

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Jamal Khan Mandokhail  
Justice Naeem Akhtar Afghan

**Civil Petition for Leave to Appeal No. 304/2022 and CMA No.891/2022**

(Against the order dated 11.01.2022 of the Islamabad High Court passed in FAO No. 111/2021)

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

Versus

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

**And**

**Civil Petition for Leave to Appeal No. 305/2022 and CMA No.892/2022**

(Against the order dated 11.01.2022 of the Islamabad High Court passed in WP No. 4245/2014)

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

Versus

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

**And**

**Civil Misc. Application Nos. 887 and 888/2022 in CP NIL/2022**

*Federation of Pakistan through Secretary, Ministry of  
Defence, Govt. of Pakistan and others.* ... *Applicants*

Versus

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

**And**

**Constitution Petition No. 3/2024**

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

Versus

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

For the Petitioners:  
in CP.304/22

Mr. Salman Akram Raja, ASC.

For the Petitioners: <i>in CP.305/22</i>	Mr. Saad Mumtaz Hashmi, ASC a/w Mr. Luqman Ali Afzal, owner of the petitioner.
For the Petitioners: <i>in Const.P.3/24</i>	Mr. Umar Ijaz Gilani, ASC.
For Capital Development Authority:	Hafiz Arfat Ahmed Ch., ASC with Mr. Muhammad Ali Randhawa, Chairman CDA, Mr. Naeem Dar, DG Law Mr. Irfan Azeem, Dy. DG (Environment) Mr. Kamran, Director, Law and Raja Abdul Ghafoor, AOR.
For Metropolitan Corporation Islamabad:	Mrs. Misbah Gulnar Sharif, ASC and Raja Abdul Ghafoor, AOR.
For Ministry of Defence:	Malik Javed Iqbal Wains, Addl. AGP, Brig. (R), Falak Naz, Legal Advisor, Col. Faran Tariq, Dy. Director Military Farms, Lt. Col. Irfan Asghar, and Mr. Zafar Mehmood, MEO.
For WWF Pakistan:	Mr. Muhammad Naqi Khan, DG/CEO (via video link from Lahore).
For Survey of Pakistan:	Mr. Muhammad Aqib, Dy. Director.
On Court's Notice:	Mr. Nabeel Rehman, ASC (for Capital View and La Montana Restaurants and Gloria Jeans)
Dates of Hearing:	22.02.2024, 11.03.2024, 21.03.2024 and 11.06.2024.

### **JUDGMENT**

**Qazi Faez Isa, CJ.** Two Civil Petitions for Leave to Appeal ('**CPLA/s**') have been filed by the petitioner, Mr. Luqman Ali Afzal who describes himself as the sole proprietor of *The Monal Group of Companies* ('**Mr. Afzal**' and '**Monal**' respectively), against the order dated 11 January 2022 of the Islamabad High Court. A first appeal against order (FAO No. 111/2021) and civil revision (CR No. 13/2021) was dismissed and writ petition (WP No. 4245/2014) filed by Professor Zahid Baig Mirza ('**Professor Mirza**') was allowed, through the said short order of the High Court, which is reproduced hereunder:

- (i) Biodiversity, ecosystems and natural habitats are possessed of life and thus living organisms.

- (ii) Life, whether that of human or other living beings, depends on existence of biodiversity, ecosystems and natural habitats.
- (iii) Protection of ecosystems and natural habitats is inextricably linked to right to life guaranteed under Article 9 of the Constitution.
- (iv) Protection of ecosystems and natural habitats is a constitutional obligation of the State, its institutions and every public functionary.
- (v) The destruction of the National Park is violative of the fundamental rights of the people of Pakistan and saving it from further harm an inviolable duty of the State, its institutions and the public functionaries.
- (vi) The Federal Government, Capital Development Authority and the Islamabad Wildlife Management Board shall be severally and jointly liable for any further destruction of the National Park.
- (vii) The Federal Government, Capital Development Authority and the Islamabad Wildlife Management Board shall jointly ensure that no further unauthorized activity, construction or acts in any other manner take place or are undertaken within the notified area of the National Park.
- (viii) The respective Secretaries of the Ministry of Defence, Ministry of Interior and Chairman of the Capital Development Authority shall jointly conduct a survey and demarcate the unharmed area of the notified National Park. The survey and demarcation shall be completed within sixty days from the date of this order. They will ensure that no activity or construction is allowed within the notified National Park as mandated under MLR 82, the Capital Development Authority Ordinance, 1960 and regulations made thereunder, the Islamabad Wildlife (Protection, Conservation and Preservation, Management) Ordinance, 1979, and the Islamabad (Preservation of Landscape) Ordinance, 1966.
- (ix) The Secretary, Ministry of Defence shall ensure that the enforced laws are strictly implemented in the three sectors allocated for the use of the branches of the Armed Forces. The Chairman of the Development Authority Capital shall forthwith advise the Secretary, Ministry of Defence regarding the enforced and applicable laws.
- (x) Pakistan Navy has encroached upon State land including the notified area of the National Park unauthorisedly by and illegally establishing a golf course outside the allocated sector E-8. The

construction on the encroached land and establishing a golf course was and continues to be illegal, without lawful authority and jurisdiction.

