SUPREME COURT OF AZAD JAMMU & KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, C.J.
Kh. Muhammad Nasim, J.
Raza Ali Khan, J.

CIVIL APPEAL NO. 143 OF 2025
(Against the judgment of the High Court dated 21.10.2024 in writ petition No.854 of 2022)

Abdul Majid Anwar Khan & others

…. Appellant(s)

VERSUS

Muhammad Yahya Shah & others.

…. Respondent(s)

-:-:-:-:-:-:-:-:-:-

For the appellants: Mir Tanveer Hussain, Advocate.

For the respondents: Sheikh Masood Iqbal, Advocate-General, Sardar Karam Dad Khan, Ch. Aqif-ud-Din, Miss Farkhanda Abrar and Noshaba Iqbal, Advocates.

Date of hearing: 19.06.2025

JUDGMENT

Raza Ali Khan, J.- Through the titled appeal, the appellants have called in question the judgment dated 21.10.2024 passed by the learned High Court of Azad Jammu and Kashmir, whereby a writ petition filed by the private respondents herein was accepted, and the official respondents

were directed to protect the notification dated 24.09.2007 through which a large area of forest land was declared as *"National Musk Deer Park, Guraiz"* and to evict the illegal occupants therefrom.

2. The facts in brief, as narrated by the respondents (petitioners before the High Court), are that they are first-class State Subjects and residents of Union Council Guraiz, Tehsil Sharda. They submitted that a substantial tract of land comprising Compartment Nos. 16 to 42 of Janwal Block and Compartment Nos. 1 to 31 of Sohnar Block, measuring approximately 110,158 acres, was officially declared as *"National Musk Deer Park, Guraiz"* through a Notification dated 24.09.2007. It was asserted that relevant departments were constituted by the Government for protection and conservation of said national park. However, certain individuals unlawfully encroached upon portions of this land and constructed residential structures, thereby causing environmental degradation. A Commission was constituted, which submitted its report on 05.10.2018 recommending the eviction of the encroachers. Despite these findings, instead of initiating legal action against the unauthorized occupants, alleged efforts were made under the influence of a Member Legislative Assembly to allot segments of the national park land in their favour. The petitioners prayed for implementation of the aforesaid notification and for the removal of illegal encroachments. The learned High Court, after hearing the parties and examining the record, allowed the writ petition and issued the following direction:

> *"The epitome of the above discussion is that petition in hand is accepted and the notification dated 24.09.2007 stands protected, resultantly, the*

respondents especially District Administration of Neelum is directed to vacate the land of 'National Musk Deer Park, Guraiz' from illegal occupants and proceed the responsible in light of the report of commission dated 05.10.2018 and hand over the same to Department of Wildlife and Fisheries. Any proceedings regarding allotment of piece of land of National Park to private respondents or anyone, at any forum, shall be deemed as cancelled."

3. The appellants, being aggrieved by the said judgment, filed this appeal contending that their possession over the disputed land was not illegal, but was a consequence of compelling and humanitarian considerations. According to them, during the years 1982 to 1991, due to recurring natural calamities such as glacial movements and heavy snowfalls, they were displaced from their original habitats. As a result, they were resettled upon the subject land under oral directions allegedly issued by the then Chief Executive of the State, Army authorities, and the local administration. They claim to have constructed permanent houses and cultivated the land with the knowledge and tacit approval of official respondents, thereby investing substantial financial resources. It was further contended that they possess no alternate land for relocation, and that their possession spans over three decades.

4. In view of the public importance of the matter, leave to appeal was granted vide order dated 06.05.2025. Relevant portion of the said order reads as follow:

"After hearing the learned counsel for the parties, we are of the view that the propositions involved in this case are of public importance requiring detailed deliberation. Resultantly, leave is granted. The petitioners are directed to deposit security of Rs.1,000/- within a period of one week otherwise the leave granting order shall automatically stand rescinded.

> Pursuant to the Court's direction, the Commissioner, Muzaffarabad, appeared in person and was heard. He is hereby directed to obtain a comprehensive and detailed report from the Deputy Commissioner, Neelum and the Assistant Commissioner, Sharda regarding the present status of the disputed; the extent and nature of the structures/buildings, if any, constructed by the petitioners on the said land; the availability and identification of crown land in the vicinity or district that may be considered for potential adjustment or relocation of the petitioners. The report must be submitted before the next date of hearing. Meanwhile, the status quo prevailing at the moment shall be maintained."

