

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1913 of 2017
[Gulzar Ahmed v. Province of Sindh and others]

Present:

Mr. Nadeem Akhtar, J.

Mr. Muhammad Faisal Kamal Alam, J.

- Date of hearing : 31.05.2018.
- Date of Decision : 31.05.2018.
- Petitioner : Gulzar Ahmed, through Mr. Qurban Ali Malano, Advocate.
- Respondents 9&20 : Airport Manager, Begum Nusrat Bhutto Airport Sukkur and Director General, C.A.A., through Mr. Fayyaz Ahmed Soomro, Advocate.
- Respondents : Pakistan Air Force and others through Mr. Jamshed Ahmed Faiz, Assistant Attorney General.
- Respondents : Province of Sindh and others through Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with Ifikhar Ahmed Arain, DFO (A), Rafique Ahmed Mako (S.F) and Sanaullah Kalwar, Mukhtiarkar, New Sukkur.

Case law relied upon by Petitioner' Counsel

1. 2015 S C M R page-1520
[*Lahore Bachao Tehrik v. Dr. Iqbal Muhammad Chauhan and others*] – **Lahore Case.**
2. 2011 S C M R page-1743
[*CUTTING OF TREES FOR CANAL WIDENING PROJECT, LAHORE: In the matter of Suo Motu Case No.25 of 2009.*] – **Trees Case.**
3. P L D 2006 Supreme Court page-394
[*Moulvi Iqbal Haider v. Capital Development Authority and others*] – **CDA case.**
4. 2013 P L C (C.S.) page-106
[*Fida Hussain through Attorney v. Executive Engineer Irrigation/Drainage, Larkana and 4 others*] – **Fida Hussain Case.**

Case law relied upon by Respondents' Counsel

Other precedents

1. P L D 1957 Supreme Court (Pak.) page-9
[*Jibendra Kishore Achharyya Chowdhury and 58 others v. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, Government of East Pakistan*] – **Kishore case.**
2. 20013 S C M R page-1880
[*Hamid Mir and another v. Federation of Pakistan and others*] – **Hamid Mir case.**
3. P L D 2018 Sindh page-360
[*Muhammad Sarwar v. Government of Sindh and others*] – **Sarwar case.**
4. [2004] UKHL {United Kingdom House of Lords} 56
[*A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*

X (FC) and another (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)]
5. 585 U. S. (2018)
Supreme Court of The United States
No. 17-965
[*Donald J. Trump, President of the United States, ET AL., Petitioners v. Hawaii, ET AL.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit]

Research Material

1. Rooh Al Maarif (رُوح المَعَارِف)
[*Compiled by Shah Maqsood Ahmed Arfi*]
2. **Terrorism And The Constitution**
[*A Book by David Cole and James X. Dempsey*]
3. **Dias Jurisprudence [5th Edition]**
[R W M Dias]

- Law under discussion:**
1. Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”)
 2. Civil Aviation Ordinance, 1982. (**Aviation Law**) – CAA Law.
 3. The Sindh Local Government Act, 2013 (**SLGA**).
 4. The Sindh Plantation, Maintenance of Tress and Public Parks Ordinance, 2002 (**Trees and Park Law**).

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Petitioner is a practicing Advocate and has filed the present case, *inter alia*, in respect of preservation of trees. Petition contains the following prayer clauses_

- a) *That this Hon'ble Court may graciously please to issue writ against the respondents whereby the act of respondents of cutting valuable tress near Begum Nusrat Bhutto Sukkur may kindly be declared null and void ab initio.*
- b) *That this Hon'ble Court may be pleased to direct the Anticorruption Authorities to take the action against the responsible persons.*
- c) *That this Hon'ble Court may kindly be restrained the respondents not nut more trees from the said Area near Begum Nusrat Bhutto Airport Sukkur and the Trees located in the urban areas of Sukkur city.*
- d) *That this Hon'ble Court may be pleased to issue direction to preserve forest land and trees planted in the city and outside the city of Sukkur further may be pleased to the Respondents to produce the Utilization of funds for trees plantation.*
- e) *To grant any other alternate relief which this Hon'ble Court deems fit and proper in the circumstances of the case.*
- f) *To award the cost of this Petition.*

