

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

**Present:**

Mr. Justice Umar Ata Bandial, CJ  
Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Mansoor Ali Shah

**Civil Appeals No. 329 to 346 of 2022**

*[On appeal from the judgment dated 24.03.2021 of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat passed in Civil Revisions No. 43-M/15 and 103-M/16 and Writ Petitions No. 287-M, 358-M, 699-M/2016, 353-M, 551-M/2017, 880-M, 974-M, 1245-M/2019, 627-M/2020, 612-M, 613-M/2019, 57-M and 166-M/2021]*

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| CA. 329/22 | Shah Zaman Khan Vs. Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others.   |
| CA. 330/22 | Syed Azim Shah Vs. Assistant Commissioner Forest Tehsil Charbagh, Swat and others.  |
| CA. 331/22 | Bakht Zada and others Vs. Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others.                                     |
| CA. 332/22 | Bakht Zada and others Vs. Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others.                                     |
| CA. 333/22 | Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Moambar.   |
| CA. 334/22 | Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Shah Zaman Khan.   |
| CA. 335/22 | Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Kamal Ahmed and others. |
| CA. 336/22 | Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Khan Muhammad.          |
| CA. 337/22 | Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Azam Khan and others.   |
| CA. 338/22 | Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Bakht Zada and others.                                     |
| CA. 339/22 | Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Bakht Zada and others.                                     |

- CA. 340/22 Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Shah Jehan and another.
- CA. 341/22 Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Umar Muhammad and others.
- CA. 342/22 Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Rustam Khan and others.
- CA. 343/22 Govt. of Khyber Pakhtunkhwa through Secretary Forestry, Environment & Wild Life Department, Peshawar and others Vs. Sher Muhammad Khan and others.
- CA. 344/22 Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Ihsanullah Khan and others.
- CA. 345/22 Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Sarfraz Khan and another.
- CA. 346/22 Govt. of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar and others Vs. Abdul Ghaffar Khan and others.

For the Appellants:

Mr. Muhammad Jawaid, ASC.  
(in CAs. 329, 331 & 332/22)

Mr. Sabir Shah, ASC.  
(in CA. 330/22)

Mr. Shumail Butt, Advocate-General, KP.  
Mian Shafaqat Jan, Addl. A.G., KP.  
Mr. Atif Ali Khan, Addl. A.G., KP.  
Mr. Babar Shahzad, Addl. A.G., KP.  
(in CAs. 333-346/22)

For the Respondents:

Mr. Shumail Butt, Advocate-General, KP.  
Mian Shafaqat Jan, Addl. A.G., KP.  
Mr. Atif Ali Khan, Addl. A.G., KP.  
Mr. Babar Shahzad, Addl. A.G., KP.  
(in CAs. 329-332/22)

Khawaja Salahuddin, ASC.  
(in CAs. 333, 335-337, 342, 343/22)

Mr. Sabir Shah, ASC.  
(in CA. 340/22)

Muhammad Qasim, Attorney in-person.  
(in CA. 346/22)

Date of Hearing:

07.09.2022.

**JUDGMENT**

**Qazi Faez Isa, J.** These eighteen appeals arise out of petitions in which leave to appeal was granted, under Article 185(3) of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**). All of them challenge the judgment dated 24 March 2021 of the Mingora Bench (Dar-ul-Qaza) of the Peshawar High Court. Four appeals (Civil Appeals No. 329 to 332 of 2022) have been filed by private parties and fourteen appeals (Civil Appeals No. 333 to 346 of 2022) have been filed by the Government of Khyber Pakhtunkhwa (**'the private parties'** and **'the Government'** respectively). A few of the civil petitions for leave to appeal were belatedly filed, that is, the petition from which Civil Appeal No. 330 of 2022 arises, was filed by a private party, and petitions from which Civil Appeals No. 338 to 341 and 344 to 346 of 2022 arise were filed by the Government, and leave therein was granted subject to limitation. Both sides had belatedly filed petitions, however, most petitions assailing the same judgment were filed within time and as we will be examining the same impugned judgment, therefore, the delay in filing those petitions is condoned.

