

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Original Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Criminal Original No.28 of 2018
(Filed on 05.10.2018)

Haji Javed Akram son of Ch.Muhammad Akram
r/o village Sangote, Tehsil and District Mirpur.

....PETITIONER

VERSUS

Chaudhary Muhammad Saeed son of
Chaudhary Muhammad Saleem r/o Sector F-1,
Tehsil and District Mirpur (Minister Azad
Jammu and Kashmir Government).

....RESPONDENT

(Application for initiation of contempt of Court
proceedings)

FOR THE PETITIONER: Mr.Khalid Rasheed
Ch., Advocate.

FOR THE RESPONDENT: Raja Inamullah
Khan, Advocate.

FOR THE STATE: Sardar Karam Dad
Khan, Advocate-
General.

Date of hearing: 22.05.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled application has been filed for initiation of contempt of Court proceedings against the respondent.

2. The facts necessary for disposal of this application are that some encroachment adjacent to the Supreme Court Rest House Mirpur was noticed by one of us, i.e. Hon'ble Chief Justice of Azad Jammu and Kashmir. The Deputy Commissioner Mirpur was ordered to submit the report regarding the nature of encroachment. He submitted the report stating therein that the encroachment has been caused by the respondent, herein, upon the land acquired for Mangla Dam reservoir. On

this, Deputy Commissioner Mirpur and Director General Mirpur Development Authority, were further directed to submit the detailed report along with the accurate measurement and also ensure the stoppage of encroachment. In this regard, a separate file was maintained. In the meantime, on 05.10.2018, the petitioner, herein, filed an application for initiation of contempt of Court proceedings against the respondent and claimed that the respondent by making encroachment upon the State land has violated the judgment of this Court reported as *Muhammad Azeem Dutt and others v. Raja Khadim Hussain and others* [2017 SCR 577]. The petitioner along with the application annexed a copy of the judgment of this Court delivered in the case (supra) and the reports of the Deputy Commissioner dated 09.09.2018 and 27.09.2018. On the filing of application, the respondent was summoned

who filed para-wise comments and also tendered unconditional apology; however, keeping in view the peculiar facts of the case, the Court while turning down the apology tendered, ordered in the interest of supremacy of law to decide the matter after thoroughly appreciating all the aspects. On the completion of all the necessary proceedings, the arguments of the counsel for the parties as well as the learned Advocate General have been heard.

3. Mr. Khalid Rasheed Chaudhary, Advocate, the learned counsel for the petitioner argued that the respondent by making encroachment/raising construction over the State land reserved for Mangla Dam reservoir has intentionally violated the judgment of this Court delivered in *Muhammad Azeem Dutt's* case (supra) and tried to undermine the authority of the Court.

He contended that the respondent is the sitting Minister of the Government and the misuse of authority/violation of the judgment of the apex Court of the State by him conveyed a wrong message to the public at large that the persons holding such positions are over and above law and they can do whatever they want. He added that the respondent raised illegal construction adjacent to the Supreme Court Rest House and even did not bother that under the nose of the apex Court of the State he is going to do an illegal act. He added that the respondent by making encroachment has tried to show his authority that he is not bound by any direction issued by the apex Court. He further added that according to the respondent's version he purchased the house adjacent to the Supreme Court Rest House in the year 2005, but he made the encroachment when he was holding

the portfolio of the Minister which itself shows that the act done by him was intentional. He submitted that the encroachment has fully been proved from the detailed report of the Deputy Commissioner, therefore, the respondent is liable to be punished under the provisions of Contempt of Court Act as he has badly shaken the confidence of general public. He added that being a Minister the respondent was duty bound to act strictly in accordance with law but he failed to discharge the legal obligations. In continuation of the argument, the learned counsel submitted that the respondent instead of taking measures for implementation of the judgment of this Court, himself violated the same; thus, the act of the respondent is fully covered under Article 45 of the Interim Constitution, 1974, read with section 3 of the Contempt of Court Act, 1993, therefore, he is liable to be punished for the

act committed. The learned counsel referred to and relied upon the case law reported as *Suo Motu case No.1 of 2007* [PLD 2007 Supreme Court 688], *The State v. Khalid Masood, Regional Director, Pakistan Narcotics Control Board, Lahore and 3 others* [PLD 1996 SC 42], *Federation of Pakistan and others v. Mian Muhammad Nawaz Sharif* [PLD 2009 SC 284], *Dr. Ali Sana Shakir Bokhari v. The State* [2001 SCMR 519], *Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others* [PLD 1998 SC 823], *Reference No.1 of 2011* [2015 SCMR 658], *Mst. Shawahid Begum v. Municipal Committee and 13 others* [1998 SCR 314], *Manzoor Hussain v. The State* [PLD 1963 (W.P.) Lahore 20] and *Robkar Adalat v. Shahid Mohi-ud-Din and another* [2017 SCR 1411].

4. On the other hand, Raja Inamullah Khan, Advocate, the learned counsel for the respondent at the very outset submitted that

his client does not want to contest the matter, as from the day first by tendering unconditional apology, he has placed himself on the mercy of the Court. At this juncture, the respondent also came on the rostrum and while tendering again the unconditional apology stated that he had no intention to violate the judgment of the apex Court and the act done by him was the result of some misconception. However, the learned counsel for the respondent was asked to argue the case; whereupon he submitted that the respondent purchased the house (adjacent to the Supreme Court Rest House) in the year 2005 and the boundary wall around the house was already constructed at the time of sale. He added that since sale transaction, the land in question was never demarcated and the respondent was under the impression that the area where he raised the construction, is the

part and parcel of the purchased property. He added that the respondent bona fide constructed the retention wall to protect his house from damage and except this no other object was there to gain. He added that the act of the respondent was not intentional rather he has a great respect of the Court and even can never imagine to violate the judgment of the apex Court. He contended that the petitioner and the allied persons who filed affidavits against the respondent, have got no locus standi to approach the Court for initiation of contempt of Court proceedings against the respondent. The petitioner owns the affiliation with the opposite political party/rival political candidate of the respondent; therefore, the application against the respondent is politically motivated. In this regard, the learned Advocate drew the attention of the Court towards the statement

of the petitioner. He added that the area/land where the construction was being carried out is not included in the master plan of the Mirpur city, therefore, the direction issued in *Muhammad Azeem Datt's* case (supra) is not applicable in the matter in hand. The learned counsel referred to and relied upon the case law reported as *Fakhre Alam v. The State and another* [PLD 1973 SC 525] and *Muhammad Mehrban and another v. Muhammad Siddique and 2 others* [2005 SCR 418].

5. Sardar Karam Dad Khan, the learned Advocate-General submitted that the contempt of the Court by the respondent has been proved, however, the matter is between the Court and the contemnor and the Court has the discretion to accept the unconditional apology. He submitted that although a wrong message was conveyed to the public at large by the act of the respondent, but from the

action taken by Court, the confidence of the people of the State has been restored and strengthen in the administration of justice that no one is over and above law. He referred to a case law reported as *Sardar Ejaz Ali Gillani Advocate v. Sardar Atique Ahmad Khan* [1995 SCR 176].