2. On 31-5-2018, the present Petition was accepted in terms of the following short order_

“Learned counsel for the Petitioner and Respondents as well as learned D.A.G. and A.A.G. have been heard at considerable length for the reasons to follow, the petition is allowed by directing the Respondents to refrain from cutting or removing any grown-up tree either on the subject road or on any of the main roads in the entire Sukkur city and nor to dispose of the trees already cut except in accordance with law and the relevant Rules, and directions to be given in the reasons of this short order.”

2-A. The main reason for bringing the present action at law, as per the petition, is that on 03.10.2017, when the Petitioner visited the Airport to see off his close relatives, he was shocked to see that all the trees in the area were cut down / felled. As per the Petitioner, the trees, which were fully grown and were quite old, were illegally cut by Respondent No.5- Pakistan Air Force (**PAF**).

3. The legal team from the Petitioner's side has highlighted the importance of plantation of tree and its fruitful impact on the environment and ecology. The Petitioner has also challenged the act of Respondents on the ground of public nuisance. It has been argued that though in recent decades much awareness is created about the environment and global warming, but in fact mankind has been forewarned fourteen hundred years back through the verses of Holy Quran, that if the equilibrium of nature is disturbed, then it will only result in destruction.

4. At one stage of the proceeding (as reflected in the Order of 17.05.2018) it appeared that matter would be resolved to the extent that in future the Respondents would strictly adhere to the relevant procedure before cutting down the trees; but then Respondent No.5 - Pakistan Air Force **{PAF}** decided not to give any such undertaking, as observed in the Order dated 24.05.2018.

5. Eventually the present petition was allowed vide short order dated 31.05.2018 reproduced herein above, followed by the reasons in the paragraphs below.

6. The main defence set up by the contesting Respondent No.5 is that the trees were felled/cut as they were obstructing the firing range of Respondents and could pose a potential terror threat to the Air Base;

whereas other official Respondents have filed formal Parawise Comments/Replies, although in their revised Parawise Comments the Respondent-CAA has shown some concern for the adverse environmental impact, as stated in the main Petition, while acknowledging that fifty seven Old trees were cut down by Respondent No. 5 without informing or consulting the CAA, which is the Regulator, *inter alia*, civil aviation activities, the control and regulation of air transport services, and the control and development of aerodromes in Pakistan, as per the CAA Law (as mentioned above).

7. The Respondent - CAA in their revised parawise comments has acknowledged the fact that after physical verification of the place the said Respondent - CAA found out that “fifty seven” trees have been chopped by the Pakistan Air Force (Respondent No.5), which were initially planted adjacent to the road leading from city canal area towards Airport road and is being maintained by Provincial Government through its subordinate department provincial highways.

8. Respondent No. 11 (the Deputy Commissioner) in his parawise Comments has appended a Report from the Mukhtiarkar, who has submitted the detail of the area acquired by Respondent – PAF for its above named Air Base while mentioning as follows_

“ It is submitted that the report called from Supervising Tapedar / Tapedar of the beat, who after verifying the Revenue Record and visited the site has reported in Deh Saeedabad S.Nos.291, 328, 329, 316, 317, 342, 343, 330, 332, 319, 320, 321, 322, 323, 324, 325, 326, 292, 293, 294, 295, 296, 776, 769, 277, 282, 284, 285, 286 and 293, the Village New Shahpur is shown in orange colour and area of PAF is acquired and the PAF’s boundary wall is constructed on the site.

2. *The Yellow colour showing the road from Sukkur to Airport Terminal and PAF base. And road is constructed on old railway line and also S.No.326 and 328 the area of railway is also entered in PAF's Site plane among the mentioned s.nos. (However the Sorath Hall and Map is enclosed herewith for kind perusal"*

9. The Respondents challenged the maintainability of present Petition, which is controverted by the Petitioner mainly on the ground that the instant action at law is '*pro bono publico*' {For the public good}. Legal team of Petitioner has relied upon the case law mentioned in the opening part of this Decision and more particularly the well-known decision of *Trees case (ibid)*, reported in 2011 S C M R page-1743.