2. The leave granting order dated on 21 March 2022 is reproduced hereunder:

'Civil Petition Nos. 3496, 4038 and 4039 of 2021: The learned counsel representing the private petitioners state that while the impugned judgment permits them to file suits before a civil court to establish their individual rights to land which they allegedly own but since such land is within the area declared to be a protected forest *vide* Notification No. SOFT(FAD)V-168/71(i) dated 17 February 1976, issued under section 29 of the then Forest Act, 1927 (**'the Notification'**), the stated permission to file suits is illusory because the courts, where such suits may be filed, have been prevented from de-notifying any area. They further state that the Notification did not specify any particular area, and since it affects private property rights it should be amenable to challenge. They have also placed reliance upon the case of *Azam Khan Affandi v Deputy Commissioner* (2000 SCMR 548).

2. Civil Petition Nos. 367-P, 368-P, 369-P, 370-P, 371-P, 376-P and 377-P of 2021: The learned Additional Advocate-General, Khyber Pakhtunkhwa (**'the learned AAG'**) states that the Notification attained finality in view of section 9 of the Khyber Pakhtunkhwa Forest Ordinance, 2002 (**'the Ordinance'**), which replaced the Forest Act, 1927, and that

section 92 of the Ordinance prohibits civil courts to exercise jurisdiction. He further states that in respect of the lands mentioned in the Notification there were no record of rights but subsequently settlement proceeding took place in the year 1985-1986 and if the petitioners before the High Court were aggrieved by such settlement they should have assailed the same within time and before the appropriate forum, and could not do so by filing writ petitions before the High Court in the year 2016 nor could the High Court permit them to now file suits.

3. Both the private petitioners and the Government of Khyber Pakhtunkhwa are not satisfied with the common impugned judgment and as a number of points requiring determination have been raised we grant leave to appeal in all these petitions to consider the same and any other points raised therein.'

It was further ordered that both sides should maintain *status quo* in the following terms:

'Both sides are directed to maintain *status quo*. However, till the disposal of the appeals there shall be no logging and/or cutting of trees in the protected areas of forest mentioned in the Notification, nor shall the Government permit anyone to do so.'

3. The private parties asserted ownership rights to lands situated in the former State of Swat. The State of Swat acceded to Pakistan on 3 November 1947<sup>1</sup> and its accession was accepted by Mr. M. A. Jinnah in his capacity as the Governor General of Pakistan. Subsequently, the administrative control of Swat was taken over by the then Government of West Pakistan.<sup>2</sup> Thereafter, two regulations were enacted to attend to disputes pertaining to the lands situated in the former State of Swat<sup>3</sup> (**the Regulations**). However, the private parties did not assert their purported rights under the Regulations.

4. The Notification was issued on 17 February 1976 under section 29 of the Forest Act, 1927. Through the Notification all forest lands in Swat (and certain other areas) were declared as '*protected forests*'. The Forest Act, 1927 was repealed by sub-section (1) of section 120 of the Forest

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<sup>1</sup> Instrument of Accession signed by the Ruler of Swat, Miangul Gulshahzada Abdul Wadood.

<sup>2</sup> Dir, Chitral and Swat (Administration) Regulation, 1969, Regulation I of 1969, Gazette of West Pakistan, Extraordinary, 15 August 1969, PLD 1970 West Pakistan Statutes 1.

<sup>3</sup> Devolution and Distribution of Property (Dir and Swat) Regulation, 1972, Regulation No. 122, and Settlement of Immovable Property Disputes (Dir and Swat) Regulation, 1972, Regulation No. 123, Gazette of Pakistan, Extraordinary, 12 April 1972, PLD 1970 Central Statutes 613 and 614.

Ordinance, 2002<sup>4</sup> (**the Forest Ordinance**). However, all notifications that had been issued under the Forest Act, 1927, including the Notification, were saved by sub-section (2) of section 120 of the Forest Ordinance.

