OF PAKISTAN
(Appellate/Review Jurisdiction)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB.

CIVIL MISC. APPLICATION NO. 3854 OF 2014 IN S.M.C.NO.3 OF 2009.
(Matter regarding non-implementation of the order of this court with respect to demarcation of property).

AND

CIVIL REVIEW PETITION NO.155 of 2015 IN
CIVIL MISC. APPLICATION NO.4341 OF 2014 IN
CIVIL MISC. APPLICATION NO.3854 OF 2014 IN
S. M. C. NO. 3 OF 2009.

Bahria Town through its Company Secretary.	... Petitioner(s)
<u>VERSUS</u>	
Govt. of Punjab & others.	... Respondent(s)

AND

CIVIL REVIEW PETITION NO.156 of 2015 IN
CIVIL MISC. APPLICATION NO.4341 OF 2014 IN
CIVIL MISC. APPLICATION NO.3854 OF 2014 IN
S. M. C. NO. 3 OF 2009.

Bahria Town through its Company Secretary.	... Petitioner(s)
<u>VERSUS</u>	
Govt. of Punjab & others.	... Respondent(s)

AND

CIVIL REVIEW PETITION NO.245 OF 2013 IN S.M.C. NO.3 OF 2009

Bahria Town (Pvt.) Ltd & others.	... Petitioner(s)
<u>VERSUS</u>	
Muhammad Shafi and others.	... Respondent(s)

AND

CRIMINAL ORIGINAL PETITION NO.110 OF 2014 in S.M.C. NO. 3 OF 2009

Dr. M. Shafiq-ur-Rehman.	... Petitioner(s)
<u>VERSUS</u>	
Abdul Qayyum & others.	... Respondent(s)

AND

CIVIL MISC. APPLICATION NO.6807 OF 2015 IN
CIVIL REVIEW PETITION NO.NIL OF 2015 IN

CIVIL MISC. APPLICATION NO.3704 OF 2015 IN
CIVIL MISC. APPLICATION NO.3853 OF 2015 IN
CIVIL MISC. APPLICATION NO.4341 OF 2014 IN
CIVIL MISC. APPLICATION NO.3854 OF 2014 IN
S.M.C. NO.3 OF 2009

Review on behalf of Syed Ali Zafar Counsel for Bahria Town.

... Petitioner(s)

VERSUS

Govt. of Punjab and others.

... Respondent(s)

AND

CIVIL MISC. APPLICATION NO.6809 OF 2015 IN
CIVIL REVIEW PETITION NO.NIL OF 2015 IN
CIVIL MISC. APPLICATION NO.3704 OF 2015 IN
CIVIL MISC. APPLICATION NO.3853 OF 2015 IN
CIVIL MISC. APPLICATION NO.4341 OF 2014 IN
CIVIL MISC. APPLICATION NO.3854 OF 2014 IN
S.M.C. NO.3 OF 2009

Review on behalf of Syed Ali Zafar Counsel for Bahria Town.

... Petitioner(s)

VERSUS

Govt. of Punjab and others.

... Respondent(s)

AND

CIVIL REVIEW PETITION NO. 473 OF 2015 INH.R.C. NO.4729-P OF 2011
IN S.M.C. NO.3 OF 2009

(Review Petition on behalf of Bahria Town (Pvt) Ltd.)

AND

H.R.C. NO.4729-P OF 2011 IN S.M.C. NO.3 OF 2009

(Application by Malik Muhammad Shafi)

AND

CIVIL MISC. APPLICATION NO.3704 OF 2015 IN
CIVIL MISC. APPLICATION NO.4341 OF 2014 IN
CIVIL MISC. APPLICATION NO.3854 OF 2014 IN
S.M.C. NO.3 OF 2009

(Reply to Show Cause Notice by Syed Ali Zafar)

For the petitioner(s):

Mr. Ali Zafar, ASC.
 Raja Abdul Ghafoor, AOR.
 (in CRPs.155-156/15 and
 CMAs. 6807 and 6809/15)

Syed Zahid Hussain Bokhari, ASC.
 Raja Abdul Ghafoor, AOR.
 Mr. Zahid Nawaz Cheema, ASC.
 (in CRP.245/13)