5. In compliance with the aforementioned order, the Deputy Commissioner, Neelum submitted a detailed and comprehensive report, duly supported by record and photographic evidence. The relevant portion of the report reads as under:

> "بالا واقعات کی روشنی میں خلاصہ بحث یہ ہیکہ رقبہ زیر بحث جنگل ہے جس پر ناجائز قابضین نے نوتوڑ کرتے ہوئے مکانات اور زراعت کیلئے زمین ہموار کی اور حکومتی منظوری کا کوئی ثبوت قابضین کے پاس دستیاب نہ ہے۔ وقتاً فوقتاً حکومتی اتھارٹیز کے ساتھ حقوق ملکیت حاصل کرنے کیلئے پیش کی گئی درخواست باکے نتیجہ میں بھی کوئی حکومتی فرمان نوٹیفکیشن جاری شدہ نہ ہے۔ محکمہ جنگلات کی انکوائری رپورٹ مورخہ **05.10.2018** بھی قابضین کو محکمہ جنگل کی زمین پر ناجائز قابض بیان کرتی ہے اور قابضین کے پاس گاؤں پھولاوئی میں ملکیت رقبہ جات دستیاب ہیں جن پر ان کے مکانات موجود ہیں اور مزید آباد کاری کی بھی پوری طرح گنجائش موجود ہے۔"

The above report squarely undermines the foundation of the appellants' case. It confirms that the land in question is notified forest land, forming an integral part of the "National Musk Deer Park", and that the appellants are in unauthorized possession thereof. There exists no documentary evidence to suggest that their possession was ever sanctioned or regularized by any competent authority. Moreover, it has

been unequivocally affirmed that the appellants possess proprietary land in Village Phulawi, where their existing residences are located and further resettlement is feasible. Hence, the contention that the appellants have become landless or that no alternative land is available, stands falsified by the record.

6. It is a well-settled principle of law that forest land or a notified national park cannot be encroached upon under the guise of humanitarian considerations or oral permissions. Such protected lands are reserved for ecological preservation and environmental welfare of the State and its citizens and as such, cannot be subjected to allotment, possession or unauthorized occupation. The inquiry report dated 05.10.2018, and the recent report of the Deputy Commissioner conclusively establish the encroachment and illegal possession of the forest land by the appellants.

7. Although the learned counsel for the appellants questioned the veracity of the report submitted by the Deputy Commissioner, Neelum, was unable to identify any factual error, material inconsistency, or legal flaw therein. Furthermore, he failed to produce any documentary evidence capable to rebut the well-corroborated findings contained in the report. The report, being based on official records, site inspections, photographic documentation, and supported by earlier inquiries, carries a presumption of correctness, which the appellant, have failed to displace by any credible material.

8. In this view of the matter, the judgment of the High Court does not suffer from any legal infirmity. On the contrary, it is founded upon sound judicial reasoning, proper appreciation of facts, and inconsistent with the principles of

public interest and environmental conservation. Resultantly, the appeal fails and is hereby dismissed. The Forest Department is hereby directed to take immediate and effective action for the complete restoration of the land comprising the National Musk Deer Park, Guraiz, by removing all illegal encroachments and unauthorized constructions therefrom. The District Administration of Neelum is directed to extend full cooperation and provide all necessary administrative assistance to the Forest Department during the execution of this task. The entire operation shall be completed within a period of six months from the date of this judgment.

9. **Before parting with the judgment,** it is imperative to underscore that Forests constitute an integral component of the natural environment, playing a pivotal role in sustaining ecological balance. They regulate climate, contribute to atmospheric stability, and support diverse array of flora and fauna, thereby preserving biodiversity and harmonious existence of the various species within their natural ecosystems. Moreover, forests serve as a natural defense against soil erosion, anchoring the earth with their root systems, and thus mitigating the adverse effects of heavy rainfall and windstorms. The ecological significance of forests extends far beyond aesthetic appeal; they provide critical habitats for countless species of animal, birds, and insects and are vital to maintaining the delicate balance of ecosystems. Forests also act as the lungs of plants, absorbing carbon dioxide and releasing oxygen, thereby playing a crucial role in offsetting the detrimental effects of greenhouse gas omissions and ensuring the survival of all life forms, human and non-human life alike. However, the unchecked and unlawful felling of trees, coupled with encroachment upon forest lands poses a

