

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Present:

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

**Civil Review Petition No. 360 of 2024 in
CPLA No.304 of 2022**

(Against the order dated 11.06.2024 passed by
this Court in CPLA No. 304/2022)

*Capital View Point Restaurant (La Montana),
Islamabad.*

Petitioner

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.*

Respondents

**Civil Review Petition No. 361 of 2024
in CPLA No.304 of 2022**

(Against the order dated 11.06.2024 passed by
this Court in CPLA No. 304/2022)

The Monal Group of Companies, Islamabad

Petitioner

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.*

Respondents

**Civil Review Petition No. 362 of 2024
in CPLA No.305 of 2022**

(Against the order dated 11.06.2024 passed by
this Court in CPLA No. 305/2022)

The Monal Group of Companies, Islamabad

Petitioner

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.*

Respondents

**Civil Misc. Application No. 7355 of 2024
in CRP No. Nil of 2024**

(Against the order dated 11.06.2024 passed by
this Court in CPLA No. 304/2022)

Brigadier Retired Falak Naz Bangash. *Applicant*

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.* *Respondents*

**Civil Misc. Application No. 8848 of 2024
in CRP No. Nil of 2024**

(Against the order dated 11.06.2024 passed by
this Court in CPLA No. 304/2022, etc.)

Sunshine Heights Pvt. Limited, Islamabad. *Applicant*

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.* *Respondents*

**Civil Miscellaneous Application No. 8870 of 2024
in CRP No. Nil of 2024**

(Against the judgment dated 21.08.2024 passed by
this Court in CPLA No. 304/2022)

Dr. Muhammad Amjad. *Applicant*

Versus

*Capital Development Authority through its
Chairman, Islamabad, etc.* *Respondents*

For the Petitioner/Applicant

(in CRP. 360/24 & CMA. 8870/24): Mr. Naeem Bokhari, ASC
(in CRPs. 361 & 362/24): Mr. Taimoor Aslam Khan, ASC
(in CMA. 7355/24): In-person
(in CMA. 8848/24): Mr. Khurram Raza, ASC
Sh. Mahmood Ahmad, AOR
assisted by Mr. Mouood Fiaz, AHC

For the Respondents

(in all): N.R.

Date of Hearing: 03.09.2024.

ORDER

Qazi Faez Isa, CJ.

**Civil Review Petition No. 360 of 2024 and CMAs No. 8869,
8870 and 8920 of 2024:** Civil Review Petition No. 360/2024 seeks

the review of the short order dated 11 June 2024 and through CMA No. 8869/2024, review is also sought of the detailed judgment dated 21 August 2024, and the additional grounds for review are mentioned in CMA No. 8920/2024. The said Review Petition and the applications have been filed by the *Capital View Point Restaurant*, a partnership firm (**'the Firm'**), represented by the learned Mr. Naeem Bokhari. The learned counsel stated that the partner of the Firm who had agreed to vacate the restaurants being run under the name and style of *La Montana* and *Gloria Jeans* do not want to do so now.

2. The Review Petition's paragraph 8 states:

'Short Order (Subsequently detailed judgment):

That the writ petition along with connected petitions came up for hearing before the Honorable Judge in Chambers on January 11, 2022 where after, the Honorable Judge in Chambers passed the Short Order, reserving reasons to be recorded later.'

The cases were not heard in Chambers nor by a Single Judge. They were heard in open Court by this Bench (of three Judges) and the short order dated 11 June 2024 was dictated in open Court in the presence of everyone. What is stated is regrettable and unnecessarily generates controversy where none exists.