- (xi) The purported Navy Golf Course shall forthwith be sealed and its possession handed over to the Capital Development Authority and the Islamabad Wildlife Management Board.
- (xii) The construction on the encroached land of Navy Golf Course shall be demolished within four weeks from the date of the order unless it can be utilized for an environmentally friendly activity.
- (xiii) The Capital Development Authority and Islamabad Wildlife Management Board shall jointly restore the encroached land of Navy Golf Course as part of the National Park.
- (xiv) Secretary, Ministry of Defence shall conduct an inquiry and fix responsibility of officials/persons involved in trespassing and encroaching upon the State land for unauthorizedly and illegally establishing the Navy Golf Course.
- (xv) The Secretary, Ministry of Defence shall conduct a forensic audit through the Auditor General of Pakistan to ascertain the loss caused to the exchequer and the same shall be recovered from the officials/persons found responsible.
- (xvi) The claim of Remount, Veterinary and Farms Directorate of Pakistan Army, regarding 8068 acres of land in the notified National Park area is in violation of the Ordinance of 1979 read with the Ordinance of 1960 and the Master Plan. The claim is also not in conformity with the enforced laws applicable to the management of lands for the use of the Armed Forces. The Federal Government was bereft of jurisdiction to allow the Directorate to use 8068 acres of land in the notified National Park area. The Directorate has no jurisdiction nor the authority to own, use or keep in possession any land within the notified National Park area.
- (xvii) The Remount, Veterinary and Farms Directorate had no jurisdiction or authority to execute the purported agreement, dated 30.09.2019 with Monal Restaurant. The rent recovered by the Directorate from Monal Restaurant was also without lawful authority and jurisdiction. The Secretary, Ministry of Defence shall ensure that the rent received by the Directorate is recovered and deposited in the exchequer within sixty days from the date of the order.

- (xviii) The lease agreement of Monal Restaurant with the Capital Development Authority had expired and its agreement, dated 30.09.2019 with the Remount, Veterinary and Farms Directorate was void and without any legal effect. The order, dated 04.10.2021 impugned in F.A.O No.111 of 2021 does not suffer from any illegality.
- (xix) The Capital Development Authority and the Islamabad Wildlife Management Board shall forthwith take over possession of Monal Restaurant and thereafter seal its premises subject to allowing its owner/management to take out its property.
- (xx) The Chairman of the Capital Development Authority shall undertake an inquiry to identify the officials responsible for the construction of Monal Restaurant and other buildings in the protected area of the National Park in violation of the Act of 1997, Ordinance of 1960, Ordinance of 1966, Ordinance of 1979 and the regulations made under the respective statutes. The Board of the Authority shall thereafter proceed against the officials in accordance with law.
- (xxi) The Secretary, Ministry of Climate Change and the Director General, Environmental Protection Agency shall jointly conduct a survey of Monal Restaurant and other buildings constructed in the area to assess the damage caused to the environment and thereafter take such measures and actions as may be necessary to avoid further environmental degradation.
- (xxii) The report and recommendations of the Commission, which forms an integral part of this judgment, shall be forthwith examined by the Secretary, Ministry of Climate Change. The Commission headed by Dr. Pervez Hassan, Sr. ASC is hereby converted to Implementation Commission. The Secretary, Ministry of Climate Change shall coordinate with the chair of the Implementation Commission. The recommendations, after deliberations, shall be placed before the Federal Government i.e. the worthy Prime Minister and Members of the Cabinet for approval.
- (xxiii) The prestige and special status of the Armed Forces is of paramount importance for the people of Pakistan. The Secretary, Ministry of Defence and Chairman of the Capital Development Authority shall ensure that no controversy is created in future regarding non implementation of the enforced laws within the three sectors allocated for the use of the branches of the Armed Forces in the Islamabad Capital Territory.

- (xxiv) The aforementioned officials shall submit their respective compliance reports to the Registrar of the Court within thirty days from the date of the order.
- (xxv) The Registrar of the Court shall send copies of this order to the aforementioned officials through special messenger for compliance.

2. The CPLAs filed by Mr. Afzal came up for hearing before this Court on 16 February 2022 by which date the detailed judgment had not been issued by the High Court, therefore, this Court considered it, *'just, proper and in the interest of justice to order that status quo to be maintained in the meantime.'* The detailed reasons were issued on 13 July 2022, which were brought on record through CMAs No. 8384/2022 and 4381/2023.

3. On 24 February 2022 two applications (CMAs No. 891 and 892/2022) were submitted by the Islamabad Wildlife Management Board (**'the Wildlife Board'**) seeking to be arrayed as a party to the said petitions; the applications were granted. The Wildlife Board also filed a constitutional petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**), bearing CP No. 3/2024, through its Chairperson, Ms. Rina Saeed Khan (**'Ms. Khan'**), against the Capital Development Authority (**'CDA'**), the Federal Government and others. The Wildlife Board complained about certain actions taken by CDA and sought a number of directions, including that the respondents should ensure the protection, preservation and conservation of wildlife and protect, preserve and conserve the Margalla Hills National Park (**'the National Park'**).

4. The World Wide Fund for Nature - Pakistan (**'WWF'**) also sought to be arrayed as a party, and in this regard filed an application (CMA No. 1251/2022). WWF stated that it wanted to ensure strict compliance with the applicable laws, including the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, rules made thereunder and the Islamabad Capital Territory Zoning Regulations, 1992 (respectively **'the Ordinance'**, **'the Rules'** and **'the Regulations'**). It also wanted to save the further degradation and destruction of the National Park and to help restore it. WWF's application was granted and it was arrayed as a party.

5. CDA had constructed, at its own cost, an eatery at Pir Sohawa, within the precincts of the National Park, and had sought proposals for operating it. Mr. Afzal submitted a proposal to CDA which was accepted and Lease Agreement dated 10 March 2006 was executed between the CDA as the Lessor and Mr. Afzal as the Lessee in respect of the *site/structure* measuring 47,000 square feet having a covered area of 12,900 square feet (**'the CDA Lease'** and **'the property'** respectively). Clause 1 of the Lease stipulated that, *'The Lessor will remain the Sole Owner of the Site/Structure'*. The monthly rent payable by the Lessee (Mr. Afzal) to the Lessor (CDA) was two hundred and sixty thousand rupees, with an annual increase of ten per cent. The CDA Lease was for a period of fifteen years.

6. The Lessee (Mr. Afzal) signed the CDA Lease on behalf of *'Ze Grill Restaurants'* and it was written that he was *'representing Ze Grill having its office at National Bank Park, Gulberg, Lahore ... hereinafter called "The Lessee".'* There was no mention of *Monal* or *The Monal Group of Companies* in the CDA Lease.