Dr. M. Shafiq-ur-Rehman, In person.
(in Crl. O. P. 110/14)
Ch. Aitzaz Ahsan, Sr. ASC.
Mr. Gohar Ali Khan, ASC.
Raja Abdul Ghafoor, AOR.
(in CRP.473/15)

Malik M. Shafi, In person.
(in HRC. 4729-P/11)

Raja Abdul Ghafoor, AOR.
(in CMA. 3704/15)

For the respondent(s): Ch. Aitzaz Ahsan, Sr. ASC.
Mr. Gohar Ali Khan, ASC.
Raja Abdul Ghafoor, AOR.
(in CMA.3854/14 & HRC.4729-P/11).

Syed Rifaqat Hussain Shah, AOR.
Hafiz Hifz-ur-Rehman, ASC.
Mr. Zahid Hussain Bokhari, ASC.
(in Crl. O. P. 110/14)

For Govt. of Punjab : Mr. Razzaq A. Mirza, Addl. A. G. Punjab.
(in all cases)

Federation of Pakistan: Mr. Sajid Ilyas Bhatti, DAG.
Assisted by Barrister Asad Rahim Khan.
Barrister Mineel Tariq.
Mirza Moiz Baig, Adv.
(in all cases)

Date of hearing: 10, 11, 24.01.2018, 08, 21.02.2018, 13, 20, 22,
29.03.2018. 02-05, 10-12, 30.04.2018 and
02.05.2018. (Judgment Reserved).

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J U D G M E N T

EJAZ AFZAL KHAN, J.- The issue raised in this case is that the Bahria Town has encroached upon a great deal of forest land. Demarcation has been conducted at various levels but no conclusive finding could be handed down. Mr. Ali Zafar, learned ASC appearing on behalf of the Bahria Town contended that demarcation of the forest land and the land in contiguity was conducted in 2007; that the said demarcation proceedings were scrutinized by the NAB Authorities and Provincial Ombudsman during the proceedings of Suo Motu Case No. 03 of 2009 and found to be correct and that on the basis of the said proceedings an area - measuring 1170 kanals of the forest was found to have been encroached by Bahria Town and an area measuring 765 of the Bahria Town was found to have been encroached by the Forest Department and that the area thus found to have been encroached was not only accepted by one another but mutations witnessing exchange of the said areas were also entered and attested. The learned ASC went on to argue that the confusion in this case has arisen on account of wrong entries in the revenue papers showing that total area of Takht Pari as 2210 acres which in fact is 1741 acres and that if this position is accepted there could be no dispute about encroachment especially after its settlement resulting in the exchange of the property and attestation of mutations as mentioned above. The learned ASC next contended that if the field map of 1956-57 and measurements therein are considered, no area can be said to have been encroached by the Bahria Town. He lastly argued that once the matter was set at rest on the attestation of mutations and disposal of SMC. No. 3 of 2009 on 05.06.2013, CMA.

No. 3854 of 2014 raising the same issue could not have been entertained to revive an issue which was past and closed.

2. Syed Zahid Hussain Bukhari, another learned ASC for Bahria Town also reiterated the arguments of Mr. Ali Zafar learned ASC for the Bahria Town.

3. Mr. Aitzaz Ahsan, learned Sr. ASC appearing on behalf of the investors reiterated the arguments as were addressed by Mr. Ali Zafar. He, however, dwelt at length while highlighting the bias of Iftikhar Muhammad Chaudhary, the former Chief Justice of Pakistan against Malik Riaz, Chief Executive of the Bahria Town because of the well-known scandal of Arsalan Iftikhar, a son of the then Chief Justice. The learned Sr. ASC next contended that once the matter was concluded vide order dated 5.6.2013 in SMC. No. 03 of 2009, it could not have been reopened; that any one-sided demarcation conducted pursuant to the order dated 18.6.2013 passed in the chambers of this Court cannot be acted upon firstly because no notice of such proceedings was given to the Bahria Town and secondly because it was not conducted on the spot. The learned Sr. ASC by referring to the order dated 2nd and 3rd November, 2015 passed in Crl. O. P. No. 110 of 2014 by a three-member bench of this Court contended that where this Court itself held that as for Takht Pari Forest, there needs to be a coordinated effort between the Forest Department, Revenue Department and Survey of Pakistan, any demarcation report without the coordination of the three departments cannot be construed to have been conducted in compliance with the above-mentioned order of this Court. Whether the total area of Takht Pari, the learned Sr. ASC maintained, is 2210 acres or 1741 acres is a question to be determined by the civil court,