3. The learned Mr. Naeem Bokhari submitted that the Firm was issued a license by the Capital Development Authority (**'CDA'**) on 11 November 1999, and pursuant thereto *La Montana* and *Gloria Jeans* restaurants were constructed. He also referred to Enquiry No. 36/2012 which was conducted by the Federal Investigation Agency (**'FIA'**) mentioned in letter dated 14 July 2018 issued by the Metropolitan Corporation Islamabad (**'MCI'**). The letter stated that the Enquiry was closed by FIA, '*with the recommendations to increase 400% in the current monthly charges being charged by the CDA with immediate effect*'. Resultantly, the learned counsel

submitted, that the monthly rent was increased to three hundred and twenty eight thousand and five hundred rupees.

4. The learned Mr. Naeem Bokhari next referred to the Partnership Deed dated 23 August 2019 and submitted that the partner who had voluntarily agreed before this Court to vacate the premises within three months had a minority seventeen per cent share in the Firm, therefore, he could not have made a commitment on behalf of the Firm. The majority shareholder, Dr. Muhammad Amjad, has filed CMA No. 8870/2024, and has also taken issue with the fact that his association with General Pervez Musharraf was mentioned in paragraph 28 of the detailed judgment, but without denying his association with the General. It would be best to reproduce what is stated by him in the application, as under:

'The deceased General was known to the Petitioner as he had appointed him as the General Secretary of his Party and the Chairman of All Pakistan Muslim League (APML) in his place, which position came to an end when Dr Amjad quit the chairmanship of APML, founded by the ex-military ruler, on August 10, 2018 i.e less than two months after being nominated as its Chairman by General (r) Pervez Musharraf in his place.

The Petitioner has held no public office since 2008, when he had been appointed as a Caretaker Federal Minister for Inter Provincial Coordination, but is incorrectly assumed to be influential in the corridors of power and once considered as a close aide of the deceased General.

The Petitioner is an office bearer of Pakistan Tehreek-e-Insaf (PTI) having joined the Party in 2019 but has held no Governmental position during the tenure of PTI.'

5. We had pointed out to the learned Mr. Naeem Bokhari that in representing both the partners of the Firm, one who disowns the act of the other, places him in a conflict of interest position, however, the learned counsel stated that he was not conflicted and could represent both of the partners and also the Firm.

6. The licence dated 11 November 1999 issued to the Firm was for a period of one year, from 20 October 1999 till 19 October 1999, and extendable for a further period of one year. Assuming that the licence was extended (though no proof in this regard is submitted) it expired on 19 October 2001. In response to our query to refer to the extension of the licence or to the issuance of any fresh licence the learned counsel stated that through MCI's letter dated 14 July 2018 it was extended. This is incorrect, because CDA, and not MCI had issued the licence, therefore, it does not stand to reason for MCI to have extended it; secondly, the said letter had referred to an Enquiry conducted by FIA and, thirdly, no mention to extend the licence was made therein.

7. The Firm's case at best was that it was issued a licence in the year 1999 for a period of one year. The status of a licence does not equate with a lessee because a licence can be arbitrarily and unilaterally revoked by the licensor. The licence had restricted the construction that could be raised on the licenced area to no more than 16x35 feet, that is, to only five hundred and sixty square feet as stipulated in clause 5, and its clause 7(o) provided, that:

'No encroachment is allowed beyond the site/open space already approved. If any type of material is found around the existing approved site, the same will be removed and license will be cancelled on violation/encroachments by the licensee without any notice.'

Admittedly, the Firm disregarded the stated built-up area restriction and constructed on a far greater area.

8. In response to our query the learned counsel stated that the Firm was not registered. The effect of the non-registration of a firm is attended to in the Partnership Act, 1932. Sub-sections (2) and (3) of section 69 of the Partnership Act stipulate that no legal proceedings can be initiated to enforce a right arising out of a contract by or on behalf of a firm unless it is registered and by partners who are shown in the Register of Firms as partners of the firm. Therefore, since the Firm of *Capital View Point Restaurant* is

an unregistered firm it could not have filed the said Review Petition and applications nor could its partners agitate the matter.