10. Rival submissions and the documents considered.

11. From analysing the pleadings of the parties and particularly Petitioner, Respondent No.5 (PAF), Respondent – CAA and Respondent – Deputy Commissioner, the 57 trees which were felled / cut are located on the public thoroughfare and not inside the boundary wall of Respondent PAF premises, but outside the boundary wall.

12. To answer the maintainability question, as relied by the Respondents, the concept of 'Public Trust' doctrine as explained in the Cutting of Trees Case (*Supra*) by the Honourable Supreme Court, which was further affirmed in subsequent reported decision of Lahore Case (*ibid*) 2015 S C M R page-1520, provides an insightful answer; the crux of which is that the air, running water, the sea and consequently the sea shores are common to all mankind. The Apex Court after discussing in detail the judicial precedents of multiple jurisdictions has come to the conclusion that environmental rights are in fact the fundamental rights of citizens, as, inter alia, clean water, air and a functioning ecosystem are

rights, because human life cannot exist without them. It has been held in the above reported decision that the green belt with trees is a 'Public Trust' resource. It would be advantageous to reproduce the relevant part of the above decision (Trees Case) herein under_

“20.

In England this concept was codified in the Magna Carta and in 1225 King John was forced to revoke his cronies' exclusive fishing and hunting rights, because this violated the public's right to access these common resources. Thereafter, it became a part of the Common Law and travelled to U.S. during its founding years. As part of the Common Law tradition, it became a concept of judicial comment for the first time in 1821 in U.S. in the case of Arnold v. Mondy (6N.J.L.1, 53 (1821) wherein it has held:--

“...the government could not, “consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their commons right.”

21. This was followed by another case Illinois Central Railroad v. Illinois (146 U.S. 387 (1892) wherein the Supreme Court thwarted the attempt of the executive to give the entire lakeshore to a private railroad. The Supreme Court held that:

“..... a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.”

13. Admittedly, the trees in question are located at the green belt, which exists in between the boundary wall of Air Base of the Respondent No.5 and the thoroughfare leading to the main Sukkur Air Port Building; thus, without going into the dispute that whether the green belt area belongs to Respondent - PAF or not, by invoking the above 'Public Trust' doctrine, it can be safely held, that the trees in question do fall within the ambit of public trust resource and thus the act of

Respondent No.5 is not immune from a Court proceeding and is challengeable in the proceeding of the nature.

14. The other reason for holding this petition as maintainable is that on a specific query the authorised representative of said Respondent No.5 has stated that timber/trees in question are lying at the Air Base for the purpose of sale. **It means that the defence set up by the said Respondent No.5 is also blended with commercial activity.** But at the same time, we appreciate that after grant of restraining order on 07.12.2017, that the felled trees in question shall not be disposed of, a Statement dated 14.12.2017 is filed by the Squadron Leader (Jaffer Taqi), PAF Base, Sukkur, that the timber / wood lying at Respondent No.5 Base shall not be disposed of / sold / auctioned. It is also noteworthy to mention that Respondent No.5, in compliance of order dated 15.11.2017, has placed on record the Minutes of Meeting held at the PAF Base Sukkur at 1100 hours on 26.09.2016. The item No.VII and decision taken thereon at serial No.16, show that only wild growth inside the airbase and outside was required to be removed and on advice of the Commissioner, Sukkur City, the staff of Respondent No.5 had to coordinate with Agriculture Department for obtaining their assistance.

There is a clear distinction between removal of wild growth and felling the full grown old trees on a thoroughfare (green belt). In our considered view, the impugned act of Respondent No.5 in cutting down the trees in question is also against the mandate decided in the aforementioned Meeting (*available at page-275 of the Court's file*), and hence justiciable.