serious threat to environmental integrity. Such acts not only violate environmental laws and forestry regulations but also result in degradation of vital natural resources. The unauthorized clearing of forest cover leads to in habitat destruction, ecological imbalance, and an increased frequency of climate-related disasters, including flooding, drought, and abnormal temperature fluctuations. These activities undermine both national policies and international obligations regarding environmental protections and sustainable development. Recently, we delivered a judgment in the case titled *Ilyas Jandalvi & others vs. PDA & others* [2022 SCR 812], in which observations were made concerning the urgent issue of deforestation. The relevant portion of the judgment reads as follows:—

> *"22. Before parting with, we would like to observe here in the public interest that Chhota Gala/Banjonsa Lake is a tourist resort. Surrounded by dense blue pine forest, mountains and lush green fields, it was a beautiful spot in the past but at present the place is full of garbage. The lake water is totally green due to algae. Instead of taking steps for protection of this valuable place to generate a huge revenue, the concerned are intended to ruin it by establishing a Housing Scheme nearby it. Surely, a Housing Scheme cannot be established without cutting the trees. It is unfortunate, catastrophic and shocking that the forests of the country are now almost extinct at decreasing rate. The deforestation is leading to increase in the spread of life-threatening diseases. The fauna and flora are better served by the natural growth of trees than the mountains of iron, cement and concrete. Moreover, the Banjonsa Lake surrounded by blue Pine Forest and other green bushes, is consisted of sharp slope bedrocks and cutting of sharp slope bedrocks may cause tons of siltation in the Mangla Dam as the natural course of water from Banjonsa Lake leads to Magla Dam Reservoir. The Supreme Court of Pakistan in an identical Suo Moto Case reported as (2010 SCMR 361) took the cognizance of the matter regarding establishment of New Murree Development Project in the Shamilat Deh land, on the*

following note, initiated by Mr. Justice Tassaduq Hussain Jillani, in the following manner:-

> *"The report of the International Union of Conservation of Natural Resources (IUCN) submitted to the Government and published on the front page in Daily "The News" dated 29TH March, 2005 makes starling and shocking disclosures about the apprehended adverse environmental impact of the proposed New Murree Project. The findings, if true, warrant serious attentions of all those concerned with the conservation of the Forests, Supply of Clean Water to the Twin Cities of Rawalpindi and Islamabad issues of siltation is Simly and Mangla Dams. The issues raised are likely to affect public-at-large with particular reference to the Fundamental Right enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, i.e the Right to life…*
>
> *The patriate Forest according to the afore-referred report has a highly fragile eco-system and was declared as reserved forest as far back as 1886 is going to receive the worst blow i.e. at least 50% of the existing standing stock of 1.4 million confer trees are likely to be cut. Imploring protection of this valuable forest reserve the report maintains that "the development of new township could result in the catastrophes like loss of protective forest cover resulting in more rapid runoff following storm event; higher peak stream flows; increased soil erosion; reduced groundwater infiltration; stream channel instability; and increased sedimentation….." Such adverse changes in watershed hydrologic conditions result in degradation of water quality for the population particularly residing in Islamabad, the report said, demanding, "to avoid such compound disasters and to ensure supply of safe water for twin cities, the valuable Patriata forests have to be preserved. "To develop new city by cutting sharp slope bedrocks will further aggravate the situation for new city and will cause heavy siltation in the Simly and Mangla dams." This move, it is said would cause serious damage to be ongoing Mangal Dam*

raising project, which was approved at a total cost of Rs. 62,552 billion including foreign exchange component of Rs. 9.6 billion. The main objective of the project was to raise Mangla Dam by 30 ft to regain the lost storage capacity due to silting and heavy sedimentation.""