therefore, this Court cannot determine such question in a proceeding of this nature. The learned Sr. ASC contended that where the Bahria Town having settled the dispute raised superstructure on the property and spent a great deal of money on its development, it would be unjust to oust it therefrom especially when it is willing to pay the compensation for the property. The learned Sr. ASC next contended that where report dated 20.12.2006 was accepted by the parties and no appeal was filed thereagainst, it attained finality. The learned Sr. ASC further contended that where land of reserved forest was utilized by DHA and many other housing societies without any caveat, Bahria Town could not be treated differently. He lastly argued that where human rights cases are dealt with by the Human Rights Cell, there was absolutely no occasion to give different treatment to H.R.C No. 4729-P of 2011.

4. Mr. Razzaq A. Mirza, the learned Addl. A. G. Punjab by referring to the field map of the years 1885 and 1956 and the record of rights of the year 1956 contended that the total area of Takht Pari is 2210 acres and that if the demarcation report dated 15.4.2017 conducted on the basis of the aforesaid figures is considered, the area of 684 acres has rightly been found to have been encroached by the Bahria Town and that the encroachment thus worked out appears to be perfectly correct on all accounts. This report, the learned Addl. A. G. maintained is further strengthened by the entries made in the Punjab District Gazetteer Volume XXVIII, published in 1907, working plan of scrub forest of Rawalpindi, West Forest Division for the period 1933-34 to 1952-53, working plan of 1966-67 to 1975-76 and working plan of 1989-90 to 2019-20 showing that the total area of Rukh Takht Pari is 2210 acres. The learned Addl. A. G. lastly

contended that when it is unshakably established on the record that the total area of Rukh Takht Pari is 2210 acres, one or any number of reports based on the assumptions that its total area is 1741 acres cannot hold the field notwithstanding such reports were approved by the then Chief Minister of the Province.

5. Mr. Malik Muhammad Shafi, petitioner in H.R.C. No. 4729-P of 2011 contended that a huge property of the Forest Department has been grabbed by the Bahria Town by tampering with the record in collusion with the officials of the Forest Department and the revenue hierarchy; that the Chief Minister could have nipped the evil in the bud but he too having been obliged by the land grabbers illegally approved the demarcation report and the exchange effected pursuant thereto. He also referred to the mutations attested in favour of the front man of the Chief Minister and then in favour of his family members and that the litigation has been going on at various levels including this Court for more than a decade but it does not admit of any end due to the dilatory tactics of the counsel representing Bahria Town notwithstanding it is too evident to be disputed that the area of Rakh Takht Pari is 2210 acres. This aspect has also been highlighted in Crl. O. P. No. 110 of 2014 filed by Dr. Muhammad Shafiq-ur-Rehman. He also accused the Provincial Bureaucracy and the then Chief Minister to have colluded with the Bahria Town in manoeuvring the approval of the demarcation reports based on erroneous assumption.

6. We have carefully gone through the record and considered the submissions of the learned Sr. ASC and ASCs for the Bahria Town, the applicants appearing in person and the learned Addl. A. G. Punjab.

7. The first and foremost point to be considered in this case is as to what is the total area of the forest land known as Rukh Takht Pari and what are the documents establishing it. The best evidence to prove the area is the record of rights and field maps prepared during the settlement of the area in 1956-57. According to the record of rights the total area of Rukh Takht Pari is 17678 kanals and 17 marlas. This area when converted into acres comes to approximately 2210 acres. This record having been prepared during the settlement of 1956-57 is blessed with much greater presumption of truth. The *raison detre* behind such presumption is that the settlement is always invariably carried in the presence of village proprietary body and during such course every nook and corner of the land is measured and demarcated afresh. Therefore, much stronger evidence is required to rebut this presumption. Nothing has been brought on the record to dispute the entries appearing in the record of rights prepared during the settlement of 1956-57. The learned Sr. ASC and ASCs for the Bahria Town during the course of their arguments and even in their written arguments submitted in the Court placed reliance on the same documents.