15. Some of the paragraphs of the Reply of Respondent – PAF are noteworthy; the averments of Respondent – PAF about Petitioner, that he visits a sensitive areas frequently, is untenable, as visiting Sukkur

Airport to receive and see off one's relatives and friends by Petitioner cannot be termed as a 'security concern', as alleged. Respondent No.5 has also stated that they have started a campaign for cultivating more than 7000 trees in Sukkur City including Eucalypts, but no record in support of this claim has been produced with the Parawise Comments; but interestingly, in one of the paragraphs the Respondent – PAF states that they have cut down the trees in question including Eucalypts (Trees) because they are prone to fire hazard. Question is that if these trees are unsuitable, then the said Respondent should not have campaigned for planting of such trees. In one of the paragraphs it is stated that few suspects have been arrested near the security wall of Respondent No.5 Air base (at Sukkur); it means, that if the proper security is in place then merely existing of decades old trees could not pose any threat to the airbase of Respondent No.5. Thus, there is some contradiction in the Parawise comments of Respondent No.5 itself.

16. Now adverting to the main defence of Respondent No.5 relating to the security issue and a potential threat to the air base.

17. No doubt that the time we are living in is a unique one. Security issue is the real concern for the state institutions. Much has happened on the international scenario in the last 18 years, particularly, after the episode of 9/11 attacks in the United States of America (USA), which became the *casus belli* {an act or situation that provokes or justifies a war} for the 'war on terror'. In this backdrop the geo strategic location of Pakistan warrants an optimum level of security and state of preparedness. It is also an undeniable fact that the region where our Country is geographically located is a prime regional war theatre (although forced upon).

18. The state of constant turmoil has persuaded the nation states to legislate and promulgate special laws containing much wider discretionary powers for the executive authorities. But at the same time the national courts of countries where constitutional dispensation exists, the extraordinary powers and discretion given to the executive have been minutely scrutinised while exercising judicial review jurisdiction(s); because there is a consensual opinion that a balance is to be struck between the policies relating to Security and civil liberties and fundamental rights of citizens.

19. The object of the scheme of trichotomy of power as envisaged in our Constitution like other well-known constitutions of other countries, is to keep in place the system of checks and balances, for the simple reason that an unbridled authority and discretion either in the hands of an individual or a state institution would be disastrous. A respected English Jurist R. W. M Dias in his Book '**Dias Jurisprudence**' {5th Edition} has quoted Lord Acton that "*power tends to corrupt, and absolute power corrupts absolutely.*"

20. In a Muslim Polity like ours it is unimaginable that the State Institutions are not subject to the accountability. Various renowned Muslim Scholars of different eras have richly contributed through their voluminous writings on the rules of governance and the administrating the affairs of a state. The discussion in this and the following paragraphs is basically a summary of the judicial pronouncements and the Books written on the subject, which are listed in the opening part of this decision, and wherever it is felt necessary the relevant portions, paragraphs / extracts for a ready reference are reproduced.

21. Consultation Process (a part of the Shoorā System) is mandatory for rulers of a Muslim State and if a Ruler or Head of State acts without the consultative process then he is required to be removed from the Office; reference is from the Book *Rooh Al Maarif* (رُوح المَعَارِف) which is a summary and compilation of Eight Volumes of *Maarif ul Quran*, a Tafseer (Exegesis) of the Holy Quran (by *Shaykh Mufti Muhammad Shafi*).

22. The good governance is directly related to the accountability and the foundation of which has been laid down many centuries back during the Caliphate. This has been explained in many decisions of superior courts of our Country and recently in a judgment handed down by the Hon'ble Supreme Court in the case of *Hamid Mir* (2013 S C M R 1880); wherein, significance of financial probity and public accountability is highlighted. The issue in the said reported Decision was that the Government claimed immunity from the audit scrutiny of funds falling under the head of 'Secret Service Funds', created in the budget of various ministries. The mechanism that was in place at the relevant time was that instead of being scrutinised by the Auditor General, a designated officer (controlling officer) used to undertake such audit and furnish a certificate to the Auditor General Office. After an exhaustive discussion the Hon'ble Apex Court partly struck down the enabling Rule 37 of the General Financial Rules, under which the above immunity was extended to the 'secret service expenditure', **but, at the same time holding**, that demand from the Government to maintain secrecy in respect of some grants and allocations can be addressed, through mechanisms and procedures ensuring the secrecy, as, *inter alia*, a clear distinction exists between 'secrecy' and the 'audit'.