23. We would also like to highlight here the benefits of the forests by reproducing here an extract from the judgment of the Lahore High Court, Lahore delivered in the case reported as Sheikh Asim Farooq vs. Federation of Pakistan & others [PLD 2019 Lahore 664], as follows:-

"8. It may be noted that the National Environment Information System (NEIMS), a project of United Nations Development Programme (UNDP), had published a Research Report in 2010 detailing the environment and biodiversity and ecological zones in Pakistan from forests to mountains and threatened flora and fauna and threatened species of animals. The report suggests that deforestation rate in Pakistan is estimated at 0.2% to 0.5% annually, which is the highest in the world and accounts for 4-6% decline in its wood biomass per annum. The total natural forest cover has reduced from 3.59 million hectares to 3.32 million hectares at an average rate of 27,000 hectares annually. The natural resource is decreasing at such an alarming speed that all the forest area will be consumed within the next few years. Some of the extracts from the Research Report are as follows:

1. Pakistan is a Forest Poor Country: Only 4.72 million hectares or 5.36% of its land mass is covered with forests. Table 1.7 of the Report suggests that there is declining forestation trend during the years 2000-2009.

2. Environmental Benefits of Trees: The value of intangible benefits is eight times greater than the tangible value of products and services of forestry sector. Many other "intangible" benefits are derived from forest including oxygen production, watershed value, scenic benefits, ecosystem synergism and flow, and a variety of other values essential for human health and quality of life. Forests also

provide a number of crucial ecosystem services, for example, their role in sequestering carbon from the atmosphere, protecting upstream watersheds, conserving biodiversity and gene-pools for future generations and in providing landscape beauty.

3. Biodiversity Conservation: 60-90% of all terrestrial species are found in forests having widespread economic and medicinal uses still unknown to mankind.

4. Forests and Carbon Sequestration: Forests are both a source of carbon dioxide (CO2) when they are destroyed or degraded and a sink when conserved, managed or planted sustainably. Forest vegetation and soils hold 40% of carbon stored in terrestrial ecosystems.

5. Forests and Water Quality: As population grows, the demand for clean drinking water becomes more acute. Besides this, need of water for agriculture, sanitation purpose, cooking needs and other uses is imperative. In Pakistan, 2 decades ago, no one had ever thought of purchasing water, but now people do purchase it, just because of depletion of forests in watersheds. Forest and plant cover are necessary to slow runoff and filter rainwater. When trees are in place, rainwater, which naturally flows downhill to the nearest stream, is slowed. Once slowed, rainwater seeps down to refill underground storage tanks or aquifers. In addition, water may be absorbed by the roots of trees and transpired by leaves so that it can cycle back for use again as rainwater. Forests prevent non-saline drinking quality water from running off too quickly to mix with the salt water of oceans. Once salty, water takes much longer to reenter the fresh water portion of the hydrological cycle, where it is most useful to humans.

6. Forests and Soil Quality: The roots of trees hold soil in place. Fertile soil that is needed to grow crops would otherwise be washed away in rainstorms, decreasing the amount of soil available for agriculture. Rich soil transfers nutrients to food, which contributes to human health.

7. Biodiversity Conservation: The forests are one of the largest repositories of biodiversity in the world. By some estimates they contain 60-90% of all terrestrial species found on the planet. Some of these could have widespread economic or medicinal uses that are still unknown to us. The conservation of these valuable genetic resources for future options that are yet undiscovered is thus a valuable service that forests provide.

8. Other Benefits: In addition to the above, the forests provide multiple benefits to environment, people, and animals. The list of some of such recognized benefits is as follows:

a. Forest cool air temperature by release of water vapour into the air;

b. At day time trees generate oxygen and store carbon dioxide, which helps to clean air;

c. Forest attracts wild life and offer food and protection to them;

d. Forests offer privacy, reduce light reflection, offer a sound barrier and help guide wind direction and speed;

e. Trees offer artistic functions such as creating a background, framing a view, complementing architecture, and so on;

f. Well managed forests supply higher quality water with less impurity than water from other resources;

g. Forests help in controlling the level floods and soil erosion;

h. Forest provides different kind of wood which are used for different purposes like making of furniture, paper, and pencils and so on;

i. Forest help in giving the direction of wind and its speed;

j. Forest helps in keeping environment healthy and beautiful;

k. Forests also minimize noise and air pollution and;

l. Forest helps the scientist to invent new medicine as forest has different kinds of plants and herbs.

All benefits quoted above are purely outcome of forests and cannot be derived from agriculture. If cost of these be calculated in terms of money, it will be far above the outcome/benefits of agriculture."