6. Before examining the submissions made by the counsel for the parties and the worth of the apology tendered, we would like to observe here that the contempt proceedings are initiated to maintain and strengthen the confidence of the general public and the litigants in the Court and to vindicate the honor and dignity of the Court when somebody tried to ridicule and lower the respect of the Court and shaken the confidence of people at large in the safe administration of justice. The object of the contempt of Court proceedings has been defined in a plethora of judgments.

In a case reported as *Robkar Adalat v. Shahid Mohi-ud-Din and another* [2017 SCR 1411]

this Court observed as under:-

“Before diving deep in the record of the case, we would like to observe here that the object to proceed for contempt is to maintain the confidence of the general public and the litigants in the Courts and to keep the course of justice free and to ensure the administration of law and justice. The contempt proceedings are not initiated just to protect the Judges but to vindicate the honour of the Court, so that the confidence which the public retains in superior Courts in the State is not weakened.”

The learned counsel for the parties referred to different case law in support of their respective version, however, keeping in view the peculiar facts of the instant case the same being distinguishable is not applicable; therefore, for

the sake of brevity without discussing the case law we intend to attend the merits of the case.

7. The allegation levelled against the respondent in the case is hand is that in violation of the direction issued by this Court in the case reported as *Muhammad Azeem Dutt and others v. Raja Khadim Hussain and others* [2017 SCR 577], he raised illegal construction on the State land, situate adjacent to the Supreme Court Rest House Mirpur. The encroachment/illegal construction by the respondent has been proved from the record as is envisaged in the report of *patwari* which is reproduced as under:-

"گزارش خدمت ہیکہ حسب الحکم جنابوالا رقبہ زیر قبضہ چوہدری محمد سعید ولد محمد سلیم موضع بڑبن بعد از پیمائش موقع ایک دستی خاکہ مرتب کیا جا کر شامل رپورٹ کیا گیا ہے۔ جس کے مطابق نمبر 2/434/630 رقبہ تعدادی 4 کنال 6 مرلے مملو کہ منظور حسین ولد محمد اکبر مقبوضہ چوہدری محمد سعید پایا گیا ہے۔ جسکو نقشہ میں حصہ الف سے ظاہر کیا گیا ہے۔ حصہ ب جس کا رقبہ 7 مرلہ 3 سرسائی حصہ ج جس کا رقبہ 17 مرلہ کل 1 کنال 4 مرلہ 3 سرسائی نمبر 434 مملو کہ آزاد حکومت واپڈا جبکہ یہ رقبہ بھی زیر قبضہ چوہدری محمد سعید مذکور ہونا

پایا گیا ہے۔ موقع پر حصہ ج 35x40 جگہ پر کام موقع ہو رہا تھا جس کو بند کروایا گیا ہے۔ چونکہ حصہ ب حصہ ج واپڈا کا رقبہ ہے۔"

The relevant portion of the report submitted by the Deputy Commissioner Mirpur before the Court reads as under:-

"اراضی زیر بحث کے ریکارڈ مال اور موقع ملاحظہ کرنے سے اخذ ہوتا ہے کہ انتقال نمبر 61 کی رو سے متبادل کے طور پر اراضی تعدادی 9 کنال 14 مرلے منظور حسین ولد محمد اکبر کے نام منتقل ہوئی۔ جس میں سے اراضی نمبر خسره 2/434/630 تعدادی 4 کنال 6 مرلے پر مکان تعمیر شدہ ہے جو اس وقت چوہدری محمد سعید ولد چوہدری محمد سلیم کے زیر قبضہ و تصرف ہے اور اراضی نمبر خسره 434 تعدادی 1288 کنال 12 مرلے ملکیتی آزاد حکومت ریاست جموں و کشمیر مقبوضہ محکمہ واپڈا از قسم غیر ممکن جھیل میں سے اراضی تعدادی 1 کنال 8 مرلے 4 سرسائی (جانب غرب و جنوب) چوہدری محمد سعید ولد چوہدری محمد سلیم کے زیر قبضہ و تصرف پائی گئی ہے۔"

Even the respondent has not denied that he did not raise illegal construction rather he has taken the stance that he purchased the land measuring 4 *kanal* 6 *marla* along with a house constructed over there, in the year 2005 and he was under impression that the piece of land wherein he was constructing the wall, is included in the land purchased by him. The

respondent throughout the proceedings remain consistent on this version that he did not committed the violation of the judgment of this Court intentionally rather the act done by him is the result of some misconception. However, from the record it is evident that the respondent committed the illegal act of encroachment after being elected as Member Legislative Assembly/holding the office of Minister, which is clearly indicative of the fact that he has intentionally by misusing the high-rank, committed this act. As the respondent is not an ordinary person and if suchlike persons are spared in routine then a wrong message will spread in the society that the influential persons are over and above law, which may result into distrust in the system of administration of justice. Under law, all the persons apart from their positions, are equal before law; moreover, any categorization in

this regard is strictly prohibited in Islam. The Holy Prophet (Peace Be Upon Him) while addressing to His companions (R.A) said that 'O people, those who have gone before you were destroyed, because if any one of high rank committed theft amongst them, they spared him; and if any one of low rank committed theft, they inflicted the prescribed punishment upon him. By Allah, if Fatima, daughter of Muhammad, were to steal, I would have her hand cut off'. For reference *Sahih Muslim's Hadith* No.4410 along with Urdu translation is reproduced here which reads as under:-

" حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ، حَدَّثَنَا لَيْثٌ، ح وَحَدَّثَنَا مُحَمَّدُ بْنُ رُمْحٍ، أَخْبَرَنَا اللَّيْثُ، عَنِ ابْنِ شِهَابٍ، عَنِ عُرْوَةَ، عَنِ عَائِشَةَ، أَنَّ قُرَيْشًا أَهَمَّهُمْ شَأْنُ الْمَرْأَةِ الْمَخْزُومِيَّةِ الَّتِي سَرَقَتْ، فَقَالُوا: مَنْ يُكَلِّمُ فِيهَا رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ؟ فَقَالُوا: وَمَنْ يَجْتَرِئُ عَلَيْهِ إِلَّا أُسَامَةُ، حَبُّ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَكَلَّمَهُ أُسَامَةُ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «أَتَشْفَعُ فِي حَدٍّ مِنْ حُدُودِ اللَّهِ؟» ثُمَّ قَامَ فَاخْتَطَبَ، فَقَالَ: «أَيُّهَا النَّاسُ، إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ، وَإِيمَ اللَّهِ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا.