23. In a recent reported judgment of this Court in the **Sarwar case** (*ibid*), the obligations of those in the authority has been highlighted in the following words_

“34. In Hakim Khan case reported in PLD 1992 SC Page-595 (supra) the term ‘Oolilamr’ (اولى الامر) as mentioned in the Holy Quran, has been explained to include all the three limbs of an Islamic State, namely, executive, legislature and judiciary. If a common man is bound to follow orders given by ‘Oolilamr’ in a Muslim polity then the latter (‘Oolilamr’) are also under a religious as well as constitutional obligation that their acts, deed and decision should be just, fair and reasonable and the subjects (public at large) of a Muslim polity should be treated with benevolence, justice and care, while criminals and wrongdoers should not go unpunished.

In my considered view, the above principle is further fortified in Surah 38 Verse 26 (of Holy Quran). The fundamental rule is that government in a Muslim polity or State has to dispense justice. If a Government, its Ministers and High Officials after acquiring knowledge about a plight of a citizen, particularly where a valuable human life is lost and the conclusive evidence is against the government functionaries, yet fails to address grievance of a citizen, then it is not difficult to observe that the Government of the day as well as its Senior Government functionaries have failed to discharge their function in accordance with the constitutional mandate. In certain cases, depending on the facts and circumstances, a concerned elected representative of a particular constituency or area where a gruesome incident takes place and nothing is done to remedy a wrong, then it means that the elected representative has not discharged his duty / obligation towards his constituents with honesty.

Since legislation and policy matters rest with Government(s), elected/chosen representatives and Executive Branch of the State, therefore, they are saddled with a bounden duty to dispense the administrative justice in an expeditious manner. In my humble view, the term elected representative includes, a person elected as a Councilor of a Ward right up to a Senator.

35. *The Articles 2-A, 27 and the Principle of Policy in fact make our Constitution a unique and pragmatic social contract document of a Muslim Polity. The grundnorm is that rulers and those who are in the authority and at the helm of affairs is saddled with an obligation to treat their subjects/citizens with benevolence and justice, but punishing the culprits simultaneously, in order to restore the confidence of a common man in the State Institutions. This follows that a despot or tyrant cannot be a ruler of a Muslim polity or State.” {Underlined to add emphasis}.*

24. The role of judiciary in a Muslim Polity is clothed with greater obligation. Even in turbulent times, Courts in Pakistan have given decisions to enforce the fundamental rights of citizens, which is an internationally recognised historical fact. In the above mentioned Book ‘Dias Jurisprudence’ {5th Edition} this fact is acknowledged in the following words_

“A Pakistani judge who used the historical context to strike down a piece of legislation by the revolutionary government, and he was fearless enough to do so while that government was still firmly in power. Reference to the avowed basis on which it came into power, the learned judge said:

‘Martial law was imposed, therefore, with the declared purpose of “restoring sanity”, “restoring and saving the country from internal disorder and chaos” and to “ensure that the administration resumes its normal functions to the satisfaction of the people”.... No one, including the Chief Martial Law Administrator, can transcend or deviate from the sole purpose of restoring law and order and democracy and it needs no gainsaying that curbing the jurisdiction of the established judiciary is not a step in that direction’.

“ In a later case, the Supreme Court of Pakistan made a broader, and more emphatic averment to the same effect. ‘Our own Grundnorm’, said the Chief Justice, ‘is enshrined in our own doctrine that the legal sovereignty over the entire universe belongs to all Almighty Allah alone, and the authority exercisable by the people

within the limits prescribed by Him is a sacred trust. This is an immutable and unalterable norm (as embodied in the Quran) which was clearly accepted in the Objective Resolution passed by the Constituent Assembly of Pakistan on the 7th of March 1949.... It is under this system that the Government becomes a Government of laws and not of men, for, no one is above the law. It is this that led Von Hammer, a renowned orientalist, to remark that under the Islamic System “the law rules through the utterance of justice, and the power of the Governor carries out the utterances of it”.”