5. Section 29 of the Forest Act, 1927 and section 29 of the Forest Ordinance pertained to '*protected forests*' and are similarly worded. Section 29 of both these laws empowered the Government to declare '*any forest land or wasteland as a protected forest*' after determining the '*rights of Government and of private persons, in or over the forest or wasteland comprised therein, have been inquired into and recorded at a survey or settlement, or in such other manner*'<sup>5</sup> as the Government thought sufficient or appropriate. Once such determination was made, then '*every such record shall be presumed to be correct*',<sup>6</sup> unless the contrary was proven.

6. The private parties contended that the permission granted to them to file suits in civil courts by the impugned judgments is illusory, as the same judgment held that the civil court '*cannot order any notified reserved or protected forest to be de-notified*'. Their case was that they were the owners of lands which had been declared as '*protected forests*', therefore, they had challenged the Notification. Some filed suits, others directly filed writ petitions in the High Court and those whose complaints were rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 filed civil revisions in the High Court. The complaints were rejected because the suits were held to be barred under section 92 of the Forest Ordinance, which stipulates that, '*Except as provided in section 93, no Civil Court shall exercise jurisdiction over any of the matters relating to the implementation of this Ordinance or rules made there under*'. In certain other cases the private parties, who had lost their cases on merit, re-agitated the matter by filing fresh suits. The learned Judges of the Division Bench, through the common judgment dated 24 March 2021, decided all the writ petitions and civil revisions, and this judgment is assailed both by the private parties and the Government; their respective contentions at the leave granting stage were recorded in order dated 21 March 2022 (reproduced above).

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<sup>4</sup> The North-West Frontier Province Forest Ordinance, 2002, Ordinance XIX of 2002, Gazette No. Legis: 1(6)/99-II/4525 dated 11 June 2002. PLD 2003 [Supplement-1] Part II Federal Statutes, 189.

<sup>5</sup> Ibid., section 29(1).

<sup>6</sup> Ibid., section 29(3).

7. In addition to the submissions noted in the leave granting order it was contended on behalf of the private parties that the bar contained in section 92 of the Forest Ordinance is not absolute and that it cannot be used to divest the private parties of their land, particularly when section 5(1)(c) of the Forest Ordinance envisages the constitution of a Forest Settlement Board for the specific purpose of inquiring into and determining, *'the existence, nature and extent of any rights, alleged to exist in favour of any person in or over any land comprised within such limits or forest produce there from'*. Therefore, the Government be directed to constitute a Forest Settlement Board to decide the claims of the private parties.

8. The learned Advocate-General Khyber Pakhtunkhwa ('AG') represents the Government and, in addition to what was recorded in the leave granting order, submitted that the Notification was issued in the year 1976 and was only challenged in the year 2016, that is, after a period of forty years, without offering any explanation for the belated challenge. He further submitted that everyone knew that the settlement of the land in Swat was being undertaken, which took twelve years, whereafter ownership rights were recorded in the year 1986. The lands claimed by the private parties were owned by the Forest Department of the Government and the record of rights (*haqdarar-e-zamin*) reflected this and also that the same were *'protected forests'*. Responding to the contention, that the Forest Settlement Board should again be constituted to decide the claims of the private parties, the learned AG stated that before the issuance of the Notification the Forest Settlement Board had already determined that the said lands were owned by the Forest Department of the Government and that the lands constituted *'protected forests'*. Therefore, the matter could not be reopened (after forty years), and sent for re-determination by the Forest Settlement Board, which had ceased to exist. The learned AG stated that the private parties had not sought resort to the Regulations; had not assailed the Notification within a reasonable period of its issuance; and, had not agitated their purported rights when the settlement/land revenue records were prepared, wherein they were not shown as owners. The said lands, he submitted, were owned by the former State of Swat and comprised of forests and when the State of Swat acceded to Pakistan they came to vest in the Government. He alternatively submitted that, if it be

assumed that the said lands were ownerless then as per the Constitution it shall vest in the Government.<sup>7</sup>

9. The learned Judges of the High Court had framed the following three questions for determination:

- 'a) Whether the [Forest Settlement] Board provided under section 5 of the Forest Ordinance as a forum for settlement of disputes has been a continuous phenomenon to which any dispute arising at any time may be referred and settled there-under or same is relevant at the time when a forest is declared as reserved or protected forest for the first time?
- b) Whether the bar of jurisdiction contained in Section 92 of the Forest Ordinance would be an absolute bar, debarring any civil suit, wherein certain rights are claimed in immovable property and in defence, it is alleged that the property had ever been declared as protected or reserved forest?
- c) What forum would be available to a person whose property is wrongly claimed as reserved or protected forest?