(قتیبہ بن سعید اور محمد بن رمح نے کہا: ہمیں لیث نے ابن شہاب سے خبر دی، انہوں نے عروہ سے اور انہوں نے حضرت عائشہ رضی اللہ عنہا سے روایت کی کہ قریش کو ایک مخزومی عورت، جس نے چوری کی تھی، کے معاملے نے فکر مند کر دیا، انہوں نے کہا: اس کے بارے میں رسول اللہ صلی اللہ علیہ وسلم سے کون بات کرے گا؟ کہنے لگے: رسول اللہ صلی اللہ علیہ وسلم کے پیارے حضرت اسامہ رضی اللہ عنہ ہی اس کی جرات کر سکتے ہیں؟ چنانچہ حضرت اسامہ رضی اللہ عنہ نے آپ سے گفتگو کی تو رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: "کیا تم حدود اللہ میں سے ایک حد (کو ساقط کرنے) کے بارے میں سفارش کر رہے ہو؟" پھر آپ صلی اللہ علیہ وسلم اٹھے، خطبہ دیا اور فرمایا: "اے لوگو! تم سے پہلے لوگوں کو اسی چیز نے تباہ کر ڈالا کہ جب ان کا کوئی معزز آدمی چوری کرتا تو اسے چھوڑ دیتے اور جب ان میں سے کوئی کمزور آدمی چوری کرتا تو اس پر حد نافذ کرتے۔ اللہ کی قسم! اگر فاطمہ بنت محمد بھی چوری کرتی تو میں اس کا ہاتھ بھی کاٹ دیتا۔"

In the *hadith* quoted above, a clear principle has been laid down that in the affairs of justice, special treatment cannot be given to anybody due to his/her high position. In the case in hand as we have observed hereinabove that due to the act of the respondent, a message of violation of the judgment of this Court by a sitting Minister spread throughout the State; hence, in our view in the given circumstances this act cannot be uncared for in a routine matter. The learned counsel for

the respondent during the course of arguments emphasized that the respondent from the day first by tendering unconditional apology has placed himself on the mercy of the Court and in suchlike cases the Court always shown the grace. No doubt, in the cases where contemnors purge themselves by tendering unconditional apology without making any attempt as justification of their conduct and contesting the matter on factual side, grace lies in forgiving rather than convicting them, however, it is not a universal principle to be applied in each and every case as each case has its own peculiar facts and circumstances. In this regard, reference may be made to a case reported as *Suo motu contempt proceedings against Mr. Talal Chaudhry* [PLD 2018 SC 773], wherein it has been held that:-

“22. As regard the submission of the learned Sr. ASC for the alleged contemnor that the Court ought to show judicial restraint. We have gone through the judgment cited by him and are of the view that these are not of much help to the alleged contemnor as the principle of judicial restraint is not a universal principle to be applied in each and every case as each and every case is based upon its own different facts, which in law are required to be dealt with in the peculiar facts and circumstances at their own case.”

We also deem it proper to observe here that the gracious attitude of the Courts in dealing with contempt cases by accepting apology from the contemnors has been construed as a sort of weakness or inability of the Courts to deal efficiently with the contemnors and a general concept has developed that after violating the judgments, the contemnor can

get away with it easily by tendering unconditional apology. Such a tendency not only erodes the public confidence in the judicial process but also impinges upon the dignity of the judiciary. In the instant case, the respondent made encroachment on the State land situate adjacent to the Supreme Court Rest House, as has been proved from the record, which makes the respondent's act more obnoxious. Moreover, during the course of trial in the case in hand, it also came into the notice of the Court that apart from the encroachment under consideration, the respondent has also made encroachments at many other places in Mirpur city; whereupon, the report was summoned from the concerned quarters and in the light of the report the Court vide its order dated 30.01.2019, ordered to maintain a separate file. The separate file although, is under process, however, the

allegations levelled in the same coupled with the fact that the respondent has not denied the same, the opinion regarding the conduct of the respondent can easily be formed. For better appreciation the relevant portion of the order dated 30.01.2019, is reproduced here which reads as under:-

"2 - دوران کارروائی نسبت عملدرآمد فیصلہ عدالت ہذا عنوانی محمد عظیم دت وغیرہ بنام راجہ خادم حسین وغیرہ (2017 ایس سی آر 577) و درخواست توہین عدالت عنوانی حاجی جاوید اکرم بنام چوہدری محمد سعید، مسؤل چوہدری محمد سعید کی موضع بڑبن کی جائیداد کے علاوہ دیگر جائیداد کی نسبت بھی بے قاعدگیوں اور بد معاملگیوں کی نشاندہی ہوئی جس پر باضابطہ طور پر متعلقہ اداروں سے ریکارڈ اور رپورٹ طلب کی گئی۔

3- ڈپٹی کمشنر (رکن عملدرآمد کمیٹی) نسبت فیصلہ عدالت ہذا نے اپنی رپورٹ محررہ 19 دسمبر 2018ء میں پلاٹس نمبر 290 (پٹرول پمپ)، 65 (آزاد میگا مارٹ) و 64 اے (ٹیوٹا آزاد موٹرز) واقع سیکٹر ایف امیرپور میں ملزم مسؤل (چوہدری محمد سعید) کے تجاوزات کی نشاندہی کی۔ اس نسبت چوہدری محمد سعید نے اپنے عدالتی بیان میں رضاکارانہ طور پر اظہار کیا کہ اگر انتظامیہ نشاندہی کرے تو وہ از خود تجاوزات ختم کر دے گا جس پر 21 جنوری 2019ء کو ڈپٹی کمشنر امیرپور کو تجاوز شدہ رقبہ جات کی نشاندہی کی ہدایت ہوئی۔ مطابق رپورٹ ڈپٹی کمشنر محررہ 29 جنوری 2019 مسؤل نے نشاندہی پر پلاٹ نمبر 290 (پٹرول پمپ) واقع سیکٹر ایف امیرپور سے تجاوز شدہ سرکاری رقبہ تعدادی 2300 مربع فٹ واگزار کر دیا ہے۔ پلاٹ نمبر 64 اے (ٹیوٹا آزاد موٹرز) کی نسبت مسؤل کا

اظہار ہے کہ ٹویوٹا کمپنی سے ضروری امور طے کرنے ہیں جس کے لیے کم از کم ایک ہفتہ کا وقت درکار ہے۔ مسؤل نے مزید اظہار کیا کہ امور طے ہونے کے بعد وہ از خود سڑک اور مفاد عامہ پر تجاوز شدہ رقبہ واگزار کر دے گا۔ مسؤل کو ایک ہفتہ کے بجائے دو ہفتہ کی مہلت دی جاتی ہے۔ دیگر پلاٹ نمبر 65 (آزاد میگا مارٹ) کے حوالے سے مسؤل کا اظہار ہے کہ یہ اراضی واحدتاً مسؤل کی ملکیت نہ ہے بلکہ دیگر حصہ دار بھی ہیں۔ اس حوالے سے انتظامیہ کو ہدایت کی جاتی ہے کہ وہ تجاوز شدہ رقبہ کو واگزار کرائیں اور اگر مالکان کو تعمیر شدہ عمارت میں ترمیم کی نسبت مناسب اقدامات کے لیے وقت درکار ہو تو نوعیت کے مطابق انہیں مطلوبہ مہلت دی جائے تاہم بہر صورت تجاوز شدہ رقبہ کو واگزار کرایا جائے۔ ڈپٹی کمشنر میرپور اور دیگر متعلقہ ادارہ جات کو ہدایت کی جاتی ہے کہ وہ تجاوزات کے خاتمے اور فیصلہ عدالت ہذا پر عملدرآمد میں پیشرفت کی نسبت ماہانہ رپورٹ ہر ماہ کی 15 تاریخ تک ایڈیشنل رجسٹرار میرپور کے پاس جمع کرائیں۔"

In the light of the above discussion, we have arrived at the conclusion that the alleged contemnor deliberately by violating the judgment of the Court tried to undermine the authority of the Court, thus, he made himself liable for punishment for the commission of contempt of Court.