7. The tenure of the CDA Lease was till 10 March 2021. However, just before its expiry in February 2021 Mr. Afzal filed a suit against CDA. In his plaint Mr. Afzal prayed that the court should declare that CDA *'had no lawful right to demand or receive rent'* from him and that the rent which he had already paid to CDA should be *returned/refunded* to him. Failing to get the relief he had sought, Mr. Afzal filed a first appeal against the order dated 4 October 2021 which had been passed by the learned Civil Judge (West), Islamabad (FAO No. 111 of 2021). Mr. Afzal also filed a civil revision (Civil Revision No. 13 of 2021) against the order dated 1 March 2021 passed by the learned District Judge (West), Islamabad, who had upheld the order dated 27 February 2021 of the learned Civil Judge (West), Islamabad. He also challenged the order dated 11 January 2022 passed by the Islamabad High Court in the writ petition filed by Professor Mirza (WP No. 4245 of 2014).

8. During the subsistence of the CDA Lease Mr. Afzal entered into another lease with *'The RV & F Directorate, QMG Branch, GHQ'* [Remount, Veterinary and Farms Directorate, Quarter Master General Branch, General Headquarters of the Pakistan Army] (respectively **'the Directorate'** and **'the RV&FD Lease'**). The RV&FD Lease was executed on 30 September 2019 for

a period of seventeen years. Clause 1 of the RV&FD Lease stipulated that, '*The Lessor will remain the Sole Owner of the Site/Structure.*' Clause 1 of the RV&FD Lease was identical to clause 1 of the CDA Lease, even the first letters of the same four words were capitalized.

9. A lessee cannot unilaterally discard his lessor, substitute it with another and then become the lessee of the latter, but this is what Mr. Afzal did. He unilaterally cast aside CDA, his Lessor, and the CDA Lease and elected to become the purported lessee of the Directorate under the RV&FD Lease. Mr. Afzal had obtained the possession of the property from CDA pursuant to the CDA Lease and had agreed to pay rent to CDA, but then he stopped paying rent to CDA and had the temerity to seek the refund of the rent already paid to CDA. Nonetheless, Mr. Afzal retained the possession of the property which he had got from CDA under the CDA Lease while he put up his untenable contention. Rarely such audaciousness, and complete disregard of the law has been witnessed.

10. The Directorate and its Director-General asserted rights to the land of the National Park on the tenuously improbable premise that in the year 1910 the Veterinary, Remount and Farms unit of the British Army was allowed to use some land of the National Park for fodder. Major General Muhammad Samrez Salik, was the Director-General of the Directorate, who had affixed his signature and official stamp on the RV&FD Lease, through which Mr. Afzal was bestowed the favour of a seventeen year *lease* by the Directorate. However, the Directorate is not a legal entity. The Directorate bypassed the Government of Pakistan and directly took up the matter with CDA. It stated that through notification No.266 dated 23 April 1910 land was being '*utilized by Military Farm Rawalpindi for production of hay for Army animals.*' Permitting the use of land does not confer its ownership, nor could ownership have been conferred on the Directorate, a non-legal entity. It also escaped the attention of the personnel of the Directorate that the only concerned statutory entity was the Wildlife Board.

11. The Federal Government was correct in disabusing Major General Muhammad Samrez Salik and the Directorate of their fanciful notion that a 110 year old permission to collect fodder did not nor could bestow ownership rights to such land. CMA No. 7541 of 2024 was filed by the Federal Government wherein it stated in writing that the RV&FD Lease was



'void ab-initio', and that no record is available to show 'that the Federal Government has given any approval to execute the said Lease Agreement,' that is, the RV&FD Lease. However, Mr. Afzal continued to assert the purported rights of the Directorate.

12. Mr. Afzal apparently cultivated and developed relationships with the powerful, and his brother was in the bureaucracy who then rose to the highest position in it. Therefore, he may have deluded himself in assuming that he was above the law. He violated the law for years and went on expanding his restaurant by encroaching into and destroying the National Park. The protected status of the National Park was of no consequence to him and to the government servants who supported him. He also disregarded the order dated 19 May 2020, of a five-member Bench of this Court, which was passed in Human Rights Case No. 318 of 1993, reproduced hereunder:

1. ...pursuant to the order of this Court dated 05.03.2020, it is stated by the Advocate General, Islamabad Capital Territory, Deputy Attorney General, Acting Chairman Capital Development Authority/Chief Commissioner, ICT that the whole of the Margalla Hills, spreading in Islamabad, K.P. and Punjab, has since long declared as a heritage site and National Park, and no part of it can be allotted to any private person, either for residential purposes or for any sort of commercial activity. We have been informed by the Acting Chairman, CDA that a large number of restaurants have been established in the Margalla Hills, amongst them Monal restaurant is a famous one, and there are rental residential premises by the name of Pine Residencia, Whispering Pine and some other residential premises constructed in the Margalla Hills which are being offered as hotels/guest houses, etc. and they are being advertised openly. It is stated that all these constructions are illegal and against the very spirit of the Margalla Hills being declared as a heritage site and National Park, and all such constructions and activities have to be stopped and demolished, and the Margalla Hills restored as heritage and National Park.

2. We are informed that a large number of trees have been removed and cut-down for stated expansion of the Monal restaurant and the Acting Chairman CDA/Chief Commissioner I.C.T. is fully familiar with such situation and states that he has taken action on this occurrence and sealed the Monal restaurant. He has further assured the Court that the trees that have been cut-down or removed by Monal restaurant shall be restored with sufficiently tall and grown up trees. Action against all those premises, which are operating for commercial or residential purposes in the Margalla Hills be initiated to ensure their removal. We, however, direct that

notices be issued to all the alleged owners/occupants of the premises in the Margalla Hills who shall appear before the Court on the next date of hearing. The expansion or construction work of Monal or any other Restaurant or any other premises in the Margalla Hills is stayed altogether.'