[Underlining to add emphasis].

25. In the above discussion it is clear in the light of our Apex Court decisions that environmental human rights are in fact fundamental human rights, thus it is necessary to protect and enforce them in the same manner. It is a settled principle by now that not only the executive actions but even legislation cannot violate such fundamental rights. This principle has been laid down back in 1957 by the Hon’ble Apex Court in the Kishore case (*ibid*), in the following words_

“ In the High Court, Mr Brohi’s bold and categorical assertion that the rights referred to in Article 18 are “Subject to Law” and may therefore be taken away by the law, succeeded. That assertion has repeated before us, but I have not the slightest hesitation in rejecting it. The very conception of a fundamental right that it being a right guaranteed by the Constitution cannot be taken away by the law, and it is not only technically in artistic but also a fraud on the citizens for the makers of a Constitution to say that a right is fundamental but that it may be taken away by the law.”

(Emphasis added by underlining).

26. In the last two decades particularly the civil rights activists in the United States of America (USA) have made sincere attempts to forestall the excesses committed on the part of state agencies, particularly, FBI (Federal Bureau of Investigation), inter alia, by organising seminars, making representative petitions to the American Congress and penning

down their concerns about the civil liberties. The result of one such endeavour is the Book ‘**Terrorism and the Constitution**’ with the basic theme ‘*Sacrificing civil liberties in the name of national security*’ co-authored by David Cole and James X. Dempsey; former was the Professor of Law at Georgetown University USA and the latter remained Deputy Director at the Centre for Democracy and Technology and former Assistant Counsel to the US House Judiciary Subcommittee on civil and constitutional rights. Few excerpts from this Book are reproduced herein under, which, in our considered view, would be useful for the discussion:

“But our early responses unfortunately reflect the pattern of overreaction that we have so often seen in the past. Many of the expansive authorities that the new law grants, however, are not likely to make us more safe. To the contrary, by penalizing even wholly, lawful, nonviolent, and counterterrorist associational activity, we are likely to vest valuable resources tracking innocent political activity, drive other activity underground, encourage extremists and make the communities that will inevitably be targeted by such broad-brush measures far less likely to cooperate with law enforcement. As Justice Louis Brandies wrote nearly 75 years ago, the Framers of our Constitution knew “that fear breeds repression; that repression breeds hate; and that hate menaces stable government.” (Underlined for emphasis)

27. Denouncing the ethnic profiling of Muslims and Arabs, it is concluded as follows:

“Second, the use of ethnic stereotypes is certainly not “necessary” to effective law enforcement. In fact, it is likely to be bad law enforcement. When one treats a whole group of people as presumptively suspicious, it means that agents are more likely to miss dangerous persons who take care not to fit the profile. In addition, the fact that the vast majority of those suspected on the basis of their Arab or Muslim appearance are innocent will inevitably cause agents to let their guard

down.” Overbroad generalizations, in other words, are problematic not only because they constitute an unjustified imposition on innocents, but because they undermine effective law enforcement.”

28. The most recent decisions are of United States Supreme Court in the case of *Trump v. Hawaii* (*ibid*) and House of Lords (United Kingdom) in the case of *A and others v. Secretary of State for the Home Department* (*supra*).

29. The US Supreme Court in the case of *Trump v Hawaii* has approved the “Rational Basis Test” to scrutinise, Executive action or Parliamentary legislation, which purports to be based on the premise of national security. The “Rational Basis Test” requires the Government / Legislature to show that the action or law is rationally related to legitimate government interest. An instance where a statute failed the Rational Basis Test can be seen in the case of *Cleburne v. Cleburne Living Centre*, wherein it held that an amendment to a statute was **“divorced from any factual context from which we could discern a relationship to legitimate state interests”**

30. The UKHL in the case of *A v Secretary of State* also viewed Legislation which was enacted on the basis of national security, in the after-math of 9th September, 2001, and which allowed for indefinite detention of foreign nationals who were suspected of terrorism, to be incompatible with the supra-legislation of the European Convention of Human Rights. The majority found the incompatibility on the ground that it was discriminatory and hence in contravention of Articles 5 and 14 of the European Convention of Human Rights. At this juncture it would be relevant to re-produce a few of the excerpts from the additional note of Lord Hoffman, who was a Member of the Bench:

“86.