8. We do not agree with the argument of the learned counsel for the respondent that in *Muhammad Azeem Dutt's* case (supra) the

master plan of Mirpur city was under consideration, whereas, the land in question is not included in the master plan, therefore, it cannot be said that the respondent violated the directions of this Court issued in the referred judgment; as in the judgment (supra) the observations/directions have also been given regarding the land situate within the municipal limits as well as for protection of the land reserved for public place/public purpose. As the land in question is a State land adjacent to Mangla Lake which also falls within the definition of public place, moreover, the same is situate within the municipal limits; therefore, it cannot be said that the directions given in the judgment (supra) are not applicable in the instant case. In this regard, some of the observations and directions given by this Court in the judgment (supra) are reproduced here which read as under:-

"مندرجہ بالا خصوصی قانون کے علاوہ آزاد جموں و کشمیر میں شہری سہولیات کے حوالے سے آزاد جموں و کشمیر لوکل گورنمنٹ ایکٹ ۱۹۹۰ بھی نافذ العمل ہے جس کے شیڈول V میں لوکل کونسل کے علاوہ بلدیہ کی لازمی ذمہ داریوں کا تذکرہ کیا گیا ہے جن میں صفائی، صحت عامہ، تعلیمی ادارے، ٹائون پلاننگ بشمول ماسٹر پلان کی ترتیب، گلیوں میں پانی کی نکاسی، کھلی جگہوں کی فراہمی، عوام الناس کے مفاد اور خدمات کے لیے اراضی کا مختص کیا جانا، شاہراہ عام اور گلیوں کی فراہمی، ناجائز تجاوزات کو روکنا، عوامی منڈیوں، عوامی تفریح کے لیے باغات، لائبریریوں، فلاحی اداروں، فلاحی گھروں، قبرستان اور شمشان گھاٹ کا قیام جیسے تقریباً ۲۷ قسم کے معاملات شامل ہیں۔ جہاں تک عمارتوں کی تعمیر اور نقشہ جات کی منظوری کا تعلق ہے تو شمار یہ ۲۶ میں اس نسبت خصوصی طریقہ کار وضع کیا گیا ہے اور بلدیہ کا نقشہ منظور نہ کرنے پر حق اپیل روبرو حکومت فراہم کیا گیا ہے۔ اس طرح قوانین نافذ الوقت کے تحت بلدیہ حدود میں آباد شہریوں کا یہ حق ہے کہ انہیں تمام تر بنیادی شہری ضرورتیں فراہم کی جائیں اور اس مقصد کے لیے منصوبہ بندی کی جا کر اُس پر عملدرآمد کو یقینی بنایا جائے۔ ترقیاتی اور بلدیاتی اداروں کا قیام انہی مقاصد کو مد نظر رکھتے ہوئے عمل میں لایا گیا ہے تاکہ غیر منظم اور بے ڈھنگے طریقے سے کی گئی تعمیرات کو روکا جائے اور شہری ضرورتوں سے محروم بستیوں اور آبادیوں کو انسانی معاشرت اور تمدن کے مطابق آباد اور منظم کیا جاسکے۔ اگر قوانین کی روح اور انسانی زندگی کے تمدنی تقاضوں کو مد نظر رکھا جائے تو اس میں کوئی دوسری رائے نہ ہے کہ اجتماعی انسانی آبادی میں پارکوں، سڑکوں، گلیوں، قبرستانوں اور دیگر مذہبی تقاضوں کے مطابق عبادت گاہوں کے لیے جگہ کا مختص کیا جانا اور منصوبہ بندی کرنا لازمی ہے۔ اس حوالہ سے آزاد کشمیر میں عموماً اور میرپور میں خصوصاً ہر خاص و عام، اداروں کی جانب سے ماسٹر پلان کی خلاف ورزی اور اجتماعی شہری حقوق کی پامالی سے متاثر اور رنجیدہ نظر آتا ہے۔ عدالتی ریکارڈ پر یہ بات بھی موجود ہے کہ کئی ایک مقدمات میں سڑکوں اور گلیوں کے لیے مختص جگہوں پر اداروں نے انتہائی غفلت سے خلاف قانون

رہائشی پلاٹس کی تخلیق کی ہوئی ہے۔ اسی طرح نالوں، پارکوں اور دیگر تہذیبی ضرورتوں کے لیے مختص جگہوں کو بھی انفرادی مفادات کے پیش نظر رہائشی پلاٹس میں تبدیل کر دیا گیا جس سے نہ صرف قانونی مالکان اور رہائشی باشندوں کے حقوق بُری طرح متاثر ہوئے بلکہ صحت، صفائی، ماحول، ٹریفک وغیرہ جیسے سنگین مسائل نے بھی جنم لیا جس سے لوگوں کی زندگی اجیرن ہو چکی ہے۔ یہ تمام صورتحال متعلقہ اداروں کی اپنے فرائض کی ادائیگی میں کوتاہی اور ناجائز اختیارات کے استعمال کا شاخسانہ ہے۔ مفاد عامہ کے لیے مختص جگہوں کی ہیئت تبدیل کرنے یا دیگر اغراض کے لیے استعمال والاٹ کرنے کا عمل نہ صرف قانون کے مغائر ہے بلکہ عدالت ہدائے ہمیشہ مفاد عامہ کے لیے مختص جگہوں کو اسی مقصد کے لیے استعمال کرنے کو لازمی قرار دیا جس مقصد کے لیے وہ مختص کی گئیں۔ اس ضمن میں مطبوعہ فیصلہ عنوانی چوہدری عبدالحق

وغیرہ بنام محمد مالک وغیرہ (۱۹۹۷ سی ایل سی ۴۴۲) میں قرار دیا کہ:

8. The respondents, in our view, could not substantiate their claim that the area under dispute was not reserved for common purposes of an Eidgah of residents of the locality and even not an iota of material was brought on record in support of their claim. The High Court, thus, committed an error in accepting the writ petition. Keeping in view the peculiar facts and circumstances of the case, we have formed the view that the Revising Authority rightly reached the conclusion that the

area reserved for Eidgah should remain reserved as such."

It has further been held in paragraph No.17 of the judgment that :-

"17- بالا صورتحال کے پیش نظر ہم اپیل ہذا کو منظور کرتے ہوئے بذیل احکامات جاری کرنا ضروری سمجھتے ہیں:-

الف- حکومت انتہائی بااختیار انکوائری کمیشن مقرر کر کے اُن پلاٹس کا تعین کرے جو بلدیہ میرپور نے ماسٹر پلان کی خلاف ورزی کرتے ہوئے چائے کٹنگ یعنی قانونی طور پر الاٹ شدہ پلاٹس کو مختصر کر کے اور مفاد عامہ یعنی سڑکوں، نالوں، گلیوں، پارکوں اور مسجدوں کے لیے مختص جگہوں کو متاثر کرتے ہوئے تخلیق و الاٹ کیے گئے۔ اس طرح سے تخلیق کردہ پلاٹس کے تعین کے بعد ماسٹر پلان کو حتی الامکان بحال کیا جائے۔