13. Money, connections, influence and/or nepotism supplanted the law and the protected status of the National Park, first by getting CDA to execute the CDA Lease and then the Directorate to execute the FV&FD Lease. Every opportunity was given to Mr. Afzal to comply with the law, which he had been continuously flouting for eighteen years. Probably it finally dawned that this Court would ensure the law is abided by and that it would also ensure that the National Park is protected which made him and the other restaurant owners pause and reflect. A sudden stoppage of their businesses and the dismantling of their restaurants would cause them loss. Therefore, all those running restaurants sought time to remove their businesses. On 11 June 2024 the learned counsel representing Mr. Afzal (in presence of Mr. Afzal), and others to whom notices had been issued, stated:

'2. ...that his client is the petitioner (in CPLA Nos. 304 and 305 of 2022) and may be permitted to vacate the premises (Monal Restaurant) within three months. Learned Mr. Nabeel Rehman represents La Montana and Gloria Jeans restaurants and states that they will also vacate their premises in three months. Learned counsel further submits that CDA may give them preference in the leasing/allotting/licensing of premises/land for the running of restaurants where it is permissible, as their businesses will be affected. The Chairman CDA present in Court states that he will designate an officer to consider the request and if there are premises/land available for this purpose, and if the law permits, preference will be given to those who are voluntarily vacating restaurants from within the National Park.'

'3. We appreciate those who have voluntarily agreed to remove their restaurants as it will help preserve and conserve the National Park. Accordingly, three months' time is granted to all the restaurants on and around the Pir Sohawa Road in the National Park to vacate them. Small kiosks situated on or around the Pir Sohawa Road in the National Park may continue to be operated provided they are licensed by the Islamabad Wildlife Management Board (**the Wildlife Management Board**) and strictly abide by their terms of license, which must include collecting of all garbage generated by each and their respective customers and disposing it outside the precincts of the National Park and, if they are permitted to have a stove then they must also have a fire extinguisher.'

'4. Any lease, license, allotment or permission granted by CDA, or by the Remount, Veterinary and Farms Directorate ('**the Directorate**') or any other department/authority to operate restaurants in the National Park was contrary to the provisions of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979. Therefore, the same are declared to be of no legal effect and set aside. The petitioner in CPLAs No. 304 and 305 of 2022 is stated to have deposited in court rent/fee to which only the Wildlife Management Board could be entitled for the preservation, conservation and proper utilization of the National Park, therefore, the same shall be paid to/withdrawn by the Wildlife Management Board.'

'5. The Directorate is a component of the Pakistan Army, which operates under the Ministry of Defense of the Federal Government. The Directorate has no separate legal existence yet it acted as if it was a legal entity, executed the said 'Lease Agreement' dated 30 September 2019, which was countersigned by its Director-General, Maj. General Muhammad Samrez Malik.'

'6. For the proper management of the National Park, CDA shall assist the Wildlife Management Board whenever required. If an officer of CDA well conversant with conservation and environment is not already a member of the Wildlife Management Board, it would be appropriate that one is appointed as a member of the Wildlife Management Board. Moreover, since the World Wildlife Foundation Pakistan ('**WWF**') came forward to facilitate the preservation and protection of the National Park the Government may also consider nominating it on the Wildlife Management Board.'

'7. The impugned decision of the Islamabad High Court is sustained, subject to what is stated above and any clarification/amplification and direction that may be given in the detailed reasons to follow. Resultantly, all the petitions and CMAs are disposed of.'

14. Constructing a restaurant in a designated national park is a clear violation of the Ordinance. Unrestricted construction and commercial activities within a national park also denigrates its protected status. The Ordinance was enacted forty-five years ago with the stated object of '*protection, preservation, conservation and management of wildlife*' and for the establishment '*of a National Park in the Islamabad Capital Territory*'. Section 21(1) of the Ordinance stipulates that '*with a view to protecting and preserving scenery, flora and fauna in natural state*', the Federal Government may declare any area to be a national park. On 28 April 1980 the Federal Government issued Notification No. S.R.O. 443(I)/80 and

declared the areas mentioned therein as the Margalla Hill National Park, which included the Margalla Reserve Forest, the Military Grass Farms, certain villages, Rawal lake and the area surrounding it. Another notification (No. S.R.O. No. 3(15)/76-Capital Development Authority.III(3) was issued on 27 April 1980) under section 20 of the Ordinance through which '*Bannigallah hills bounded by Kurang river in the North, Mohra Noor in the West, Thal in the East and Belgh in the South*' were declared as wildlife sanctuaries. Section 20 of the Ordinance states that a wildlife sanctuary is '*closed to public, and no exploitation of forest therein shall be allowed*' and '*no person shall enter or reside*' in it. One of the stated reasons being to secure the '*undisturbed breeding of wildlife*'.

15. Subsection (2) of section 21 of the Ordinance states that a national park is accessible to the public only '*for recreation, education and research*'. Subsection (4) of section 21 of the Ordinance prohibits the following activities in a national park:

- (i) hunting, shooting, trapping, killing or capturing of any wild animal within a radius of two kilometers of its boundaries;
- (ii) firing any fire-arm or doing of any other act which may disturb any wild animal or interfere with its breeding place;
- (iii) felling, tapping, burning, damaging or destroying of, or taking, collecting or removing therefrom any plant or tree;
- (iv) clearing or braking up of any land for cultivation, mining or for any other purpose; and
- (v) polluting water flowing in or through it.'

The proviso to subsection (4) of section 21 stipulates that, '*Provided that the authorized officer may, for specific purposes, authorize the doing of any of the aforementioned acts.*' Trees, shrubs, soil of the National Park were removed and the land cleared to construct the restaurants, which were not *authorized* by the Wildlife Board, nor could such authorization be given. Subsection (3) of section 21 allows certain acts to be carried out for *public recreation, education and research*, as under:

'Provision for access roads to, and construction of rest houses, hotels and other buildings in the national park along with amenities for public may be so made, the forest therein shall

be so managed and forest produce so obtained as not impair the object for which it is declared a national park.'