8. Another independent, impartial and above-board evidence appearing in the form of the Punjab District Gazetteer Volume XXVIII, published in 1907, working plan of scrub forest of Rawalpindi West Forest Division for the period 1933-34 to 1952-53, revised working plan of 1959-60 to 1963-64, 1966-67 to 1975-76 and working plan of 1988-89 to 2019-2020 amply and overwhelmingly proves that the total area of Takht Pari forest is 2210 acres. When an undisputed evidence of this type has been available we fail to understand what mode of calculation reduced the area of 2210 to

1741 acres. Yes, the then Chief Minister approved the reports of demarcation carried out earlier but no sanctity could be attached to such reports when the officials demarcating the land based their finding on the assumption that the total area of Rukh Takht Pari is 1741 acres which is erroneous on the face of it. What led the then Chief Minister to be so benign and benevolent to the encroachers of such a huge area of the forest land has been explained by the applicant in C.M.A No. 4729 by alleging that the then Chief Minister was obliged by the Bahria Town by transferring 270 kanals of land vide mutation no.966 sanctioned on 22.6.2005 to Ch. Munir Ahmed, the alleged front man of the then Chief Minister, who in turn transferred 200 kanals to Ch. Salik, Ch. Rasikh Ali and Mst. Kharia Shujaat Hussain vide mutations No. 995 and 996 sanctioned on 10.04.2008. This is what we have been told about the Chief Minister. But what about the officialdom of the revenue hierarchy and the Forest Department whose watchful presence did little to guard against the intrusion of the Bahria Town and encroachment over a huge area of the forest land? It appears that they too being in league with the intruders let them do what they wanted to do. Thousands of trees were cut with the collusion of the officials of the Forest Department but what is bizarre and baffling is that they did not even wrinkle their noses, nor did they utter a syllable of disapproval. What was this due to? Was it the heat of money which let their responsibility pass off in vapours or was there grease in their palms which let the intruders slip and spiral out of their hands despite violating the law? It is horribly depressing to note that in the age of advanced technology even an encroachment of inches gets detected, but that of hundreds of acres goes unnoticed. In a

situation of this type where the officialdom in the revenue hierarchy and the Forest Department acted hand in glove with the encroachers, the Supreme Court has to step in else everything, every government land and every government building shall be gobbled by the grabbers. We have been told that Mr. Malik Riaz is a great philanthropist providing medicines to the ailing poor and food to the needy. But in the given background his case is no better than the one illustrated in the phrase, "rob Peter to pay Paul". If he deserves fame and acclaim for paying Paul he would certainly deserve shame and blame for robbing Peter. He, thus, cannot avoid the consequences of his acts done in contravention of law or off set them with his charitable acts.

9. Much hue and cry has been raised by the learned Sr. ASC and ASCs for Bahria Town by contending that once reports of demarcation have been accepted, a settlement pursuant thereto has been arrived at, the area encroached upon by either of the sides has been adjusted through exchange, mutations in this behalf have been sanctioned and S.M.C No. 3 of 2009 has been disposed of, C.M.A No. 3854 of 2014 raising the same issue could not have been entertained to revive an issue set at rest once and for all. This hue and cry to say the least is without any legal or moral justification when demarcations forming basis of such reports were not conducted in accordance with undisputed entries of the record of rights for the year 1956-57. Similarly, the settlements arrived at between the Forest Department and the Bahria Town culminating an exchange and even the order dated 05.06.2013 of this Court cannot be vested with any sanctity and even finality when the entire proceedings from the inception to the end were based on

misrepresentation, erroneous assumption about the area and non-reading of the record in its correct perspective. Such proceedings even otherwise cannot be vested with any sanctity when the revenue staff and officials of the Forest Department being more royalist than the monarch defended the interest of Bahria Town with much greater tenacity than the Bahria Town did itself. This situation has been more picturesque portrayed in one of the verses of Saghir Siddiqi which reads as under:

Any order passed on the basis of such reports cannot prevent us from reading the revenue record in its correct perspective drawing conclusions accordingly and reopening the matter thus disposed of. The objection of the learned Sr. ASC and ASCs for the Bahria Town thus being misconceived has to be turned down if not scoffed at. The argument whether the total area of Takht Pari is 2210 acres or 1741 acres is a question to be dealt with by the civil court and that this Court cannot deal with such a question in a proceeding of this type is shorn of force when the entries in the record of rights of 1956-57, field maps of 1886 and 1956-57, Punjab District Gazetteer Volume XXVIII, published in 1907, working plan of scrub forest of Rawalpindi, West Forest Division for the period 1933-34 to 1952-53, working plan of 1966-67 to 1975-76 and working plan of 1989-90 to 2019-20 clearly and unmistakably show that total area of Takht Pari is 2210 acres. It, therefore, is not a question to be referred to the civil court when the record of rights of 1956-57 has also been relied upon by the Bahria Town itself in the written arguments submitted by the learned ASC therefor without questioning the sanctity of the entries before any legal forum and even in the suit instituted before the civil court.

10. The argument that where the Bahria Town having settled the dispute raised superstructure on the property and spent a great deal of money on its development, it would be unjust to oust them therefrom especially when they are willing to pay the compensation for the property is vacuous both legally and morally when they knew all along that the property they took possession of and raised superstructure thereon was Forest Land. The argument that where land of reserved forest was utilized by DHA and many other housing societies without any caveat, Bahria Town could not be treated differently is legally incorrect as one or any number of wrongs cannot justify yet another. However, if at all any forest land has been utilized by DHA or any other society in violation of the provisions of law, we would request the honourable Chief Justice of Pakistan to take Suo Moto Notice of this fact so that all those who are found to be similarly placed be treated similarly. The argument that where human rights cases are dealt with by the Human Rights Cell, there was absolutely no occasion to give different treatment to H.R.C No. 4729-P of 2011 is devoid of force as many human right cases were listed in the Court and decided accordingly. The argument that that any one-sided demarcation conducted pursuant to the order dated 18.6.2013 passed in the chambers of this Court cannot be acted upon firstly because no notice of such proceedings was given to the Bahria Town and secondly because it was not conducted on the spot in accordance with the order dated 2nd and 3rd November 2015 passed in Crl. O. P. No. 110 of 2014 is not without substance when a three-member bench of this Court on 2nd and 3rd November 2015 observed by holding that as for Takht Pari forest, there needs to be a

coordinated effort between the Forest Department, Revenue Department and Survey of Pakistan.

11. As a sequel to what has been discussed and highlighted above, we declare that the area of Takht Pari is 2210 acres; that exchange of land purportedly encroached by Bahria Town and the Forest Department and attestation of mutations in this behalf being based on erroneous assumption about the area is against law and the record and as such of no effect and the order passed in S.M.C.No. 3 of 2009 is recalled and direct the Forest Department, Revenue Department and Survey of Pakistan to conduct a fresh demarcation after giving notices to Forest Department and Bahria Town and submit their report within one month before the implementation bench of this Court. We, therefore, request the Honourable Chief Justice of Pakistan to constitute an implementation bench in this regard. However, if any third-party interest has been created over the Forest Land what to do therewith and how to deal therewith shall be decided by the implementation bench. The NAB is directed to investigate the case and file references against all those who are found responsible for committing, aiding and abetting the crime at any level or in any form.

12. For the reasons discussed above, Civil Review Petitions No. 155 to 156 of 2015, 245 of 2013 and 473 of 2015 are dismissed. Criminal Original Petition No. 110 of 2014, Human Right Case No. 4729-P of 2011 as well as all the other Civil Misc. Applications are disposed of in the terms mentioned above.

JUDGE

I had the privilege of going through the judgement authored by my learned brother Justice Ejaz Afzal Khan, but have not able to persuade myself to agree with the same and would therefore respectfully add my dissenting note.

JUDGE

JUDGE

Announced in open court at Islamabad on _____

JUDGE

Approved for reporting
Barrister Sohaib Shahid

ORDER OF THE COURT

With the majority of two by one, the final order of this Court is recorded in paragraph 11 of the majority judgement.

JUDGE

JUDGE

JUDGE

Islamabad
04 May 2018
Barrister Sohaib Shahid