ب- جیسا کہ اوپر ذکر کیا جا چکا ہے کہ ترقیاتی اور بلدیاتی ادارے شہری سہولتیں فراہم کرنے اور قانون کے تقاضوں پر عملدرآمد کروانے کے پابند ہیں لیکن یہ ادارے شہری تمدنی ضروریات یعنی سڑک، گلی، پارک، باغات، تفریح و کھیل، عبادات اور ترفین کے لیے جگہ فراہم کرنے میں بُری طرح ناکام رہے ہیں۔ اس ضمن میں قانون کی منشاء کے مطابق قانون پر عملدرآمد کیا جائے اور حکمت عملی وضع کی جائے تاکہ آئندہ ایسی صورتحال کا سامنا نہ کرنا پڑے

ج- انکوائری کمیشن اُن افراد کی ذمہ داری کا تعین بھی کرے جنہوں نے ماسٹر پلان کی خلاف ورزی کرتے ہوئے درج بالا غیر قانونی طریقے سے پلاٹس تخلیق و الاٹ کیے اور اس ساری صورتحال کا موجب بنے۔ مزید برآں ان افراد کے خلاف تحت قانون تادیبی کارروائی عمل میں لائی جا کر ایسی لا قانونیت کا تدارک کیا جائے۔

د۔ حکومت عدالت میں رپورٹ پیش کرے کہ عدالت ہذا کے متذکرہ بالا فیصلہ (2001 ایس سی آر 263) پر اتنا عرصہ گزرنے کے باوجود عملدرآمد کیوں نہ کیا گیا اور فیصلہ کے باوصف اس کی مسلسل خلاف ورزی کیوں جاری رکھی گئی۔

ذ۔ حکومت بلدیاتی و ترقیاتی اداروں کو شہریوں کو بنیادی ضروریات کی فراہمی کے لئے عملی اقدامات اٹھانے پر پابند کرے۔ اور نافذ العمل قوانین و قواعد پر بلا تخصیص سختی سے عملدرآمد کرایا جائے۔"

From the findings reproduced hereinabove, it becomes crystal clear that the judgment delivered in *Muhammad Azeem Dutt's* case (supra) is not only confined to the master plan rather it covers the public places and State land. Even otherwise, the encroachment in the State land or private land is highly condemnable act which cannot be expected from an elected member of the Legislative Assembly/Minister of the Government.

9. One of the arguments of the learned counsel for the respondent was that the petitioner and the other persons who filed affidavits against the respondent belong to an

opposition party/rival candidate of the respondent; therefore, the contempt application is politically motivated and liable to be dismissed on this score. Firstly, we deem it proper to observe here that the Constitution, which is the supreme law of the land, confers the powers upon the Court to take action against the contemnor. From the bare reading of the provisions of Article 45 of the Interim Constitution, 1974 read with section 3 of the Contempt of Court Act, 1993 and Order XIVII, Rule 1 of the Supreme Court Rules, 1978 it is very much clear that the Court can take the cognizance of its contempt suo motu. In this regard, detailed discussion has been made in the case reported as *Robakar-e-Adalat v. Khalid Ibrahim* [2019 SCR 17] in the following terms:-

”5- جہاں تک دوسرے نکتے کہ قانون توہین عدالت کی آئینی و قانونی حیثیت کیا ہے، کا تعلق ہے معاملہ زیر بحث میں قانون توہین عدالت کی

نسبت بھی ابہام پیدا کرنے کی کوشش کی گئی ہے۔ قانون توہین عدالت محض کسی فرد یا جج کے تحفظ کے لیے نہیں بنایا گیا اور نہ ہی یہ آئین کی منشاء کے مغاثر ہے۔ اس ضمن میں ہماری رہنمائی مطبوعہ فیصلہ عنوانی سینیٹر حاجی عدیل بنام راجہ ایم عباس وغیرہ (۲۰۱۳ ایس سی ایم آر ۳۴۶) سے ہوتی ہے جس میں بذیل قرار داد صادر کی گئی ہے:-

'9. This Court has repeatedly and consistently held that the ultimate purpose of proceedings for contempt is not the protection of a Judge personally but in fact it is for the protection of the public at large, whose rights and interests would obviously be affected, if by any act or omission of any party, the authority of the Court is lowered and the confidence of the people in the Administration of Justice is diminished or weakened.

قانون توہین عدالت نہ صرف نظام فراہمی انصاف کے لیے ضروری ہے بلکہ اس سے بھی بالاتر اس قانون کا آئین میں دیے گئے بنیادی حقوق سے بھی گہرا رشتہ ہے۔ تمام دنیا کے دساتیر میں توہین عدالت کی شقیں موجود ہیں اور اس کے ساتھ ساتھ ذیلی قانون سازی بھی نافذ العمل ہے جس کا بنیادی مقصد عدلیہ کے ادارے کو اس کے فرائض منصبی کی انجام دہی کی نزاکتوں اور ضرورتوں کے مطابق تحفظ فراہم کرنا ہے۔ اگر عدلیہ کو یہ تحفظ حاصل نہ ہو تو معاشرے کا کوئی بھی طاقتور گروہ یا فرد عدلیہ کے فیصلوں کو غیر موثر کر دے یا فیصلہ صادر کرنے والے ججز کو عدم تحفظ کا شکار کر دے اور طاقت کی بناء پر جج یا عدلیہ پر یلغار کر دے۔ ایسی صورت میں نظام فراہمی انصاف نہ صرف مجروح ہو بلکہ مفلوج ہو کر رہ جائے کیونکہ فرائض کی انجام دہی کی نوعیت کے اعتبار سے عدلیہ کو یہ تحفظ حاصل ہونا ضروری ہے۔ اس حوالے سے ہم عدالت ہذا کے مطبوعہ فیصلہ عنوانی احمد نواز تنولی بنام چیئرمین آزاد

جموں و کشمیر کو نسل و غیرہ (۲۰۱۶ ایس سی آر ۹۶۰) کا حوالہ دینا مناسب خیال کرتے ہیں جس میں بذیل قرار دیا گیا:-

21'----- جب کوئی جج موثر، طاقتور افراد، طبقات یا گروہ کے مفادات اور توقعات کے خلاف فیصلہ کرے اُس کو متنازعہ بنا دینا، قانون کی بالا دستی نہیں بلکہ قانون شکنی ہے اور یہ عدلیہ کا تحفظ نہیں بلکہ عدلیہ پر حملہ ہے۔ عدلیہ کا وجود فرائض کے اعتبار سے طاقتور طبقات، قانون شکن افراد اور گروہوں کی سرکوبی کے لیے ہے۔ عدلیہ نے ہمیشہ طاقتور، قانون شکن سے کمزور اور مظلوم کا حق واپس دلا کر قانون کی عملداری قائم کرنا ہوتی ہے۔ کمزور طبقات کی کوئی موثر زبان نہیں ہوتی کہ وہ عدلیہ کی پشت پر کھڑے ہوں اور نہ ہی قانون کی عملداری پر عدلیہ کی تشہیر ہوتی ہے۔ جس کے مقابلے میں طاقتور افراد، طبقات اور گروہوں کے مفادات عدلیہ کے وجود سے تکمیل پذیر نہیں ہوتے ایسے طاقتور افراد، طبقات اور گروہ موثر آواز رکھتے ہیں اور عدلیہ کو دباؤ میں لانے کے لیے ناجائز مقاصد، خبث باطن، مخصوص عزائم کی تکمیل کے لیے سازشیں کرنے کی کوشش کرتے ہیں تاہم عدلیہ کو بیدار رہتے ہوئے ایسے عزائم کو ناکام بنانا ہوتا ہے اور اپنے فرائض انجام دیتے ہوئے قانون کی بالا دستی کے لیے کردار ادا کرنا ہوتا ہے۔-----'

