

Advocate High Court

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SINDH HIGH COURT MOVED

‘Court verdict for the conservation of forests’

REVIEW PETITION
UNDER SECTION 114 OF THE CIVIL PROCEDURE CODE, 1908
AGAINST ORDER DATED 22.12.2010 PASSED BY THIS HON’BLE COURT
IN CONSTITUTION PETITION NO. D-363 OF 2008

Being aggrieved and dissatisfied with the Order dated 10.03.2011 passed by this Hon’ble Court, Principal Seat at Karachi, in ‘C. P. No. D-1666 of 2010’, hence the Petitioner begs to prefer this Review Petition, on inter alia, the following POINTS OF LAW / GROUNDS:

POINTS OF LAW & GROUNDS :

1. Whether the Respondents or any of state functionary or citizens is allowed by law to degrade the pristine Environment of mother Earth by deforesting particularly?
2. Whether the impugned action of deforestation on the part of Respondents is violative to the ‘Article 9’, ‘Article 14’ and ‘Article 4 (a)’ of the “Constitution of Pakistan, 1973” and ‘Section 35’ of the “Forest Act, 1927”?
3. Whether the Respondent department is allowed to lease the Forests cover/land for non-forest-use in the fake names of widows and landless women; for the term of Yaksala lease (one year) or for more years? Or whether the Summary dated 28.06.2010 (approved by the Chief Minister Sindh on 03.07.2010) for conversion of the status of Forest land in to Revenue land has been withdrawn by the Sindh Government in letter and spirit?
4. Whether on the directives of learned bench of this Hon’ble Court dated 10.03.2011 the learned District & Sessions Judges constituted ‘Public Vigilance Committees’ in each districts of the province for monitoring and conservation of Forest Cover/land as well?

5. Whether the learned bench of this Hon'ble Court formulated uniform guidelines/policy for constitution of 'Public Vigilance Committees' under the headship of the learned District & Sessions Judges in each districts of the province?
6. Whether the 'Public Vigilance Committees' under the headship of the learned District & Sessions Judges are responsible to implement the Court directives in its letter and spirit against deforestation; looping of trees, encroachment and degradation of Forest land? Or whether the 'Public Vigilance Committees' are responsible to monitor continuous departmental process for GIS Mapping and aerial seeding?
7. Whether access to the GIS Mapping is under the provision of 'Article 19A' of the Constitution of Pakistan, 1973?
8. Whether the process of aerial seeding would be carried out at some particular season?
9. Whether the Forests are essential for human existence on the planet?
10. Whether the Forests are beneficial for human being and its co-habitants? Or whether it needs to be increased and protected as well?
11. Whether the Forests are the single largest source to eradicate the GHG Green House Gases/Carbon effect on atmosphere/climate/environment and reduce its emission level?
12. Whether the impugned action of deforestation and continuous leasing by the Respondent Nos. 1 & 3 is against to the Pakistan National Conservation Strategy, 1991 (10.3 The core programmes: Supporting forestry and plantations) and National Environmental Policy, 2005 (3.4. Forestry) to ensure sustainable management of natural forests of Pakistan and increased tree cover for safeguarding economic growth and food security in the country; 'Millennium Development Goals'; 'International Plants Protection Convention, 1951'; the 'Plants Protection Agreement for the South East Asia & Pacific Region, 1956'; 'Convention on Protection of World Cultural and Natural Heritage, 1972'; 'Convention on the Protection of the Ozone Layer, 1985'; 'UNCBD-United Nations Convention on Biological Diversity, 1992' and 'UNFCCC-United Nations Framework Convention on Climate Change, 1992' under 'Section 31' *Schedule to the 'Pakistan Environmental Protection Act, 1997'?
13. Whether the Forests are essential for the preservation of public health; and for protection against storms, winds, rolling stones, floods and avalanches; for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or

gravel; for the maintenance of a water-supply in springs, rivers and tanks; for the protection of roads, bridges, railways and other lines of communications?