However, the acts stated in the abovementioned proviso may only be allowed provided they do not '*impair the object for which it is declared a national park*'. However, the construction and running of restaurants impaired the object of the national park and the same also had no nexus with *public education* and/or *research*. Therefore, the restaurants could not be allowed to operate.

16. The restaurant operated by Mr. Afzal set a precedent for others, including La Montana and Gloria Jeans. The restaurateurs trespassed and encroached upon and illegally incorporated into their business establishments land of the National Park. Mr. Afzal was given the possession of a single building on the ridge but over the years his restaurant (Monal), La Montana and Gloria Jeans captured the entire mountain ridge. WWF has produced satellite imagery of the area over the years, beginning from 2004 which makes for extremely painful viewing (CMA No. 3659/2024); the destruction of the forest and its replacement with concrete. The restaurateurs violated the Ordinance, and also a number of other laws. No building can be constructed without first obtaining requisite approval, and upon completion thereof the completion certificate ensuring that it was constructed in accordance with law, but these were not obtained.

17. The Pakistan Environmental Protection Act, 1997 (**'the PEPA'**) was enacted twenty-seven years ago '*for the protection, conservation and control of pollution.*' Anyone undertaking any activity '*involving any change in the environment*' is required to submit an '*initial environmental examinations*' (**'IEA'**) or '*an environmental impact assessment*' (**'EIA'**) to the Environmental Protection Agency (**'EPA'**). But the restaurants neither submitted an IEA nor an EIA to the EPA. The provisions of PEPA were disregarded and violated. The restaurant owners also disregarded the notices issued by EPA and the environment protection orders issued by it. Through CMA No. 2589/2022 the notices and the environmental protection orders issued by EPA have been brought on record. On 10 February 2020 EPA issued an environmental protection order under section 16(2) of the PEPA, which stated that since its enforcement team had found Mr. Afzal's restaurant to

be non-compliant with the PEPA it should '*stop all operational/constructional activities of your unit/project immediately and to seal all the entrance and exit gates.*' The Director-General of EPA issued the order after noting that the '*prior Environmental Approval*' as mandated by section 12 of the PEPA was not sought and the waste management treatment and disposal of liquid waste generated by the restaurant was not catered for. EPA provided a hearing before passing the environmental protection order, in which it was observed that '*he could not justify regarding discharging of un-treated sewerage waste and violation of section 11*' of the PEPA which prohibits '*discharge or emission of any effluent or waste or air pollutant or noise*' in excess of the stipulated Environmental Quality Standards. '*Therefore, this Agency [EPA] has no other option except to issue the Environmental Protection Order*', which is dated 10 February 2020. Similar notices and environmental protection orders were issued to La Montana and Gloria Jeans.

18. The provisions of the Ordinance that were violated were also noted by the Wildlife Board, which issued notices to those operating restaurants, some of which have been filed through CMA No. 2589/2022. These notices noted the sewage and waste material which was being generated was not disposed of properly. It was also noted that water for the restaurants was being used without obtaining permission. Wildlife Board also noted that the sewage and the solid waste pollution which was being generated had placed *the entire ecosystem under threat*. The quantity of the water that is daily used by the restaurants in their kitchens for preparation of meals, washing crockery and cutlery and used in toilets by thousands of customers has drained the National Park of its natural springs and other water sources.

19. During the hearing of these cases and earlier too frequent fires had erupted in the National Park. The Court was informed that the cause of these fires could also be that Monal, La Montana and Gloria Jeans were popular venues and daily attracted thousands of customers and any of whom could carelessly throw a lit match or a cigarette, without first extinguishing it, which would ignite the dry grass and twigs lying on the forest floor of the National Park. These blazes are difficult to put out and require considerable manpower and resources, including repeated sorties by helicopters carrying water to throw on the fires.

20. Reference may also be made to Zone-3 of the Regulations which places certain restrictions on what cannot be done in the National Park. The National Park is situated in Zone-3, which is reproduced, as under:

'**(3) Zone-3:** In this zone,

(a) no private residential, farming, orchard, poultry and dairy farming scheme shall be allowed;

(b) no change in land-use will be permissible except for such projects as may be related to conservation, preservation, afforestation and recreation and are covered by Margallah Hills National Park Management Plan;

(c) no sale/purchase of land which entails change in land use, shall be allowed;

(d) some of the existing rural settlements, being central and important villages, shall be allowed to stay under controlled programme to cater for the basic necessities of the local population, selection of such settlements shall be in accordance with the provisions of Margallah Hills National Park Management Plan. These rural settlements would not be allowed to expand;

(e) no residential scheme can be floated in this zone, nor construction of houses shall be allowed.'

21. Section 4 of the Islamabad (Preservation of Landscape) Ordinance, 1966 (**'the Preservation of Landscape Ordinance'**) prohibits the removal, destruction, damage and alteration of landscape and anyone doing so, without first obtaining requisite permission from the Authority thereunder, is liable to criminal prosecution, imprisonment and fine. The acts prohibited by the Preservation of Landscape Ordinance were also apparently committed, but no one faced prosecution thereunder.

22. Mr. Afzal and the other restaurant owners paid no heed to the Ordinance, the building laws, to the PEPA and other laws. The directions and orders issued to them, to stop the illegal use of water, creating/ causing noise, air and water pollution and failure to properly dispose of the sewage and waste generated were also disregarded. Such disdain of the laws and callous disregard is rarely witnessed.