6- عدلیہ کی نوعیت ذمہ داری کے پیش نظر آئینی و ذیلی قانون سازی کے تحت توہین عدالت کا تصور دیا گیا ہے۔ تمام دساتیر میں نہ صرف بنیادی آئینی حقوق کا تحفظ کیا گیا ہے بلکہ ان حقوق کا موثر اطلاق و نفاذ آئین کی بنیادی روح و منشاء ہے۔ مہذب دنیا کی دساتیر میں سب سے اہم حصہ بنیادی حقوق کا تعین ہوتا ہے اور بقیہ آئین ان بنیادی حقوق کے ارد گرد گھومتا ہے۔ اور عدلیہ کے وجود کا بڑا مقصد ہی آئین میں دیے گئے بنیادی حقوق کا تحفظ اور ان کے عملی نفاذ کو یقینی بنانا ہے۔ یہ ذمہ داری اسی وقت نبھائی جاسکتی ہے جب عدلیہ کو تحفظ حاصل ہو۔ اسی بات کے پیش نظر تمام دساتیر میں جہاں اظہارِ رائے کی آزادی کا حق فراہم کیا گیا ہے وہاں اس بنیادی حق کی حدود تعین

کرتے ہوئے اسے چند شرائط سے منسلک کیا گیا جن میں دیگر شرائط کے علاوہ توہین عدالت کی قدغن بھی شامل ہے۔ اس ضمن میں آئین اسلامی جمہوریہ پاکستان ۱۹۷۳ء کا آرٹیکل ۱۹ بذیل درج ہے:-

'19. Freedom of Speech, etc. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, commission of or incitement of an offence.'

جبکہ اس ضمن میں آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ء کے آرٹیکل ۴۴ کا ذیلی آرٹیکل ۹ بذیل درج ہے:-

'9. Freedom of speech. - Every State Subject shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.'

بنیادی آئینی حقوق میں دیئے گئے اسی تصور کو مد نظر رکھتے ہوئے الگ سے آئین اسلامی جمہوریہ پاکستان میں آرٹیکل ۲۰۴ اور آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ء میں آرٹیکل ۴۵ کا نفاذ کیا گیا اور آئین کی اس منشاء کے تحت ذیلی قوانین وضع کیے گئے۔ یہاں پر ہم اختصار کی غرض سے باقی ریاستوں

کے دساتیر کے حوالہ جات سے اجتناب کرتے ہیں لیکن تمام دساتیر میں اسی قسم کی آئینی شقیں نافذ العمل ہیں۔ حتیٰ کہ توہین عدالت کے دائرہ کار اور اطلاق کے حوالے سے لاتعداد فیصلہ بھی موجود ہیں جن میں سے مطبوعہ مقدمات عنوانی باز محمد کاکڑ وغیرہ بنام وفاق پاکستان (پی ایل ڈی ۲۰۱۲ سپریم کورٹ ۸۷۰ اور ۹۲۳) کا حوالہ دیا جاسکتا ہے۔ لہذا آئین کی روح و منشاء کے مطابق توہین عدالت کی آئینی دفعات اور قوانین پر عملدرآمد نظام فراہمی انصاف کو یقینی بنانے کے لیے ناگزیر ہے۔ اور اگر عدلیہ کے ادارے کو یہ قانونی و آئینی تحفظ حاصل نہ ہو تو فراہمی انصاف کا عملی مظاہرہ ممکن نہیں ہے۔

۷۔ عدالتوں کو تحفظ نہ صرف اس وقت دنیا میں نافذ دساتیر کے مطابق بلکہ قرآن و سنت اور شرعی نقطہ نظر سے بھی حاصل ہے۔ توہین عدالت کے قانون کی شرعی حیثیت جانچنے کا معاملہ وفاقی شرعی عدالت میں زیر غور آیا اور وفاقی شرعی عدالت کے مکمل بیچ نے متفقہ طور پر اس قانون کا قرآن و سنت کی روشنی میں جائزہ لینے کے بعد مطبوعہ فیصلہ پی ایل ڈی ۸۷۸ ایس سی ۲۰۰ میں بذیل رائے قائم کی:-

’۔۔ یہ عدالت کا ادب و احترام ہے کہ خلیفہ وقت بھی ایک عام آدمی کی طرح قاضی کے سامنے پیش ہوتا ہے، اور قاضی کے احتراماً کھڑے ہونے کو وقار عدالت کے منافی سمجھتا ہے، بلکہ ایسے شخص کو اس عہدہ کا اہل نہیں سمجھتا جو عدالت کے وقار کو مجروح کرے اور ایسے شخص کو معزول کیا جاسکتا ہے۔‘

۸۔ آئینی دفعات اور قوانین نافذ الوقت یعنی قانون توہین عدالت ۱۹۹۳ء اور آزاد جموں و کشمیر عدالت العظمیٰ قواعد ۱۹۷۸ء کے مطابق عدالت العظمیٰ اور عدالت عالیہ کو توہین عدالت کے معاملہ میں کُلی اختیار حاصل ہے۔ اس نسبت یہ عدالتیں کسی دائری درخواست کی محتاج نہ ہیں بلکہ از خود کارروائی کرنے کا کُلی اختیار رکھتی ہیں۔ اس حوالے سے ہماری رہنمائی مطبوعہ مقدمہ عنوانی پر یتیم پال

بنام عدالت العالیہ مدھیہ پردیش جیل پور (اے آئی آر ۱۹۹۲ سپریم
 کورٹ ۹۰۴) سے ہوتی ہے جس میں قرار دیا گیا ہے کہ:-

'13. As rightly pointed out by the High Court, these contentions in our opinion do not merit any consideration since every High Court which is a Court of Record is vested with 'all powers' of such Court including the power to punish for contempt of itself and has inherent jurisdiction and inalienable right to uphold its dignity and authority.

14 to 23

24. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Arts. 129 and 215 respectively cannot be restricted and trammled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit. It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior Courts as Courts of Record.

25.

26 to 41

41. The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being

Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any state or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemnor should be made aware of the charge against them and given a reasonable opportunity to defend himself.

اسی طرح آزاد جموں و کشمیر عبوری آئین ۱۹۷۴ء کے آرٹیکل ۴۵ میں بالصرحت درج ہے کہ عدالت العظمیٰ اور عدالت عالیہ کو توہین عدالت کے معاملہ میں سزا دینے کا اختیار حاصل ہے۔ جبکہ اس نسبت آزاد جموں و قاعدہ-۱ میں XLVII کشمیر عدالت العظمیٰ قواعد ۱۹۷۸ء کے حکم بالصرحت عدالت کو از خود کارروائی کا اختیار دیا گیا ہے۔ متعلقہ قاعدہ بذیل درج ہے:-

'1. The Court may take cognizance of its contempt suo motu or on a petition by any persons: Provided that where the alleged contempt consists of wilful disobedience of any judgment,

decree, direction, order, writ, or other process of the Court or a breach of an undertaking given to the Court or a Judge in Chambers, the Court may take cognizance suo motu or on a petition by the aggrieved person."