10. With regard to the aforesaid question (a) the learned Judges of the High Court held, that:

'21. What is important to be noted in clause (c) of Section 5 of the Forest Ordinance, is that said clause had been part of subsection (1) of Section 5 of the Forest Ordinance. It cannot be read disjunctively from rest of the text of subsection (1), wherein it has been provided that whenever it is decided to constitute any land as a reserved forest Government shall by notification in the Official Gazette declare that it has been decided to constitute such land as a reserved forest. Such a declaration is made at the time when the process for declaring such land as reserved forest is initiated for the first time. Sections 4, 5 & 6 leave no doubt that all such activities of constitution of the Board and the procedure following therein has been provided to be carried only at the time of declaring any area as reserved forest. Section 9 of the Forest Ordinance has then provided the effect of such declaration, which is also reproduced hereunder for ready reference:

9. Extinction of rights. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under

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<sup>7</sup> Constitution of the Islamic Republic of Pakistan, Article 172.

section 20 is published, the person claiming them satisfies the Board that he had sufficient cause for not preferring such claim within the period fixed under section 6.

This makes it clear that any right which is not claimed at the time of declaration being made shall seize [*sic*] to have been existing unless before publication of such notification an appeal is preferred under section 20 of the Forest Ordinance. In other words, when an area is declared as reserved forest and no appeal has been preferred at the relevant time i.e. before publication of the notification to said effect (under section 20 of the Forest Ordinance), then no right can be claimed subsequently in a reserved forest nor can such declaration be revisited by any Board. In other words, with issuance of notification under section 20 of the Forest Ordinance, the forum of Board would become *functus officio*.

Section 23 of the Forest Ordinance has provided that no right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of Government or some person in whom such right was vested when the notification under section 20 of the Forest Ordinance was issued. Meaning thereby that such a right of succession or other rights had to be settled by the Board or by the appellate forum, provided under section 17 of the Forest Ordinance before a notification of a reserved forest is issued under section 20 of the Forest Ordinance. All such provisions have also been *pari materia* to the provisions of the Forest Act, 1927.'

The High Court held that after the issuance of the Notification the Forest Settlement Board became *functus officio*. And, affirmatively answered question (a) by holding that, '*no right of any description shall be acquired in or over a reserved forest*' and no valid reason has been put forward to persuade us to take a different view.

11. Question (b), framed by the High Court (above), was decided as under:

'23. In our estimation, the question whether certain land has or has not been part of the declared protected or reserved forest, would be a question which may be raised and decided by a civil Court having territorial jurisdiction in the area.'

The following was the reason given for the aforesaid decision:

'The Board has nowhere been given any power or authority to declare any entries in the revenue record to be wrong, illegal or ultra-vires or to declare questions of ownership of persons whose property has been lying outside the limits of protected or

reserved forest. Such has been the exclusive domain of civil Courts vested in them by Section 9 CPC, Section 53 of the West Pakistan Land Revenue Act, Sections 42 and 54 of the Specific Relief Act and other relevant laws. No such jurisdiction has ever been vested in the forum of Board even under the provisions of the Forest Ordinance, the earlier law on the subject or any other law.'

And, with regard to the above noted question (c) the High Court held that, since the civil court has jurisdiction, '*therefore this question is also accordingly decided*'.

