

Dawn (April 9, 2006)

He heard the trees

ARDESHIR COWASJEE — PUBLISHED Apr 09, 2006 12:00am

ONE hundred and twenty-five years ago, in 1881, Eduljee Dinshaw (NED's father) saw people in distress and in need of medical aid. So he built a dispensary in Saddar, donated it to the city and people of Karachi, and inaugurated it on Nauroze (March 21) 1882.

Over the ensuing years, another Parsi philanthropist, Behramjee Jehangirjee Rajkotwalla, noticing crowds standing around outside the dispensary, in the sun, waiting to be treated, decided to build a park on his nearby land. A fountain was installed and it was inaugurated on Nauroze 1893. The grateful people named it Behram Bagh. Later, in the 1920s, a cricket ground was laid and a pavilion built. In 1931, I distinctly remember watching my school (BVS) team playing against the Sindh Madressah when our opener, Minoo Gati (still batting), strode in and was bowled on the first ball.

Come Nauroze this year and we found a bunch of yahoos intent on chopping the Behram Bagh trees as the CDGK, in its finite wisdom, and in its zeal to 'transform,' or rather add to, the concrete jungle that is Karachi, had planned to destroy the park and build thereon a shopping and car parking plaza.

On a distressing Monday, March 13, I wrote to Sindh Chief Secretary Fazlur Rahman:

“The men working under you are about to chop trees planted a hundred years ago in what is now known as Jehangir Park, Saddar. The park with the trees nurtured therein was donated to the people of Karachi by Khan Bahadur Behramjee Jehangirjee Rajkotwala in 1893. Parks cannot be destroyed. This has been ruled by the incumbent Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, and other wise judges.

“The affected and the aggrieved people of Pakistan, and particularly those who will be affected, intend moving the courts, seeking the preservation of trees and this park.

“I spoke to you yesterday and again today and you promised that you will ensure that the philistines do not chop the trees. Thank you. The nazims of all sorts resident in Karachi are away cutting ribbons. I cannot reach them. Help!”

Copies were sent to the chief justice of Pakistan, and to the chief justice of Sindh.

The chief secretary, anticipating the harm those working under him were about to cause, ordered them to act intelligently. Then, the CJP, having taken suo motu action on my letter to the chief secretary, on March 27 passed the following order: “Treat as petition u/s 184(3) of the Constitution. Fix it in Court on 05.04.06. Notice to Chief Secretary, Government of Sindh, City Nazim, Advocate-General, Attorney-General for Pakistan may please be issued. In the meantime chief secretary is directed to ensure that no tree of Jehangir Park is cut down nor park is used for any other purpose pending decision on petition.”

To Chief Justice Iftikhar Muhammad Chaudhry, on April 3, I sent a brief note of thanks and appreciation : “You heard the trees. You heard the people. Thank you.”

The case duly came up for hearing in Islamabad on April 5 (Suo Motu Case 03/06) and as read a headline on April 6 in this newspaper ‘Parking lot plan dropped.’ The CDGK, once more in its finite wisdom, had informed the Supreme Court bench, headed by Chief Justice Iftikhar Muhammad Chaudhry sitting with Justices Mian Shakirullah Jan and Syed Jamshed Ali that it had “abandoned its plan to build a multi-storey car parking facility in Jehangir Park grounds.”

The few citizens of this country who feel for the environment which surrounds them, which is under constant threat and attack from developers and builders, must count themselves fortunate that we now have a pro-active chief justice of Pakistan who is also deeply concerned about what is happening to our cities. He has recently acted in defence of Islamabad’s environment where a citizens’ park was to be converted into a commercial mini-golf course so that a lot of people, both from the public and private sectors, could make a lot of money.

In Constitutional Petition 36/05, CJP Iftikhar Chaudhry and Justices Mian Shakirullah Jan and Saiyed Saeed Ashhad in their order stated :

“Under Article 26 of the Constitution, it is the fundamental rights of the citizens to have access to public places of entertainment or resorts. As per the socio-financial status of the citizens of Pakistan the majority of the public is not in a position to afford the luxury of joining mini-golf courses along with their children and subject to the payment of tickets, etc.”

And last year, the Supreme Court refused to admit an appeal on the ground that it was admitted by the appellants that they were using an amenity plot for residential purposes (PLD 2005 SC 361).

Karachi has been relatively lucky with the Sindh High Court when it comes to cases involving the environment. In a recent case (PLD 2006 Karachi 10) our Chief Justice, Sabihuddin Ahmed, and Justice Zia Pervez clarified :

“That in reference to a recent decision of this court dated 24/12/2003 in CP No.1472 of 2003 to which one of us was a party, wherein we categorically reiterated that the amendment in the law had overtaken any controversy and conversion of an amenity plot for any other purpose could neither be made through an amendment of zonal plan nor by grant of specific permission.”

Much earlier on, over a decade ago, we had the first reported case dealing with the issue of whether an amenity plot can be converted into either residential or commercial use, or for any other use. Justices Ajmal Mian, Sajjad Ali Shah [both to end their careers as CJPs] and Saleem Akhtar stood firm:

“We may point out that even under the order, the KDA is not authorized to change the use of any amenity plot without inviting objections and without obtaining the order of the government” (PLD 1994 SC 512).

And in 1999, in the Sindh High Court, Justice Dr Ghous (1998 MLD 1264) was even more forceful :

“Thus the conversion of amenity plots illegally and without fulfilling the operative procedure is an illegality of a higher pedestal since the aggrieved persons in such an eventuality are the public at large. There is some dispute with regard to the market price at which the plot at issue was allotted by way of regularisation. Such a controversy and the extent of the loss caused to the exchequer disappears into the background since herein the loss caused to the public at large by the illegal conversion of an amenity plot stands established and gains predominance.....”.

Punjab is not so lucky. For instance, in a case against the Multan Development Authority (2004 CLC 964), where a 28-acre park, open to use by the public, was to be converted into an amusement park for which charges were to be levied, leaving a mere five acres of open space, Justices Ijaz Ahmed Chaudhry and Iftikhar Hussain of the Lahore High Court ruled that :

“As regards the contention of the appellants that the park is being used for commercial purposes, we are of the view that the plot is being used for the same

purpose but as respondent no.4 has spent a huge amount for the development of the park, he has a right to charge for the use of the facilities by visitors....”.

And in the recently publicised case of Doongi Ground in Lahore, planned to be converted into a theatre, shopping mall, and bowling alley by a commercial group, Karachi’s NGO, Shehri, and others filed a writ petition in the Lahore High Court against this monstrous act (WP 1226/06). Justice Mohammad Sayeed Akhtar ordered that the status quo be maintained in respect of any conversion. This was assailed by the Punjab government (CA 45/06) and the status quo order was suspended, construction was allowed to continue “at the developers’ own risk and cost.”

This remains pending in the LHC. It is a great pity that beautiful Lahore is fast being denuded of its greenery and open spaces under the leadership of the clan of Gujrat Chaudhrys. This matter should eventually end up in the Supreme Court and we can then only hope for the best for the Lahoris. Last century there was hope when the LHC held that allowing construction on a converted plot to continue would “amount to putting a premium on wrongdoing... a very sad state of affairs..... Law, thus, is observed in its breach alone.” (1990 CLC 448)

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