14. Whether the deforestation is one of the main causes for devastated flood disaster of 2010 in which 20,184,550 persons were affected and death toll rises to 1984 valuable lives?
15. Whether the impugned action of deforestation affect our fragile ecosystem, Biodiversity, unique Riverine Forests, wildlife sanctuaries, cohabitants or whether it inadequately affects the economy and livelihood of the countrymen?
16. Whether this Hon'ble Court has jurisdiction for the cancellation of all the leases issued by the Respondent department; under Sindh Agro-Forestry Policy, 2004 (Term expired on December 2010) or Yaksala (one year) lease under West Pakistan Delegation of Powers Financial Rules No.7-(iii) 1962 for the greater interest of public at large and for maintaining the ecological equilibrium of mother Earth as well?
17. Whether this Constitutional Court has jurisdiction to declare Forests (Total Forests cover/land in Sindh 2, 774, 334 Acers) as National assets and protected zone to escalate the conservation status of the Forests and for the purposes; whether this Hon'ble Court has jurisdiction for the issuance of a writ of prohibition on the changing of Forests status in the term of non-forest-use by saving the Fundamental Rights of the public at large under 'Article 9', and 'Article 14' read with 'Article 4 (a)' of the "Constitution of Pakistan, 1973" and preservation of the public health, protection against storms, winds, rolling stones, floods and avalanches under 'Section 35' of the Forest Act, 1927?
18. Whether the learned bench of this Hon'ble Court issued directives to the Respondent No. 1 in the impugned order for providing compartments of Forests to the Petitioner for developing the Forest? Or whether the Respondent No. 3 is allowed for the re-allotment looping of trees or deforestation in already developed compartments by the Petitioner at their own resources? Or whether the Respondents are bound under 'Article 5 (2)' of the Constitution of Pakistan, 1973 to work within the framework of Constitution and Law?
19. Whether this Hon'ble Court has jurisdiction to direct the Respondent No.1 to formulate a comprehensive Forest Friendly Policy with consultation to all stakeholders including local people of the vicinity and members of the civil society, till that all the activities should be stopped; like allotment/leases/schemes?

20. That, in the circumstances of the case, this apex Court ought to have decided the Review of the Petitioner on the basis of question of law mentioned in the Petition.
21. That, the questions of law evidently do constitute error apparent on the face of record of the subject case and merits it Review by this apex Court according to well settled principle of law.

That, the afore-stated POINTS OF LAW / GROUNDS arises from the following facts:

FACTS :

1. That, the factual matrix may be referred to in brief that the Petitioner is deeply concerned for the hazardous effects of deforestation in general particularly the deforestation reverine forests of Khebrani, Raees Mureed, Miani, Matiari, Khanpota, Shah Bukhari, Khipro, Pai, Nawab Muhammad Khan, Kathri, Gundi, Mukhi, Aandal Dal, Madaiji and other Forests of the Sindh (Total forests land in Sindh 750,000 Acers) at, Districts Hyderabad, Matiari, Sanghar, Mirpur Khas, Sukkur, Shikarpur and located at other districts of the Sindh.
2. That, the Afforestation Division of the Respondent department signed an extendable Memorandum of Understanding for five years, commencing from July 2007 to June 2012 with the Petitioner for conservation activities and model reforestation in barren land of the Khebrani, Raees Mureed and Matiari reverine forests of Matiari District and protection of total forest cover of the said forests under 'Forest Protection Project' firstly introduced by the Petitioner through Forest Protection Committees of the local communities and shepherds. And for the reason the Afforestation Division of the Respondent department allocated the entirely barren Compartment Nos. 15, 16, 17 & 19 in Khebrani, Compartment Nos. 1, 2, 3, 4 & 6 in Raees Mureed and Compartment Nos. 26 & 36 in Matiari reverine forests for rehabilitation of the forest through Petitioner. But it is being cleared before this Hon'ble Court that the possessions of the Compartments of Matiari Forests are not to be handed over to the Petitioner till date.

Moreover, the Petitioner safeguards the entire forest cover of Khebrani reverine forests other than allocated Compartments Nos. 13, 13-A, 13-C, 13-D, 14, 14-A, 14-B, 14-C, 14-D, 16-A, 16-B, 16-C, 16-D, 17-A, 17-B, 17-C, 17-D, 19-A, 19-B, 19-C, 19-D respectively with the help of local people, but instead of that Respondent department never allowed the Petitioner for the installation of Tube-wells for the watering to new plantation activity and already planted samples.

(The Photostat copies of the Resolution and Certificate of Registration of Society, MOU and Compartment's Allocation Letter are annexed to the main Petition and marked as Annexure-A, B, B-1, C, D & D-1)

3. That, the **Khebrani Forest** alone is about 3000 acres with precious species of plants, animals and birds, located at National Highway, Khyber Town. And at the entrance of Khebrani Forest, 10 forest villages are situated from centuries and this forest is the only source of grazing of more than 50,000 cattles of the villagers. And these Forests are also produce Timber which supports the economy of the Country.

(The Photostat copy of the map of the Khebrani and Raees Mureed Forest is annexed to the main Petition and marked as Annexure-E)

4. That, the Local people of these forest villages and people from other vicinity depends on livestock and used to grazing their cattles in these forests without harming the trees or plants and ecology, but deforestation by powerful influential persons, have not only evicted the poor local people from forest habitat by grazing their animals for livelihood which ultimately increase poverty and subsequently the crime and the productive land will left barren and we lose another natural resource which intimidate to the natural eco system and environment of Sindh.