Similarly, in a case reported as *Suo motu case No.4 of 2010* [PLD 2012 SC 553], the apex Court of Pakistan while dealing with the contempt matter has held as under:-

"The learned Attorney-General began by submitting that there was no law of contempt in force in the country, in that, the Contempt of Court Ordinance 2003 having lapsed by efflux of time under Article 89 stood repealed under Article 264 of the Constitution and that Article 270AA did not protect the said Ordinance. This question squarely came before this Court in *Suo Motu Case No.1 of 2007* (PLD 2007 SC 688) where it was held that the Contempt of Court Ordinance (V of 2003) holds the field. This judgment had been affirmed by this Court in

JUSTICE HASNAT AHMED KHAN V. FEDERATION OF PAKISTAN (PLD 2011 SC 680). It was pointed out to the learned Attorney-General that even if there was no sub-constitutional legislation regulating proceedings of Contempt of Court, this Court was possessed of constitutional power under Article 204 to punish contemnors, with no restrictions on the exercise of power including that regarding quantum of punishment that can be imposed on the contemnor.”

Secondly, under law no one can be debarred to become an informer of the committal of the contempt; even though a stranger to proceedings can lay information before the Court by filing application or otherwise. In this regard, reference may be made to a case reported as *Ch. Zahur Ilahi, M.N.A. v. Mr. Zulfikar Ali Bhutto and 2 others* [PLD 1975 S.C. 383], wherein it has been held that:-

“We are in agreement with the learned Attorney-General that whether a proceeding should be drawn up for contempt or not against any person is a matter purely for the Court itself to decide but in the absence of any law or rule of the Court prescribing any specific procedure for regulating such proceedings, it is difficult to lay down that no person is entitled even to come before this Court to lay such an information, as Ch.Zahur Ilahi says he is doing, regarding a matter which might amount to contempt of Court. We have, therefore, decided that although in such matter it would be more appropriate to move the Court through the Attorney-General yet the application cannot be refused to be entertained on the ground that the petitioner is a total stranger to the proceedings pending in this Court. It can certainly be treated, in the absence of any rules or any law

debarring such a stranger from making such an application as at least an information laid before the Court for its consideration. Whether the Court will act upon it or not is an entirely different matter. It will depend upon a variety of circumstances, such as, the seriousness of the matter, the nature of the offending speech or publication, the occasion on which it is made, the intention of the maker and above all the bona fides of the applicant or informant."

In the case in hand, in view of the principle of law enunciated in the referred pronouncement, the application filed by the petitioner has the status of just an information and now the matter is between the Court and the contemnor and the Court has to decide the same keeping in view the gravity of the contempt and the other aspects relevant to decide the contempt of Court matters and in

this regard the sole discretion lies with the Court. Thus, mere on the ground that the petitioner is a member of rival political party, the application filed by him cannot be set at naught.

As we have held in paragraph No.7 of the judgment that the alleged contemnor deliberately by violating the judgment tried to undermine the authority of the Court and committed contempt of Court; therefore, he is convicted and punished with imprisonment till rising of the Court. The contemnor stands disqualified from being elected or chosen as, and from being a member of Legislative Assembly for a period of 5 years from today. Let a copy of this judgment be sent to the Election Commission for an immediate appropriate action.

Muzaffarabad,
20.08.2019

JUDGE

CHIEF JUSTICE

I have had the privilege to go through the proposed judgment drafted by my learned brother, Mr. Justice Raja Saeed Akram Khan, which is one of the landmark judgments and surely trendsetting in relation to rule of law. Although, the judgment is comprehensive one and according to the facts and circumstances of the case no further addition is required, however, I deem it appropriate to clarify the scope of contempt of Court proceedings.

2. The Azad Jammu and Kashmir Supreme Court and High Court are not only the constitutional superior Courts but also guarantor and protector of Constitution and duty bound to ensure the rule of law. The Courts also have to ensure inexpensive and expeditious justice. The Azad Jammu and Kashmir Supreme Court has been recognized as an ultimate constitutional apex Court in relation to administration of justice and supremacy of law, that is why the Constitution has not only vested the Supreme Court with vast powers but also bound all the executive and judicial authorities throughout the Azad Jammu and Kashmir to act in aid of the

Supreme Court and its decisions are made binding upon all the Courts in Azad Jammu and Kashmir.

3. Under Article 45 of the Azad Jammu and Kashmir Interim Constitution, 1974, the Azad Jammu and Kashmir Supreme Court and High Court are vested with the vast powers in relation to the contempt of Court and exercise of these powers has been further regulated by law but it does not mean that through any subordinate legislation the powers of the Supreme Court or the High Court vested under Article 45 of Azad Jammu and Kashmir Interim Constitution, 1974 can be curtailed or controlled. It is suffice to refer here the case reported as *Baz Muhammad Kakar & others vs. Federation of Pakistan & others* [PLD 2012 Supreme Court 923], wherein it has been held that:-

“Having considered the dictionary meaning of the word ‘regulate’ and the interpretation given to it by the Superior Courts in the different judgments noted hereinabove, we reaffirm the law laid down in *Khalid Masood’s case* (supra) that the law referred to in Article 204(3) relates to procedural matters or matters which have not been provided for and though the exercise of the power conferred on a Court by this Article may

be regulated by law and subject to law by rules made by the Court, but it does not mean that a statute can control or curtail the power conferred on the Superior Courts under this Article nor in the absence of a statute on the above subject, the said Article will be inoperative.”

For carrying out the purpose of constitutional provisions envisaged under Article 45, the Contempt of Courts Act, 1993 is in force, whereas, Order XLVII of the Azad Jammu and Kashmir Supreme Court Rules, 1978 deals with the contempt proceedings. Here, I would like to refer section 3 of the Contempt of Courts Act, 1993 which reads as under:-

“3. Contempt of Court. Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or to scandalize a judge in relation to his office, or to disturb the order or decorum of a Court, is said to commit “Contempt of Court”.

Provided that the following shall not amount to commission of contempt of Court—

- (i)
- (ii)
- (iii)
- (iv) to (x)"

(underlining is mine)

A bare reading of the above statutory provisions clarifies that the act of contempt of Court is not only confined to the Court proceedings, judgments or orders but it also includes the act of tending to bring the authority of a Court or the administration of law into disrespect, disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law. According to the settled principle of administration of justice and the above referred statutory provisions the act of contempt of Court has very wide scope and the same has to be liberally construed, thus, not only any act of omission relating to the Courts proceedings, judgments or orders amounts to contempt of Court but any intentional act of any person or authority tending to bring the administration of law into disrespect, disrepute or to interfere with or obstruct or interrupt or prejudice the process of law, also amounts to

contempt of Court. For initiating the proceedings, it is not necessary that only the parties to any matter subjudice before the Court should have been proceeded against for contempt of Court rather the contempt proceedings can be initiated against any person who intended to or tends to bring the authority of the Court or the administration of law into disrespect, disrepute or to interfere with or obstruct or interrupt or prejudice the process of law.

4. While dealing with the scope and determination of the contempt of Court, the apex Court of Pakistan in the case reported as *Naveed Nawazish Malik vs. Ghulam Rasool Bhatti & another* [1997 SCMR 193] has held that:-

“7. This brings us to the question whether on these findings respondents Nos.1 and 2 have committed contempt of Court.