23. Since the concerned authorities were oblivious, negligent and/or complicit in disregarding the abovementioned laws and of the destruction of the National Park this public interest matter was brought to the court by

Professor Mirza who filed a petition in the Islamabad High Court (WP No. 4245/2014). The petition which he filed in 2014 was decided in 2022, and finally by this Court in 2024. Sadly Professor Mirza passed away on 29 May 2024, at the age of 88, without seeing the result of his decade long effort. He was a Professor of Biodiversity, Zoogeography, Paleontology, Wildlife Management and a renowned environmentalist. He also served as a Biodiversity expert on the Wildlife Board and had authored about two dozen books on the subject of environment. He was deeply concerned about the destruction of the National Park and devoted considerable amount of his time, money and effort to protect it. In his petition before the High Court he categorized the National Park to be '*a national asset*' and listed its importance, as under:

- 'A. The Margallah Hills due to its natural greenery and height, serve as crucial catchment area which is why this area gets more rains than the adjoining plains;
- B. The rain water flows into scores of springs, feed drinking water wells and streams that flow from the hills into the city;
- C. The forests in the hills consist of peculiar trees, attract exotic species of wild life, rare animals, birds, wildlife, wild-flowers etc.
- D. There are very old rare trees in the Margallah Hills National park and large number of trees are fruit bearing;
- E. Cumulatively the Margallah Hills Park constitutes "nature" and substantially impacts the environment and climate of Islamabad and adjoining areas;
- F. Margallah National Park serves as lungs for Islamabad Capital Territory.
- G. Helps check and combat pollution;
- H. Biodiversity;
- J. Ecosystems;'

With his petition he also attached posters of the species of trees, mammals, birds, wild flowers, lizards and turtles that are found in the National Park.

24. WWF submits that the National Park '*supports a diverse flora and fauna and is home to some 616 species of plants, 38 species of mammals,*



*266 species of birds, 13 species of reptiles and 147 species of butterflies.'* It further points out that, *'Apart from biological diversity the national park acts as an important wintering ground for bird species as well as acting a biodiversity corridor for locally migrating birds. However the biodiversity value of the national park cannot be underestimated with almost 40% of Pakistan's recorded bird species present in the park. The forests acts as an important carbon sink and watershed to the capital and Rawal Lake provides water to a number of sectors in Islamabad as well as Rawalpindi. Unfortunately, a number of species have already disappeared from the national park including the Cheer pheasant *Catreus wallichii* and Grey Goral *Naemorhedus goral* due to change in habitat and hunting.'*

25. Professor Mirza in his petition had also highlighted the *'activities causing injurious damage'* to the National Park and had listed them, as under:

- (i) Indiscriminate felling of trees for domestic use; constant theft of trees.

Photographs attached as Annex "E"

- (ii) Felling of trees for commercial use for sale to hotels & shrines.

Photographs attached as Annex "E/1-E/4".

- (iii) Cutting/felling theft of trees for construction purposes.

Photographs attached as Annex "E/5".

- (iv) Digging out of the roots of the stolen trees for fuel purposes, causing the erosion of precious soil with the first rainfall, resulting in the degradation of the entire ecosystem, which is a source of fresh water for human consumption and also this fresh water is arable for agriculture.

- (v) Grazing of cattle in the entire hills, that results in the overgrazing of palatable ground cover, thus giving space to non palatable grasses and herbs, which creates shortage of nutritious food for the wild ungulates of the National Park; During the dry season, these non palatable vegetation is set on fire, to give chance of growth to palatable vegetation during the coming rainy season. These deliberate fires are a major cause of forest fires in April, May and June, every year in Margallah Hills.

Photograph attached as Annex "E/6"

- (v) Raising of expanding encroachments in the government owned land located within the national park, which are

gradually reducing the area of the national park, illegal construction by encroachment and for this purpose to clear the land of all green vegetation or forest.

Photographs attached as Annex "E/7"

- (vi) Unregulated and unauthorized construction on private lands in violation of the applicable zoning regulations within the boundaries of the national park.
- (vii) Growth of population in protected areas; rural constructions due to population growth.
- (viii) Littering of the hills.
- (ix) Polluting the streams.
- (x) Channeling rain water into domestic system thereby lowering of subsoil water table, causing drying of wells for drinking water.
- (xi) Every year Margallah hills forest is put on fire which destroys hundreds of trees and bushes so that wildlife in the fire area either is choked to death or compels them to migrate.
- (x) Putting forests on fire in the middle of the breeding season of the birds cause live roasting of the nestlings of the birds, harming the reptiles and the rodents. This gives negative impact to the food chain. Burning of soil-cover vegetation causes soil erosion. Hill slopes devoid of vegetation are a cause of flash flood. Wash down of rain water does not go subsoil, resulting in fast depletion of subsoil aquifers, and drying of springs.
- (xii) Illegal game hunting takes place in various parts of the hills; Goral (a species of goats which was found only in Margallah Hills areas) has disappeared from the National Park. Population surveys of 1980s show several small populations of Goral in this National Park. Recent survey declared total elimination of these wild goats.
- (xiii) Construction and operation of infrastructure and commercial establishments such as restaurants and other violations that are violative of the objectives of the national park as stated in the applicable legislation.'

26. Professor Mirza had also listed the international treaties and conventions to which Pakistan was a signatory and which was the country's obligation to abide by, as under:

- (1) International Convention for the Protection of Birds, 1950.
- (2) International Plant Protection Convention, 1951.

- (3) Declaration of the United Nations Conference on the Human Environment, 1972.
- (4) Convention for the Protection of the World Cultural and Natural Heritage, 1972.
- (5) Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973.
- (6) Convention on the Conservation of Migratory Species of Wild Animals, 1979.
- (7) World Charter for Nature, 1982.
- (8) U.N. Conference on Environment and Development, 1989.'

These treaties and conventions Professor Mirza pointed out were not being abided by. He asserted that '*incalculable and irreversible destruction of nature*' was being caused and stated that his only objective in filing the petition was to '*conserve the natural ecological system of this national park for the sustenance of its benefits to the nation.*' None of the parties controverted what Professor Mirza and WWF had stated. Professor Mirza demonstrably was a selfless human who was deeply concerned about the desecration of the creation of the Benevolent Creator. He wanted nothing for himself.