That, for the development of the sense of belonging or performance in common people with their natural resources, the Petitioner and Afforestation Division of the Respondent department signed an Agreement dated April 20, 2010 for collection of revenue from Khebrani and Raees Mureed Forests entirely in respect of seed protection and improvement of Forest Trees and this investment in maintaining or improving the natural resource base would be encouraged.

(The Photostat copy of the Agreement vide No. G.II.(b)/-130/2010 Hyderabad dated April 20, 2010 is annexed to the main Petition and marked as Annexure-F & F-1)

5. That, the Forest department issued Leases of Compartment Nos. 13, 13-A, 14 & 14-A of the Khebrani Forest for reforestation of already forested areas to some influential persons of the Sekhat Town namely Mr. Khalil Ahmed Samo, Mr. Nusrat Samo and Mr. Kazim Samo and others by overruling the conservation principle under so called Notification No.FT&WL(SOI)13(1)Agroforestry for **Sindh Agro-Forestry Policy, 2004**. And instead of conservation they sadistically uprooted Trees in Khebrani Forest from July 2007 for which Divisional Forest Officer of Afforestation Division of the Respondent department nominated the culprits namely Haji Sher Samo to the District Police Officer Matiari but the status-quo never changed even the Chief Conservator of Forest of the Respondent department personally inspected the aforesaid Forest range and wrote an Inspection Note.

That, presently the position is still same and they've once again brutally started to uproot the Trees with heavy Cranes and Bulldozers for their vested interest particularly in the Compartment No. 13, by 13th of May 2010 even they chopped trees in other compartments which never leased to them and they continually extended threats to the Eco-guards of the Petitioner, which is evident from the day to day reporting of National Print and Electronic Media.

(The Photostat copies of the Notification No.FT&WL(SOI)13(1) Agroforestry; Letter No.B.1(d)/94 Hyderabad dated 17.07.200 address to DPO Matiari; Inspection Note No.G.II(b)/GB/-4535 Hyderabad dated 29.04.2010; news clippings of National papers are annexed to the main Petition and marked as **Annexure-G, H, I & J-1 to J-62**)

6. That, a Summary has been moved to the Respondent for approval of the distribution of 55,000 Acres of Forest land of 'Hyderabad Afforestation Division' of the Respondent department to some political influential peoples of the area including the Khebrani, Raees Mureed and Matiari reverine Forests and the aforesaid persons are also trying for the allotment of the said forests in the fake names of some widows and helpless people and ultimately the possession remain with them.

7. That, these deforested areas comes in Indus eco-region which is one of the 40 priority eco-regions in the world identified by the Global 200. The Global 200 ranks the earth's most biologically outstanding terrestrial, freshwater and marine ecosystems into eco-regions and so for 238 eco-regions have been identified all over the world.

And that is already comes under wildlife sanctuary, which is unfortunately not managed properly and deforestation and illegal hunting of wildlife is destroying this natural heritage therefore it need to be protected on top priority, therefore this Petition has been moved for the conservation and protection of natural resources, grazing areas and forest resources in the fragile ecosystem of Sindh. And for the reason centuries old communities living in these Forests have expressed their gesture of good will to rehabilitate the effected and deforested land to maintain the ecological balance of mother Earth; this sense of belonging or performance would be encouraged as an investment in maintaining or improving the natural resource base that eventually will be a win situation to eradicate poverty.

8. That, it is a matter of public interest and violation of the **Forest Act, 1927**, the **Land Preservation Act, 1900**, the **Sindh Wildlife Protection Ordinance, 1972**, as well as 'Fundamental Rights' guaranteed by the **Constitution of Pakistan, 1973**. The Petitioner has no other efficacious remedy then to invoke the Extraordinary Constitutional Jurisdiction of this Hon'ble Court on the principle of

natural justice '**ubi jus ibi remedium**' inter alia for the following grounds among others:

GROUND S

That, the Petitioner-In-Person relied upon and reiterate the afore-stated points of law / grounds in support of this Review Petition and crave indulgence to urge and /or add such other ground(s) as may be available at the time of hearing of this Review Petition by this apex Court.

PRAYER

In view of the above submission it is most respectfully prayed that this Hon'ble Court may be pleased to Review its impugned order in the interest of justice and passed an appropriate speaking order and save the pristine Environment of mother Earth.

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This Review Petition drafted and presented on 18th day of June 2011, at Karachi by me, before the Sindh High Court, arising from Constitution Petition No. D-1666 of 2010, styled as, **Indus Development Organization, versus, The Department of Forests & Wildlife & Others** (Disposed off on March 10, 2011)
