

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

CR. MISC. NO.11 OF 2018

(In the matter of implementation of judgment of this Court titled
Muhammad Azeem Dutt vs. Raja Khadim Hussain & others
2017 SCR 577)

Robkar-e-Adalat

VERSUS

Deputy Commissioner, Mirpur & others

For the state:

Sheikh Masood Iqbal,
Advocate General & Mr.
Ahmed Saad Khan, Asst.
Advocate General

For the intervenor-
applicant(s):

Syed Nishat Kazmi,
Zulfiqar Ahmed Raja, Raja
Khalid Mehmood Khan,
Javed Najam us Saqib,
Muhammad Zubair Raja,
Raja Inamullah Khan, Fiaz
Haider Nawabi, Hafiz
Arshad Mehmood etc.

For MDA:

Mr. Farooq Akbar Kiani,
Advocate.

In person:

Director General, MDA &
Deputy Commissioner,
Mirpur.

Date of hearing: 18.04.2024

ORDER

Raja Saeed Akram Khan, C.J.- This Court vide judgment reported as *Muhammad Azeem Dutt & others vs. Raja Khadim Hussain & others* [2017 SCR 577], issued following directions:-

"۱۔ 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 کنگ 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 والاٹ 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 تدفین 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 والاٹ کیے اور اس ساری صورتحال کا موجب بنے۔ مزید برآں ان افراد کے خلاف تحت قانون تادیبی کارروائی عمل میں لائی جا کر ایسی لاقانونیت کا تدارک کیا جائے۔

د۔ حکومت عدالت میں رپورٹ پیش کرے کہ عدالت ہذا کے متذکرہ بالا فیصلہ (۲۰۰۱ ایس سی آر ۲۶۳) 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 لیے عملی اقدامات اٹھانے پر پابند کرے۔ اور نافذ العمل قوانین و قواعد پر بلا تخصیص سختی سے عملدرآمد کرایا جائے۔

اپیل ہذا مندرجہ بالا ہدایات کے ساتھ یکسو کی جاتی ہے۔ خرچہ مقدمہ بدمہ فریقین رہے گا۔"

However, it was observed that these directions were not adhered to, leading to the maintenance of this Robkar for the enforcement of the judgment. During proceedings of the case, several steps were taken and numerous reports were submitted. Finally, in the light of direction issued by this Court, the Government vide notification dated 17.10.2023, constituted a high-level committee under the supervision of Chief Secretary of Azad Jammu and Kashmir for inquiring the allotments made in deviation of judgment of this Court. The Committee consisted of following members:

- (i) Irshad Ahmed Qureshi, Secretary Law;
- (ii) Muhammad Raqeeb Khan, Secretary Food;
- (iii) Tanveer Qureshi, Chief Engineer (South) Physical Planning & Housing;
- (iv) Amjad Siddique, Superintending Engineer Public Works; and
- (v) Kh. Ejaz Ahmed, Secretary Board of Revenue.

The Committee was initially granted six weeks to complete its task, however, subsequently this time was extended to four months. The Committee did a laborious work with the technological support of Pakistan Space and Upper Atmosphere Research Commission (SUPARCO) and Land Use Planning (LUP) and submitted the following recommendations:

“7.1 The Committee recommends that:-

- i) A Master Plan or revised Master Plan of specified area of MDA may be prepared and got approved as early as possible keeping in view the availability of land, future trend of urban growth, and to give legal protection for safeguarding rights of bonafide allottees and buyers as far as practicable through appropriate legislative and administrative measures;
- ii) Once the Master Plan is approved by the competent authority, the Cabinet on the recommendations of the MDA Board may approve sector plans as far as practicable without comprising public places. For this purpose, necessary amendments may be made in the MDA Ordinance;
- iii) A panel of experts may be appointed to probe illegal allotments made by Ex-DGs, including allotments made between November, 2021 to December, 2022, TPs, Director Estate and other officials and complaints pertaining to allotments of plots through bunami transactions, overlapping allotments, assets beyond means;
- iv) Record pertaining to allotments and Sector wise maps/plans of MDA must be integrated into Geographic Information System (GIS) on the pattern of CDA, Islamabad through creation of Geo Spatial Cell within MDA;
- v) Henceforth, development of a Sector Plan, invitation for public to purchase residential and commercial plots should be made on the analogy of CDA, Islamabad;
- vi) Henceforward, all allotments including those against adjacent places may be banned until proper procedures and processes are laid down on the analogy of CDA;
- vii) MDA organizational structure may be reviewed for following purposes,-
 - a) Recruitment of gazetted position through PSC and others through open competition;
 - b) Service of MDA may inter- transferable; be declared inter-transferable;
 - c) Human Resource Audit;
 - d) Conflict of interest principle among employees must be introduced and adhered to;

- e) Service rules for all cadres of MDA employees with clear job description may be enforced at the earliest;
- f) Abolishment of employees allotment of plot quota;
- g) Capacity building and compulsory IT skills for all employees.”

For implementation of the aforesaid recommendations the Committee has also proposed a plan of action, which is the part of report. We wholeheartedly endorse the comprehensive recommendations put forth by the Committee, acknowledging the diligent efforts and expertise showcased by each member under the exceptional leadership of the Chief Secretary. Specially, the efforts of the then Secretary Law/Member of the Committee are highly admired. Their tireless dedication and meticulous approach have undoubtedly contributed significantly to the success and effectiveness of the outcomes presented.

It is spelt out from the report that more than 11000 violations have been made and to rectify the same the committee has suggested number of administrative/legislative steps. There is also no denial that the places which were reserved for public purposes have been illegally allotted while deviating from the

master plan. It is not out of place to mention here that all these illegalities have been done with the connivance of the relevant authorities. Today, the learned Advocate General who was present in the Court, very frankly admitted that violations have been committed in deviation of judgments of this Court. He also submitted that the Municipal Corporation also remained involved in these illegalities. It appears from the report that the Government is serious to implement the recommendations of the Committee, therefore, we are intended to dispose of this Robkar with a direction to the Government to take the effective measures in this regard.

This Robkar along with the ancillary proceeding is disposed of. Consequently, notices issued to former D.G. MDA and Town Planner are also discharged.

Before parting with, it's important to note that during proceedings of this case we found two lists of illegal allotments which were viral on social media. The same were sent to the Committee for verification of genuineness. Perhaps under the impression that the Court has directed for initiating proceeding; five officers

were suspended without holding any inquiry or determining the genuineness of the lists, whereas, no such direction was issued by this Court. However, to date, no inquiry has been conducted. It's concerning that civil servants are being kept suspended for an indefinite period. The Committee has not given any findings in this regard. The Director-General MDA acknowledged that the suspension was unjustified and without inquiry. A query was made to the Advocate General, whether any inquiry has been conducted against the suspended officers; he showed his unawareness about this matter. Therefore, we intend to direct the concerned authority to immediately reinstate the suspended officers to their duties. If the authority deems it necessary, it may require these officers to participate in the inquiry as per the law. Furthermore, the officers appointed on deputation whose performance is unsatisfactory may be repatriated to their parent department, and if found involved in any wrongdoing, they can be subject to an inquiry.

It's also crucial to note that under the guise of violations pointed out by the Committee, MDA and the Municipal Corporation must refrain from coercing and blackmailing the citizens.

Regarding the smooth functioning of the department, it may be mentioned here that not only the general public is suffering, but the department's revenue is also declining. The Director-General of MDA has submitted that no substitute of suspended staff has been provided, hence, due to shortage of staff the daily affairs of the department are being affected. This matter was raised with the authority time and again but no positive response has been received. The Advocate General is instructed to address this matter with the concerned authority promptly.

CHIEF JUSTICE
Mirpur,
18.04.2024

JUDGE

JUDGE