27. On the other hand Mr. Afzal stated that '*making Monal Restaurant a landmark of Islamabad was recognized as one of the achievements of Luqman Ali Afzal by the President of Pakistan. He was bestowed the prestigious, "President's Award for Pride of Performance" in 2019 for public service.*' The President's Pride of Performance Award is awarded to those with notable achievements in the field of art, science, literature, sports and nursing. Mr. Afzal, however, was the first entrepreneur or restaurateur to be so honoured by the President. Mr. Afzal submitted that he employed hundreds of people, ran a charitable hospital, provided free treatment and gave widows monthly financial support, but provided no particulars or documents to support his contentions. In any case, Mr. Afzal's business status, the number of persons he employed, his stated charitable work and philanthropy was irrelevant in these cases. We are only concerned with whether he and others abided by the laws of Pakistan. In respect of these matters they are silent.

28. The owner of La Montana and Gloria Jeans, namely, Dr. Muhammad Amjad, was also issued a notice by this Court, but he elected not to disclose how he managed to get possession on the mountain ridge next to Mr. Afzal's restaurant and who, if anyone, granted him permission to construct and run his establishments. However, it is unimaginable that without having connections with those at the power centre of the country he would have been able to raise illegal buildings and to do so by disregarding the laws of Pakistan. He too had connections with General Pervez Musharraf, who after his retirement had made Dr. Muhammad Amjad his political party's Chairman. When personal contacts with the paid servants of the State, trump the laws of Pakistan, and bureaucrats come to serve the interest of law breakers it is an abomination.

29. The Wildlife Board, under its Chairperson Dr. Anis ur Rehman and then under Ms. Khan, tried to ensure the protection of what remained of the National Park. The Wildlife Board had established Visitor Information Centers at the edge of Trails 5 and 6 and a Field Office in Kalinjhar. The Wildlife Board also undertook the task of educating and sensitizing people, including school children of the flora and fauna, of these wonders of Creation. However, the properties of the Wildlife Board came under attack on 15 February 2024 when about 50 to 60 personnel of CDA, as stated in CP No. 3 of 2024 filed by the Wildlife Board, launched an attack. In its petition, contents whereof are not denied by CDA, it is stated that:

'They came without any prior notice or intimation and took the Wildlife Board's staff by surprise. They destroyed the locks, broke in and forcefully dispossessed the staff. They also threw all the belongings of the Board including display screens outside the building. This was a blatant act of harassment and usurpation by CDA against which the Board's registered their protested; but no heed was paid to their pleas. (Picture of the Site is attached herewith as ANNEXURE F)

11. Later that day, one of the staff members of the Board, Mr. Yasir Hussain, Wildlife Guard BPS-07, who has witnessed this incident of usurpation, filed a complaint in Police Station Margalla F-8. However, in blatant violation of the criminal procedure, no action was taken by the police upon the same - ostensibly because the police was reluctant to do anything CDA which is headed by the same individual who also holds charges as the Chief Commissioner of Islamabad.'

30. This Court passed the following order on 22 February 2024 with regard to the abovementioned acts of vandalism:

'7. The arbitrary manner in which CDA officials acted, and against a statutory body doing what the law prescribes, was most inappropriate. And, neither a notice was issued nor was an opportunity of hearing provided to the petitioner. The petitioner was acting pursuant to a statute and no allegation is levelled that they were misusing the properties in their possession. If such unreasonable behaviour is not checked immediately it may encourage further transgressions. Therefore, CDA is directed to immediately return/handover the possession of the subject properties to the petitioner together with any and all equipment, furniture, etc. that was removed therefrom as an interim measure and subject to the outcome of this petition.'

We have no hesitation in declaring that the actions of CDA were wholly illegal and completely unjustified and confirm the above order.

31. Such servants of the State, whose salaries are paid by the poor people of this country, have shifted their loyalty away from Pakistan, its laws and from the people. Those selling the laws of Pakistan and the land of the National Park do so for personal gain and profit. 50 and 60 personnel of CDA descending upon the abovementioned properties and dispossessing the Wildlife Board could only be done if they were directed to do so by the highest functionaries of CDA, against who(m) action must be taken. Those paid out of the public exchequer need to be reminded that they serve the people, have to abide by the law and must never use nor be allowed to use their offices to benefit themselves or those who benefit them.

32. The priciest land in Islamabad is the land facing the Margalla Hills; prices start reducing the further one moves away from this natural wonder. Resultantly, every profiteer has set his eyes on this unbuilt real estate which probably is the most expensive land in Pakistan. The National Park land has over the years been encroached upon, which could only have happened with the involvement of the officers of CDA and other senior bureaucrats. The attacks on the land of the National Park continue. The Wildlife Board in its petition states, that:

'On 30th January, it has been reported in the newspapers that the CDA's Board passed a Board Resolution resolving to take over the land where the Board is now running its Wildlife Rescue Center. This would be a blatant violation of the Islamabad High Court's judgment in IWMB v. CDA as well as the relevant statutes.'

If the CDA interferes in or makes any attempt to take over the Wildlife Rescue Center, being run by the Wildlife Board, then those on whose orders this is done should be proceeded against departmentally and also prosecuted.

33. The National Park land is under grave and imminent danger. The rich, powerful and well connected want to wrest it away for their personal use and/or gain. This must stop. The people cannot be deprived of the National Park, its flora and fauna, and of the benefits of this amazing national asset. Government servants who collude with land grabbers also need reminding that it is the people who pay their salaries and it is them who they serve, and whose interest they must protect. Those who forget this fundamental truth are a drain on the public exchequer. Private interests and those marauding public lands must not be allowed to deprive the people of Pakistan and future generations of it. If we lose the National Park the adverse effects of green house gases, deforestation, soil erosion, pollution and climate change will be exacerbated to the detriment of the people and future generations.