12. However, an examination of the cases reveal that none of the private parties had alleged and showed that they (or their stated predecessors-in-interest) were the recorded owners of the said lands either under the land revenue or under any other law, nor had they relied upon any official record of the Government or of its predecessor-in-interest (the State of Swat) in support of their claims. The private parties had based their claims on private documents or on mere assertions, as under:

Civil Appeal No.	The private parties claim	Observations
329/2022	The claim is based on a private sale deed dated 7 March 1978.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimant or his predecessor-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
330/2022	The claim is based on an oral assertion of ancestral ownership and of purchase.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2011-12, which does not mention either the claimant or his predecessor-in-interest in the column of owner. The claimant is mentioned in the column of possessor as <i>nao-tor</i> of some portion of the disputed land.

		However, it was not the case of the claimant that his possession was being disturbed nor that the said entry was being changed. The ownership of the land is shown to be of the Forest Department and the land is described as 'Protected Forest'.
331/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Provincial Government and possession of the Forest Department.
332/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Provincial Government and possession of the Forest Department.
333/2022	The basis of the claim has not been specified.	No document was produced.
334/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimant or his predecessor-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.

335/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
336/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimant or his predecessor-in-interest in the column of owner. The claimant is mentioned in the column of possessor and to be in possession of some portion of the disputed land, but without specifying the status of his possession. However, it was not alleged that he was being dispossessed or the said entry was changed. The ownership of the land is shown to be of the Forest Department and the land is described as 'Protected Forest'.
337/2022	The claim is based on an oral assertion of ancestral ownership and of purchase.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2003-04, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
338/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Provincial Government and possession of the Forest Department.

339/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Provincial Government and possession of the Forest Department.
340/2022	The claim is based on a purported deed and decision dated 17 September 1947.	Neither the deed nor the decision has been produced.
341/2022	The claim is based on a sale deed dated 21 September 1968, in favour of a predecessor of the claimants.	The said deed has not been produced.  The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
342/2022	The claim is based on an oral assertion of ancestral ownership and of purchase.	No document was produced.
343/2022	The claim is based on an oral assertion of ancestral ownership and of purchase.	The only extracts produced from the registers of <i>Haqdaraan-e-Zamin</i> are of the years 2012-13 and 2013-14, which do not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. They show ownership of the Forest Department and the land is described as 'Protected Forest'.

344/2022	The claim is based on a sale deed dated 30 October 1955, in favour of a predecessor of the claimants.	The said deed has not been produced.  The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
345/2022	The claim is based on a sale deed dated 4 September 1967, in favour of a predecessor of the claimants.	The said deed has not been produced.  The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2012-13, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.
346/2022	The claim is based on an oral assertion of ancestral ownership.	The only extract from the register of <i>Haqdaraan-e-Zamin</i> produced is of the year 2006-07, which does not mention either the claimants or their predecessors-in-interest either in the column of cultivator/possessor or in the column of owner. It shows ownership of the Forest Department and the land is described as 'Protected Forest'.

13. The private parties did not produce nor referred to any document which pre-dated the Notification issued in 1976, nor any after the Notification's issuance. They also did not prefer a claim to the settlement authorities, nor challenged the record of rights prepared in 1986. The record which was produced or referred to by them (mentioned in paragraph 12 above) showed that the Forest Department of the Government was the owner of the said lands. The High Court incorrectly assumed that the said

lands were *wrongly claimed by the forest department*, and then on this (wrong) premise held, that:

'...the civil Court would have jurisdiction for entertaining suit of a person whose property may be wrongly claimed by officers of the forest department or anyone else to be part of protected or reserved forest...'

14. The High Court had, on the basis of mere assertions, held that the civil courts had jurisdiction, and this was done by rendering the following bar of jurisdiction<sup>8</sup> superfluous:

'92. **Bar of jurisdiction.** Except as provided in section 93, no Civil Court shall exercise jurisdiction over any of the matters relating to the implementation of this Ordinance or rules made thereunder.'