10. During the course of proceedings, and upon a more profound evaluation of the underlying facts, this Court has become keenly cognizant of a deeply troubling trend, the progressive degradation and rampant encroachment of forest land across Azad Jammu and Kashmir. What emerges from the record and broader judicial scrutiny is not an isolated episode of illegal occupation but rather a symptom of a pervasive systemic breakdown marked by unchecked deforestation, land grabbing, and institutional complicity. The present case validly exemplifies this malaise. The appellants have remained in unauthorized possession of notified forest land for over four decades, without any legal sanction or executive approval. Despite this, the Forest Department, entrusted with the protection and preservation of forest resources, has egregiously failed in discharging its statutory obligations. Its inaction, bordering on wilful neglect, reflects an institutional apathy that has emboldened encroachers and facilitated environmental vandalism.

11. This Court cannot disregard the reality that such illegal occupation of forest land does not occur in a vacuum. The record reveals that the active collusion of officials from

the Forest Department, Revenue Department, and in some instances, elected public representatives, in manipulating revenue records to falsely depict forest land as proprietary or *Shamilat* land. These fraudulent alterations are then leveraged to obtain civil court decrees, thereby giving a facade of legality to what is in substance an orchestrated usurpation of public land. Once such deceptive documentation is secured, indiscriminate falling of trees ensures, and entire forests ecosystems are obliterated, causing irreversible ecological damage.

12. This Court finds such conduct to be a flagrant abuse of legal and administrative mechanism and a direct assault upon the ecological integrity of the region. If not urgently curtailed, these practices threaten to render Azad Jammu and Kashmir an epicenter of environmental disaster. The Constitution places a sacrosanct obligation on the State to protect and preserve natural resources for the benefit of both present and future generations. In view of this constitutional imperatives and the grave nature of the environmental crises, this Court strongly urges the Government and concerned institutions to undertake immediate and coordinated remedial measures, including but not limited to the following:

- A high-powered Forest Land Reclamation Task Force shall be constituted, comprising senior representatives of the Forest Department, Revenue Department, Anti-Corruption Establishment, and judicial observers. This task force shall be mandated to identify, investigate, and reclaim all illegally occupied forest land across the territory.

- A comprehensive GIS-based satellite mapping of forest boundaries shall be conducted to create a tamper-proof digital repository, enabling real-time surveillance and enforcement.

- An independent audit of revenue records spanning the last two decades shall be undertaken with a focus on mutations and entries converting forest land into private ownership. Such fraudulent transactions and entries shall be declared void ab initio, and necessary criminal and civil proceedings initiated against those responsible.

- The existing legal framework for forest protection including the Forest Act and Land Revenue Act must be revised and fortified by incorporating stringent provisions for deterrence, accountability, and environmental preservation.

- Illegally encroached forest land shall be retrieved without delay, and scientific reforestation efforts shall be undertaken within fix timelines, under the supervision of competent institutions.

- The activation of Environmental Courts or Green Benches is also recommended to exclusively adjudicate forest and environmental violations, thereby ensuring specialized and expedited justice.

- Public officials found involved in land grabbing, tampering record or abetting encroachments, shall be identified, suspended, and subjected to disciplinary proceedings and criminal prosecution.

- Transparency must be ensured by providing public access to forest land records, status updates, and restoration efforts through online platforms.

- Community engagement and civil society participation must be institutionalized to foster a collective sense of environmental stewardship.

- Until such systemic reforms are implemented, a moratorium should be considered on the adjudication of civil suits involving forest land, unless such suits are accompanied by a forest land status certificate, duly issued by a designated government authority. Regular progress reports must be submitted to Chief Secretary AJK to ensure continued administrative oversight.

This Court is acutely conscious that in exercising its constitutional jurisdiction, it does not merely resolve disputes confined to the record but also serves as sentinel for protection of our shared environmental legacy. The era of passive observation has long passed, the time for decisive and principled action is now. Let this judgment serve as a clarion call for reform, restitution and regeneration.

Copy of this judgment should be transmitted to the government of AJ&K through the Chief Secretary for implementation and strict compliance.

JUDGE CHIEF JUSTICE JUDGE

Muzaffarabad,
01.07.2025