34. That we had decided these cases on 11 June 2024 and had announced our short order, portion whereof has been reproduced above in paragraph 13, and the remaining operative part whereof is reproduced hereunder:

‘3. We appreciate those who have voluntarily agreed to remove their restaurants as it will help preserve and conserve the National Park. Accordingly, three months’ time is granted to all the restaurants on and around the Pir Sohawa Road in the National Park to vacate them. Small kiosks situated on or around the Pir Sohawa Road in the National Park may continue to be operated provided they are licensed by the Islamabad Wildlife Management Board (**‘the Wildlife Management Board’**) and strictly abide by their terms of license, which must include collecting of all garbage generated by each and their respective customers and disposing it outside the precincts of the National Park and, if they are permitted to have a stove then they must also have a fire extinguisher.

4. Any lease, license, allotment or permission granted by CDA, or by the Remount, Veterinary and Farms Directorate (**‘the Directorate’**) or any other department/authority to operate restaurants in the National Park was contrary to the provisions of the Islamabad Wildlife (Protection, Preservation,

Conservation and Management) Ordinance, 1979. Therefore, the same are declared to be of no legal effect and set aside. The petitioner in CPLAs No. 304 and 305 of 2022 is stated to have deposited in court rent/fee to which only the Wildlife Management Board could be entitled for the preservation, conservation and proper utilization of the National Park, therefore, the same shall be paid to/withdrawn by the Wildlife Management Board.

5. The Directorate is a component of the Pakistan Army, which operates under the Ministry of Defense of the Federal Government. The Directorate has no separate legal existence yet it acted as if it was a legal entity, executed the said 'Lease Agreement' dated 30 September 2019, which was countersigned by its Director-General, Maj. General Muhammad Samrez Malik.

6. For the proper management of the National Park, CDA shall assist the Wildlife Management Board whenever required. If an officer of CDA well conversant with conservation and environment is not already a member of the Wildlife Management Board, it would be appropriate that one is appointed as a member of the Wildlife Management Board. Moreover, since the World Wildlife Foundation Pakistan ('WWF') came forward to facilitate the preservation and protection of the National Park the Government may also consider nominating it on the Wildlife Management Board.

7. The impugned decision of the Islamabad High Court is sustained, subject to what is stated above and any clarification/amplification and direction that may be given in the detailed reasons to follow. Resultantly, all the petitions and CMAs are disposed of.'

35. That on 11 September 2024 the Wildlife Board will take over the possession of the said restaurants, that is, Monal, La Montana and Gloria Jeans, with the full assistance of CDA and the Islamabad Capital Territory Police, and the entrances to said area shall be barricaded. Thereafter the same shall be demolished with minimal disturbance to the wildlife and by avoiding damage to the trees of the National Park. The debris shall be removed and disposed of properly, and not within the precincts of the National Park. The Wildlife Board shall then determine how best to utilize the mountain ridge on which stood the said restaurants, and it may consult experts and environmentalists to examine whether the foundations of the said structures should also be removed or the same be left in and used to make an artificial lake to collect rainwater which can be used to put out fires that erupt in the National Park. However, under no circumstances should the building be left abandoned/derelict nor leave any

debris on the said site. Every effort should be made to ensure that the said land again becomes an integral part of the National Park.

36. The Constitution opens '*In the name of Allah, the most Beneficent, the most Merciful*' and proceeds by stating that the '*sovereignty over the entire Universe belongs to Almighty Allah alone*'. Therefore, it would be appropriate to conclude by reminding ourselves that the Creator has designated us as stewards of the earth with the responsibility to maintain balance and not to rupture the order of nature. Those actions which destroy, devastate or impair '*His Creation*' (surah al-Araf 8, verse 54) are prohibited. '*And do not do corruption on the earth, after it has been set in order*' (surah al-Araf 7, verse 56). It is important to heed our duties as stewards of the earth for the preservation and conservation of nature, and to take care of all creatures. The Creator tells us: '*Have you not seen that Allah is glorified by all in the heavens and on the earth such as birds with wings outspread? Each knows its worship and glorification*' (surah an-Nur 24, verse 41). And, that, '*There is not a thing but hymneth His praise*' (surah al-Isra 17, verse 44). A renowned scholar and environmentalist writes, '*So every time we destroy a specie, we are destroying a prayerful being. It is like murdering someone while he is praying. It is as abominable as that*' (Seyyed Hossein Nasr, *The Spiritual and Religious Dimension of the Environmental Crisis, A Sacred Trust, Ecology and Spiritual Vision*, published by The Temenos Academy, 2002, page 134). '*It is an enormous responsibility since man must eventually give an account of his stewardship of the resources of the planet. It is obviously essential that there should be great emphasis on the scientific study of every detail of natural systems and of the effects of human technology upon them. It is equally important for scientists to make proposals for ways in which the resources of the earth, which have been given to us by Allah, should be used with minimum disturbance to the environment and maximum concern for the maintenance of harmony and equilibrium*' (Yunus Negus, *Science within Islam; learning how to care for our world*, published in *Islam and Ecology*, 1992).

37. The fundamental right to life, and to live it with dignity (respectively Articles 9 and 14 of the Constitution) is to live in a world which has an abundance of all species. It has by now been scientifically well established that if the earth becomes bereft of birds, animals, insects, trees, plants, clean rivers, unpolluted air, soil it will be the



precursor of our destruction, and scientific research establishes that nothing in nature is without value and purpose. '*We have not created the heavens and the earth and all that is between them for mere play. We have created them but for truth*' (surah ad-Dukhan 44, verses 38-39). The Creator has bestowed rights on all of His creation and created the earth in perfect balance (*al-mizan*). We must fulfill our designated role as stewards of the earth (*khalifa fil ardh*), embrace, protect and conserve the natural world; in it lies our survival, and our salvation.

Chief Justice

Judge

Judge

Islamabad  
21 August 2024  
(Farrukh)

Approved for Reporting