15. The private parties were also effectively assailing the survey of the land and the determination of the boundaries of the Forest Department of the Government which had been undertaken.<sup>9</sup> Assailing the same was also not within the jurisdiction of the civil courts.<sup>10</sup>

16. Undoubtedly, a provision ousting the jurisdiction of a civil court is to be construed strictly and established rights cannot be disturbed, nor can an ouster clause deprive anyone of property. An ouster clause can also not be used to create injustice or hardship. But, this does not mean that the ouster clause is of no legal effect. Another factor to consider in determining the scope of the ouster of jurisdiction is to examine whether those who may be affected are provided with an alternative remedy. The Forest Ordinance did provide a remedy<sup>11</sup> but it was not availed.

In a case<sup>12</sup> under the Madras Forest Act, 1882, it was held that:

'It is an established principle that when by an act of the legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary courts is ousted, and in the case of injury, the party cannot proceed by action. See *The Governor*

<sup>8</sup> Ibid., section 92.

<sup>9</sup> Land Revenue Act, 1967, Chapter X '*Surveys and Boundaries.*'

<sup>10</sup> Land Revenue Act, 1967, Section 172

<sup>11</sup> Ibid., section 6(1)(c), section 17 and section 18(4).

<sup>12</sup> *Ramachandra v Secretary of State* ILR Vol. XII 1889, 105.

*and Company of the Cast Plate Manufactures v. Meredith*,<sup>13</sup>  
*Steven v. Jeacoke*,<sup>14</sup> *West v. Downman*.<sup>15</sup>

This Court has also applied the aforesaid principle:

'...where a special remedy is provided for under the law, it may not be bypassed and the Civil Courts should not be approached directly without exhausting the highest forum in the authority.<sup>16</sup>

And, in another case<sup>17</sup> it was held that:

'An exclusive jurisdiction has been conferred on the Authority for determining the disputes referred to in the Ordinance which reflect the intent of the legislature. In such like situation, the jurisdiction of Authority is exclusive, and the jurisdiction of Civil Court is barred.'

17. The private parties did not allege that the issuance of the Notification was *mala fide* or without jurisdiction, or that an order was passed against them which was *coram non judice*, which may have enabled them to access the courts. The facts of their cases are altogether different from the *Azam Khan Affandi* case (relied upon by them). In that particular case both Azam Khan Affandi and the Forest Department lay claim to the compensation with regard to the land which had been compulsorily acquired for the construction of a hydropower station, which land consequently did not remain as a forest. The facts in that case were determinative. There was a preponderance of evidence to establish Azam Khan Affandi's ownership. The law applicable in that case was the Forest Act, 1927, which did not contain a *bar of jurisdiction* provision. Moreover, in the *Azam Khan Affandi* case, neither the revenue nor any other official record showed that the land was owned by the Forest Department of the Government.

18. In the instant case the Forest Department of the Government had not done anything to adversely affect any purported right of the private parties. Instead, the private parties wanted long standing settlement/revenue records changed in their favor, by belatedly challenging the Notification. The private parties had sought the constitution of the Forest Settlement Board for the re-determination of a forty-year-old matter; a rebuttable presumption of legality attaches to thirty-year-old documents produced from proper

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<sup>13</sup> 4 T.R. 794.

<sup>14</sup> 11 Q.B. 731.

<sup>15</sup> L.R. 14 Ch. D. 111.

<sup>16</sup> *Muhammad Siddique v Noor Bibi*, 2020 SCMR 483, 485A.

<sup>17</sup> *General Manager, SNGPL v Qamar Zaman*, 2021 SCMR 2094, pp. 2098-9, para 7.

custody.<sup>18</sup> The learned Judges had overlooked the fact that neither the private parties nor their predecessors-in-interest were shown to be the owners of the lands claimed by them either in the revenue record or in any other official record, yet, they held that the civil court would have jurisdiction. In the facts and circumstances of the case, the High Court had legally erred in referring the private parties to the civil court for the adjudication of matters over which the civil court did not have jurisdiction.