9. As regards the contention that an undertaking given to this Court by a minority partner does not bind the firm is contrary to the law. The Partnership Act stipulates that '*a partner is the agent of the firm*' (section 18) and that the partner '*binds the firm*' (section 19), and also that such authority '*falls within his [partner's] implied authority*' and '*binds the firm*' (section 20).

10. The documents filed by the Firm and its partners in the Review Petition and the listed applications confirm that the Firm and/or its partners are in illegal possession of the land situated in the Margalla Hills National Park ('**the National Park**') and illegally running restaurants (*La Montana* and *Gloria Jeans*) therein which they could only have done with the help of those in power. The utter disdain and contempt for the laws of Pakistan and the degradation/destruction of the National Park was made possible by the complicity of those who were required to protect, preserve and conserve it; they were in the *service of Pakistan*, but were unmindful of their duty to serve the people, instead they served moneyed interests.

11. Therefore, for the aforesaid reasons the Review Petition No.360 of 2024 and CMAs No. 8869, 8870 and 8920 of 2024 are dismissed.

Civil Review Petitions No. 361 and 362 of 2024 and CMAs No. 8883 and 8884 of 2024:

12. These two Review Petitions were filed against the short order dated 11 June 2024 and through the two listed applications respectively the detailed judgment dated 21 August 2024 was brought on record and the grounds for assailing it.

13. The petitioner, Mr. Luqman Ali Afzal ('**Mr. Afzal**'), in the presence of his counsel had voluntarily agreed to vacate the restaurant situated in the protected National Park which he was

running under the name and style of *Monal*. The review of a consent order cannot be sought, yet surprisingly this is what is sought. The learned Mr. Taimoor Aslam represents Mr. Afzal and stated that the short order and the detailed judgment have rendered the intra court appeals pending in the Islamabad High Court redundant.

14. Once a case is decided by this Court its decision is binding on all courts subordinate to it in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan. Therefore, if there are any intra court appeals pending adjudication or any other case before the High Court or any other court with regard to the matters attended to in this Court's judgment the same will be binding thereon, and resultantly the said intra court appeals will be rendered infructuous.

15. The application filed by Mr. Afzal also attends to the merits of the case, and it is submitted that the same were not considered. Though we had noted the same in the detailed judgment let us again state that Mr. Afzal had nor has any legal right to continue to be in possession of the land and to run a restaurant (*Monal*) in the National Park. The Lease Agreement dated 10 March 2006 executed in favour of Mr. Afzal by CDA had also expired after fifteen years on 10 March 2021. Though there was a clause in the Lease Agreement which permitted the extension of the lease neither party sought its extension, nor was it extended, therefore, the lease had come to an end. Mr. Afzal got the possession of the land from CDA pursuant to the said Lease Agreement but had the audacity to file a suit against CDA and also contended therein that the amounts he had paid as rent to CDA should be refunded to him because CDA was not entitled thereto. Mr. Afzal had also unilaterally sought to substitute his lessor (CDA) with the Remount Veterinary and Farms Directorate (**the Directorate**) which was not a legal entity. This Court has declared the purported lease entered into with the Directorate to be of no legal effect, and the Federal Government (through CMA No.7541/2024)

has stated that the same was *void ab initio* and that the said *lease* was executed without the permission of the Federal Government.

16. Mr. Afzal had no legal right to continue with the possession of the land and his status is no better than that of a trespasser. And, running a restaurant, *Monal*, in the protected National Park, like those being run by the owner of *La Montana* and *Gloria Jeans* was in total disregard of the provisions of the Islamabad Wildlife (Protection, Preservation and Management) Ordinance, 1979. The operators of these restaurants, and those who permitted them to operate disregarded the integrity of the National Park; ravaged its trees and flora and displaced and disturbed the endemic bird and animal life. The natural environment of the National Park was also adversely affected, and its resultant benefits, including as a catchment area for rainfall and the recharge of springs and streams. An astronomical environmental cost was also borne by the public and will continue to be borne by future generations.