This is one of the most important cases which the House has had to decide in recent years. It calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention.

97.

I said that the power of detention is at present confined to foreigners and I would not like to give the impression that all that was necessary was to extend the power to United Kingdom citizens as well. In my opinion, such a power in any form is not compatible with our constitution. The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these”.

31. The précis of the above is that in the present case, and in all such cases, where a Government (including Defence related Organisations), Authority, Agency and/or any Institution defend(s) their actions on the plea of national security, or seeks to draw a curtain over their actions on the basis of national security, then such a defence must come from a constitutionally valid legislation; otherwise there can be no circumstance where any Government, Authority, and/or Agency, be allowed to justify their actions or violate the law of the land, on the basis of an arbitrary plea of security.

32. Addressing the present controversy from the statutory perspective. SLGA (The Sindh Local Government Act, 2013) and the above mentioned Trees and Parks Law (Sindh Plantation, Maintenance of Tress and Public Parks Ordinance, 2002) provide an answer.

33. The relevant provision of SLGA is the Part II of Schedule -II, in which Compulsory Functions to be performed by Corporations are

enumerated. 'Corporation' is defined in sub-Section (xvi) of Section 2 of the SLGA, means "a Metropolitan Corporation, District Municipal Corporation or Municipal Corporation". In terms of Paragraph 55 under the statutory scheme of the Part II (of Schedule-II), *inter alia*, it is the Council concerned that can direct the cutting of any tree which is dangerous or causing inconvenience. Similarly, the concern shown by the Respondent No.5 about the trees in question, particularly in the above referred Minutes of Meeting, should have been remedied by resorting to the above Paragraph 55 and its sub-paragraphs relating to the growth of noxious vegetation; whereas, Section 7 of the afore referred Tress and Parks Law (Ordinance 2002) further supplements the above provisions of the SLGA, that, *inter alia*, any tree or plant likely to be dangerous to life and property or causing an obstruction can be removed by following the prescribed procedure.

34. The conclusion of the above is that the trees in question were illegally cut / felled by the Respondent No.5, as no authorised representative from the Corporation responsible in this regard was present either in the above Meeting (of 26-9-2016); the impugned act was also violative of the Decision taken in the afore referred Minutes of Meeting of 26-9-2016. But the already cut trees/wood lying at the Air Base of the Respondent No.5 can be sold through a Committee, which besides comprising of the Officials from Respondent No.5-PAF, Respondent CAA and any other official, shall have the Commissioner Sukkur, Divisional Forest Officer, a representative from the concerned Corporation, preferably the elected representative of the area (where the Sukkur Air port and the Air Base is situate), or, a senior authorised officer of the Corporation. Sale proceeds received from such sale would

be spent on and diverted towards non-commercial activity and a portion of which shall be donated to a recognised charitable organisation(s).

35. Respondents No.1, 3, 4, 10 and 11 shall ensure that in future no trees are cut down/felled or trimmed, but strictly in accordance with law and relevant rules.

36. Respondents No.1, 3, 4, 10 and 11 shall submit a programme for planting more trees in Sukkur City with the object to make the City greener and will take strict measures to make this City an eco-friendly. In this regard Respondent PAF will also co-operate as according to its Parawise Comments, PAF has started a campaign for planting (growing) 7000 trees in Sukkur City.

37. A Report in respect of the above directives (disposal of felled trees lying at the Air Base and a programme for planting more trees in the City) should be submitted within two months from today to this Court through its learned Additional Registrar.

Sukkur,
Dated: _____

Judge

Judge

Riaz / P.S.