19. The rationale of the law which ousts the jurisdiction of civil courts and what it seeks to achieve is also required to be considered. The Forest Ordinance was enacted, amongst other reasons, for the *protection* and *conservation*<sup>19</sup> of forests in the Province and this was done in the public interest. Pakistan has been denuded of its forests and not nearly enough has been done to protect the remaining forests. An academic-scientific report states that Pakistan lost 14.7% of its forest habitat between 1990 and 2005.<sup>20</sup> And, from 2000 to 2020, Pakistan experienced a net change of 94.8 thousand hectares (4.5%) in tree cover.<sup>21</sup> The importance of forests is by now well established. Forests are necessary to promote headwater conservation for the alleviation of floods and water shortages.<sup>22</sup> Forests aid in the prevention of disasters and provide a stable supply of water (one tree can retain ground water up to 30,000 liters<sup>23</sup>). Denuding land of forests and trees has catastrophic effects including avalanches, flash floods, silting up of rivers, lakes and dams, the accumulation of carbon dioxide (a greenhouse gas) and climate change. Forests and trees remove carbon dioxide; over a one-year period a mature tree absorbs about 22 kilograms of carbon dioxide from the atmosphere, and in exchange releases oxygen.<sup>24</sup> The European Environmental Agency has determined that in a year, 1.3 million trees are estimated to remove more than 2,500 tons of pollutants from the air.<sup>25</sup>

<sup>18</sup> Qanun-e-Shahadat, 1984, Article 100.

<sup>19</sup> Ibid., preamble, section 3(1)(a) and section 3(2)(a).

<sup>20</sup> 'Biomass fuel burning and its implications: Deforestation and greenhouse gases emissions in Pakistan' S.N.A. Tahir, *Environmental Pollution*, Volume 158, Issue 7, July 2010, pages 2490 – 2495.

<sup>21</sup> 'Pakistan Deforestation Rates & Statistics: GFW.' *Global Forest Watch*, [www.globalforestwatch.org](http://www.globalforestwatch.org).

<sup>22</sup> 'The role of forest and forestry', *The Role of Forest and Forestry*, [www.fao.org/3/w8301e/w8301e03.htm](http://www.fao.org/3/w8301e/w8301e03.htm).

<sup>23</sup> Ibid.

<sup>24</sup> 'Trees Help Tackle Climate Change.' *European Environment Agency*, 6 Jan. 2012, [www.eea.europa.eu/articles/forests-health-and-climate-change/key-facts/trees-help-tackle-climate-change](http://www.eea.europa.eu/articles/forests-health-and-climate-change/key-facts/trees-help-tackle-climate-change).

<sup>25</sup> 'Trees Help Tackle Climate Change.' *European Environment Agency*, 6 Jan. 2012, [www.eea.europa.eu/articles/forests-health-and-climate-change/key-facts/trees-help-tackle-climate-change](http://www.eea.europa.eu/articles/forests-health-and-climate-change/key-facts/trees-help-tackle-climate-change).

20. The Forest Ordinance was also enacted to preserve *ecological significance*,<sup>26</sup> the *integrity of the ecological system*<sup>27</sup> and to promote the understanding of *environmental* significance.<sup>28</sup> Reduction in forest and tree cover harms ecosystems and consequently the animals, birds and insects dependent on them, and results in the loss of biodiversity. The Forest Ordinance is a beneficial piece of legislation, but this important aspect was not considered by the High Court before it proceeded to negate the *bar of jurisdiction* provision (section 92 of the Forest Ordinance).

21. We must also not lose sight of a most startling fact. Pakistan is amongst a score of countries which are disproportionately vulnerable to the consequences of climate change.<sup>29</sup> To ignore the reality of climate change is to be unjust and it disregards future generations. This Court has held that:<sup>30</sup>

'19. Another important dimension of climate change is intergenerational justice and the need for climate democracy. The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. The great silent majority of future generations is rendered powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country.'

'The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations.'

'We must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature.'

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<sup>26</sup> Ibid., section 3(2)(a).

<sup>27</sup> Ibid., section 3(2)(c).

<sup>28</sup> Ibid., section 3(2)(f).

<sup>29</sup> Shah Fahad & Jianling Wang, 'Climate Change, vulnerability, and its impacts in rural Pakistan: a review' *Environmental Science and Pollution Research* 27, 1334-1338 (2020); <https://link.springer.com/article/10.1007/s11356-019-06878-1>.