17. Therefore, for the aforesaid reasons Civil Review Petitions No. 361 and 362 of 2024 and CMAs No. 8883 and 8884 of 2024 are dismissed.

CMA No. 8848 of 2024:

18. This application has been filed by Sunshine Heights (Pvt.) Limited (**'the Company'**) which is represented by the learned Mr. Khurram Raza. The learned counsel stated that the short order dated 11 June 2024 and the detailed judgment dated 21 August 2024 adversely affected the rights of the Company, and did so without hearing it. The learned counsel stated that the Company is the owner of six thousand square yards of land in the National Park and referred to letter dated 4 July 1996 through which, he submitted, 6,000 square yards of land at Daman-e-Koh, Islamabad was allotted to the Company for thirty-three years. The letter stated that the cost of land was 2,786 rupees per square yard, that is, a total of sixteen million, seven hundred and sixteen thousand rupees. Twenty-five per cent of the total amount is stated to have

been paid and the remaining balance was to be paid in four equal six monthly installments. We asked the learned counsel to show proof of payment of the balance amount, but it was not provided.

19. CDA's letter dated 4 July 1998, which has been produced, stated that the allotment in favour of the Company was cancelled/withdrawn for the reason that, '*the bid/deal was not found transparent. Moreover, it was in violation of CDA Lands Disposal Regulations, 1993*'. This letter canceling the allotment enclosed a receipt to be signed by the Company so that the amount admissible under the rules could be refunded to it. However, the learned counsel submitted, Muhammad Nawaz Abbasi, J then of the Lahore High Court *vide* judgment dated 19 March 1999 set aside the letter canceling the allotment by holding that, '*The objection of the CDA Board that the plot should have been sold through public auction is not well founded*'. The learned Judge also held that though the bid was offered by M/s. KR Associates it should be construed to have been on behalf of the Company. The Company did not pay the balance amount, and CDA's letter dated 9 July 2005 noted that an amount of 14,592,297 rupees, excluding the amount payable on account of '*delayed charges*', is still outstanding. No proof that payment was made was provided to this Court.

20. Reference was next made to an order dated 26 January 2012 of this Court (passed in Civil Appeal No. 1036/2010), which is reproduced hereunder:

'Learned counsel for the appellant states that parties have compromised the matter outside the Court, therefore, he has been instructed not press this appeal. Dismissed accordingly.'

Reference was also made to CDA's Deputy Director's letter dated 29 February 2012 addressed to the Company, which is reproduced hereunder:

'Dear Sir,

In pursuance of Honorable Supreme Court of Pakistan's order dated 26.01.2012 in Civil Appeal No.

1036 of 2010 titled Capital Development Authority vs M/s Sunshine Heights (Pvt) Limited and CDA Board decision dated 2.12.2011, I am directed to state that the following clauses of your Allotment Letter dated 04.07.1996 have been deleted:

- i) Clause 2(a)(iv) regarding let-able units (Deleted) (Reference No.CDA/EM-27(2249)/95/2400 to 2404 dated 04.07.1996
- ii) Clearance for construction on the plot from ISI and PEPA (Deleted) (Reference No.CDA/EM-27(2249)/2005-5817 dated 09.07.2005)

2. It is further intimated that a sum of Rs.6,70,318/- on account of AGR + delayed charges w.e.f. 04.07.2005 to 03.07.2012 is outstanding against the subject plot which may be remitted to the Authority.

Deputy Director'

21. This Court's said order dated 26 January 2012 had not decided anything. However, CDA decided to extend extraordinary benefits to the Company ostensibly on the basis of the said order and deleted a few conditions from its allotment letter, including that the Company need not acquire permission from Pakistan Environmental Protection Agency ('PEPA'). This despite the fact that PEPA is mandated by law to implement the Pakistan Environmental Protection Act, 1997. CDA had no authority to exempt the Company from obtaining the requisite permission from a statutory authority – PEPA.