8. The learned counsel for the petitioner contended that respondent No.1 had given an undertaking to vacate the premises but has not only resiled from it but contrived a device to deprive the petitioner of the fruits of the decree by forging documents and both have thus violated the order of

this Court and committed contempt of Court. The term Contempt of Court has not been defined but jurists and judges have provided abundance of material which provide guideline for determining what is Contempt of Court. In Oswald's Contempt of Court it has been defined as follows:-

'To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation.'

Article 204 of the Constitution confers jurisdiction on the Supreme Court and a High Court to punish any person who "abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court." Section 3 of the Contempt of Court Act in general terms indicates the area of exercise of jurisdiction by the Courts in a contempt case. To disobey or disregard an order, direction or process of Court which a person is legally bound to obey, willful breach of any undertaking given to a Court, any act intended to or tend to bring the authority of the Court or the administration of law into disrespect or disrepute and to obstruct, interfere, interrupt or prejudice the process of law or the due course of any judicial proceeding fall within the category of contempt of Court.

9. At this stage it may be pointed out that from time immemorial Courts being the sole institution to dispense justice amongst person and person, and State

and person have been venerated, respected and safeguarded against onslaughts which may bring them in disrespect or disrepute. Any attempt to disobey or show disrespect to any order or direction issued by a Court or to interfere or prejudice the administration of law and justice has been not only disfavoured but made punishable. Such a respect and veneration is inherent in the Courts and administration of justice for the unique and enviable position the Courts hold in the governance and administration of the State. The Courts hold a pivotal position to dispense justice which is the cornerstone of a stable society. Dispensation of justice is an attribute of God delegated to man for which he is directly accountable to God. Justice imparted by Courts have greater degree of respectability and public acceptance than those who intend to perform such act beyond the realm of judiciary. It is the sole arbiter of the right of people, it serves as a bulwark, a safety valve between the people and the State administration. It is a forum where aggrieved people not only make claim but complain and express their vent up grievances for determination of their rights. Such unique position in the constitutional set up whose independence is guaranteed, is entitled to all respect, regard and veneration. To keep the respect and confidence in the judiciary alive, it is essential that willful disobedience of its order, obstruction in the administration of law or disrespect to the Courts must be viewed seriously. The law therefore makes such actions or inactions and acts of omission or commission punishable. This is so with the pious object to keep the stream of justice

unpolluted, the edifice of justice untarnished and the fountain of justice clean, clear and pure. Administration of justice can be effective only if its image and respect remains unchallenged, the majesty and dignity of law Courts is not compromised and confidence of the people is not shaken. The dignity and discipline should be maintained from within and outside. The jurisdiction of the superior Courts in contempt cases is intended to protect itself from any action tending to obstruct the impartial administration of justice or impair the dignity of the Court. Here reference can be to the following observation in Sir Edward Snelson v. Judges of the High Court of West Pakistan (PLD 1961 SC 237):-

'The power for contempt is given to such superior Courts in order that they may swiftly and summarily perform one of their most important duties which is to protect themselves against willful disregard or disobedience of their authority, by visiting with prompt punishment any conduct which tends to bring their authority and the administration of justice into scorn or disregard. It is evidence that a Court of justice which has no power to vindicate its dignity or which having the power fails to perform the duty of vindicating its dignity would swiftly lose all the hold upon the public respect and in consequence the maintenance of law and order through the agency of the Courts of justice would be rendered impossible. The dignity and authority of the Courts has a link with the supremacy and majesty of the law. Any conduct which is calculated to

diminish that dignity or authority is a criminal contempt which a Court is under duty to punish. The Courts of justice are a creation of sovereign authority, but their mainstay rests in the public confidence, and anything which is calculated to withdraw the public confidence from them has the character of a libel to be visited by action in contempt.'

Any form or interference in the flow of course of justice amounts to contempt. Such act should be intended to interfere with due process of law and course of justice.

In the case reported as *Mr. Muhammad Shafi, Advocate vs. Ch. Qadir Bakhsh, Magistrate Lahore*

[PLD 1949 Lahore 392], it has been held that:-

"Oswaid in his book on Contempt of Court has given the following definition of the term:--

'Contempt of Court' is so manifold in its aspects that it is difficult to lay down any exact definition of the offence. 'It is defined or described to be a disobedience to the Court, an opposing or a despising the authority, justice or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order, or decree of the Court.' Lord Hardwicke, L. C. said. 'There are three different sorts of contempt. One kind of contempt is scandalizing the Court itself. There may be likewise a

contempt of this Court, in abusing parties who are concerned in causes here. There may be also a contempt of this Court, in prejudicing mankind against persons before the cause is heard'.

'To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation. Publishing improper attacks on Judges of superior Courts and their juries, reflecting on their action in the administration of justice, attempting to intimidate or improperly to influence Judges, or speaking contemptuous words to or of Judges of Inferior Courts when is the actual execution of their duty" amounts to contempt of Court.'

It is clear that the respondent used contemptuous words regarding Mian Muhammad Salim, Sub-Judge, in relation to the work that he was carrying on in the execution of his duty, that is in issuing a temporary injunction. If the abuse of the witnesses who appear in a Court of law is to be regarded as contempt of Court on the ground that it would intimidate other witnesses and thus impede the course of justice, it must be held that the intimidation of a lawyer, who is representing one of the parties, is also contempt of Court as it would seriously interfere with the administration of justice."

5. According to the settled principle of law following have been held to be the contempt of Court:-

- (1) allegations against judges made by legal practitioner in letter to President;
- (2) administrative acts of High Court ... Criticism amounting to scandalizing the Court;
- (3) interrupting work of Court and challenging legality of Court's order before it ... gross contempt;
- (4) to accuse a Judge of a superior Court of acting in an arbitrary manner and with personal hostility;
- (5) scandalizing Court or a Judge i.e. attacking the character of the Judge or the quality of his work or by imputing improper motives to him or by suggesting that action is being contemplated to remove him from his office;
- (6) floating orders of Courts on erroneous construction;
- (7) threat of personal harm to Judge ... worst kind of contempt;
- (8) review of order of processor on the ground that Supreme Court had mis-interpreted the law;
- (9) after verdict of conviction upheld by Supreme Court, holding of an inquiry to find in roads in the judgments of the superior Courts just to help out a convict;
- (10) violation of status quo order granted by Supreme Court or the other Courts;
- (11) willful disobedience of lawful order of the Supreme Court;

- (12) issuance of false medical certificate by doctor in respect of ailment of an under trial prisoner;
- (13) differing with the interpretation placed by the High Court and the Supreme Court by using intemperate language by Commissioner;
- (14) act of extreme highhandedness towards bailiff of Court, report to threat as well intimidatory behavior to bailiff during habeas corpus proceedings; and
- (15) the intimidation of a lawyer, who is representing one of the parties, is also contempt of Court as it would seriously interfere with the administration of justice.

The above enumerated are few instances and not comprehensive or complete rather according to the facts and circumstances of each case, to be determined by the Court while applying its judicial mind, the actions falling within liberal connotation of contempt of Court as hereinabove mentioned may be included.

With the above note, I fully agree with the judgment drafted by my learned brother, Mr. Justice Raja Saeed Akram Khan.

CHIEF JUSTICE

Mirpur,
20.08.2019