<sup>30</sup> *D.G. Khan Cement Company v Government of Punjab through Chief Secretary*, 2021 SCMR 834, pp. 854-855, para 19.

22. Climate change is not just a future threat but a present reality. The planet is in crisis and disasters are accelerating disasters. Climatic events of unprecedented severity are being witnessed. The unilateral and unsustainable pillage of the earth's resources has left humanity, and all other species, vulnerable. Excessive burning of fossil fuels has heated up the earth's temperature and when forests, which sequester carbon emissions are stripped away, its effect is compounded. Carbon fuel extraction needs to correlate with the available trees, plants and phytoplankton which store emissions. The causes of climate change and the catastrophic events that it unleashes are (by now) empirically established, yet the problem is not being addressed with the requisite urgency and seriousness. Simple mitigation measures are also not implemented. Carbon emissions, and not trees, have to be cut down. The learned Judges failed to consider that the Forest Ordinance was a beneficial piece of legislation which was enacted to conserve scarce remaining forests.

23. The natural world is an epiphany yet the extraordinary bounty of nature and creation's perfect balance<sup>31</sup> has been disrupted. The warning not to tamper with nature's balance is not heeded.<sup>32</sup> Some view nature as an inert repository of resources to subdue, remove and deplete, and profiteering as their right. *'As the land becomes impoverished so too does the scope of their vision'*.<sup>33</sup> Reverence for the natural world has become peripheral. Humanity needs to regain its lost consciousness and its primordial link to nature.<sup>34</sup> Humans must assume their responsibility as trustees of the earth<sup>35</sup> and of all of creation;<sup>36</sup> and, not to be deaf and dumb, engulfed in darkness.<sup>37</sup> The trees of the forest are sentient beings<sup>38</sup> and, like human

<sup>31</sup> *Al-Qur'an*, Al-Hijr (15) verse 19 and Al-Rahman (55) verse 7.

<sup>32</sup> *Ibid.*, Al-Rahman (55) verse 8.

<sup>33</sup> Robin Will Kimmerer (Professor of Environmental and Forest Biology at the State University of New York), *'Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge and the teaching of Plants'*, 2013.

<sup>34</sup> *'Fitrat'*, *Al-Qur'an*, Al-Rum (30) verse 30. Al-Fatir which means the Originator or The Creator is also one of the names of God, *Al-Qur'an*, Fatir (35), see also: Al-Anam (6) verse 14, Yusuf (12) verse 101, Ibrahim (14) verse 10, Az-Zumar (39) verse 46 and Ash-Shura (42) verse 11.

<sup>35</sup> *'Khalifah fil ardh'*, *Al-Qur'an*, Al-Baqarah (2) verse 30 and Al-Anam (6) verse 165, The Preamble of the Constitution of the Islamic Republic of Pakistan mentions *'...sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust...'*

<sup>36</sup> *All of creation is for a wise and just purpose*, *Al-Qur'an*, Ad-Dukhan (44) verse 38, *And created it all for the Truth*, *Al-Qur'an*, Al-Jathiyah (45) verse 22.

<sup>37</sup> *Al-Qur'an*, Al-Anam (6) verse 39.

<sup>38</sup> *Al-Qur'an*: Al-Hajj (22) verse 18, Al-Isra (17) verse 44, An-Nahl (16) verses 48-50, Al-Hadid (57) verse 1.

beings, part of the biotic community. In regaining their trusteeship humans also salvage their humanity, and save themselves and their progeny.

24. Therefore, for the abovementioned reasons the appeals of the Government (Civil Appeals No. 333 to 346 of 2022) are allowed by setting aside the impugned judgment to the extent stated above, and the appeals filed by the private parties (Civil Appeals No. 329 to 332 of 2022) are dismissed, but with no order as to costs, as the points decided herein were not decided earlier by this Court.

Chief Justice

Judge

Judge

Islamabad:  
7 February 2023  
(M. Tauseef)

Approved for Reporting