22. We enquired from the learned counsel whether the Company had raised construction on the said land and were informed that no construction has been raised as yet. The purported allotment to the Company made twenty-eight years ago was not in accordance with the law. Requisite payment was also not made by the Company. The allotment letter stated that the allotment was for a period of thirty-three years and construction had to be raised within three years, but no construction has been raised even after twenty-eight years. The Company's claim on the basis of said

allotment letter is not sustainable. In any event the law does not permit the construction of a restaurant, which the Company intends to construct, in the protected area of the National Park, and this Court has also categorically decided this. Therefore, CMA No. 8848/2024 is dismissed.

CMA No. 7355/2024:

23. This application has been filed by a retired Brigadier, namely, Mr. Falak Naz, who has objected to the observations made about him in paragraph 5 of the order dated 11 June 2024, and prayed that the same may be expunged therefrom in the interest of justice. The said paragraph 5 is reproduced hereunder:

'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. Vide orders dated 11 and 21 March 2024 the original record was directed to be produced by the senior most officer of the Directorate. The representative of the Directorate did not abide by the said orders, therefore, was given another opportunity to produce the original file of the Directorate by the end of the day, but still this was not done. Such intransigence will be attended to in the detailed reasons. The Legal Advisor to the Ministry of Defense, namely Brigadier (retired) Falak Naz, rather than advocating that the direction of the Court should be complied with made completely uncalled for excuses for the Directorate. It is not understandable why the Federal Government has deemed it necessary to appoint a retired Brigadier, who has demonstrated little understanding of the law, to advise it on the law. The original record of the Directorate may have disclosed who was instrumental in ordering the execution of the said 'Lease Agreement'. The conduct of the Directorate and the Legal Advisor makes us question where their loyalty lay.'

24. Mr. Falak Naz did not dispute the facts recorded in the said paragraph, but objected to his loyalty being questioned. Needless to state, that every employee in the *service of Pakistan* is employed to serve in accordance with the terms and conditions of his service.

Mr. Falak Naz elected to attend this Court as the Legal Advisor to the Ministry of Defence of the Federal Government by upending the office of the Attorney-General for Pakistan, and tried to justify the actions of the Directorate. He also made untenable excuses for the officers of the Directorate who were not complying with the order of this Court directing the production of the file which would have revealed on whose instructions the purported lease agreement in favour of Mr. Afzal was executed. By his own actions Mr. Falak Naz demonstrated that his loyalty was not with the Ministry of Defence and the Federal Government which had employed him. Mr. Falak Naz also remained intransigent in his understanding that the Directorate was not a separate legal entity but was a component of the Ministry of Defence which in turn was a part of the Federal Government. This Court could have initiated contempt proceedings but showed restraint which fact Mr. Falak Naz did not appreciate, and instead has taken umbrage to be reminded that his loyalty should not be with the Directorate and to perform his duties by ensuring that the law of Pakistan is upheld by all. Therefore, CMA No. 7355/2024 is dismissed.

25. In view of the fact that the owner of *Monal* restaurant and of *La Montana* and *Gloria Jeans* had voluntarily offered to vacate the land of the National Park in their possession within three months this Court had appreciated this gesture of theirs and recorded this in order dated 11 June 2024, which was confirmed in the detailed judgment, reproduced hereunder:

'2. Learned counsel Mr. Saad Mumtaz Hashmi along with Mr. Luqman Ali Afzal states 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.'

The said undertakings to vacate the premises were given in the presence of their respective counsel but they want now to resile therefrom. Making a mockery of solemn undertakings and to render them meaningless cannot be permitted, and those doing so must suffer the consequences. Therefore, we have been persuaded by their contemptuous behaviour and misconceived contentions to review our said short order and detailed judgment and to withdraw/delete the following therefrom:

'... 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.'

Chief Justice

Judge

Judge

Islamabad
(Farrukh)

Announced in open Court at Islamabad on 10 September 2024.

Chief Justice.

Approved for reporting.