

IN THE FEDERAL SHARIAT COURT
(Original Jurisdiction)

PRESENT

MR. JUSTICE SH. NAJAM UL HASAN, CHIEF JUSTICE
MR. JUSTICE ALLAMA DR. FIDA MUHAMMAD KHAN
MR. JUSTICE MEHMOOD MAQBOOL BAJWA

SHARIAT PETITION NO.07/I OF 2015

1. Dr. Muhammad Mazahir Alam, Medical Officer POF Wah Cantt,
2. Dr. Mrs.Farzana Mazahir, Medical Officer POF Wah Cantt,

Both resident of House No. C-167, Lala Rukh Wah Cantt.

..... Petitioners

Versus

1. Federation through Secretary Ministry of Housing and Works, Pakistan Secretariat, Islamabad.
2. Pakistan Ordinance Factories through Director Administration POF Board Wah Cantt.

.... Respondents

Counsel for the Petitioner In person

For Federation of Pakistan Mr. M. Pervez Khan Tanoli,
Assistant Attorney General.

For Housing Foundation Mr. Altaf Hayat Khan
Islamabad Langrah, Advocate.

For POF/respondent Mian Muhammad Majid
Bashir, Advocate.

Date of Institution 04.04.2015

Date of hearing 20.02.2018

Date of decision 20.02.2018

Date of Judgment 19.03.2018

JUDGMENT:

ALLAMA DR.FIDA MUHAMMAD KHAN, Judge: The

petitioners Dr. Muhammad Mazahir Alam and Dr. Mrs. Farzana Mazahir

have preferred the instant Shariat Petition whereby they have challenged

the policy formulated by Pakistan Ordnance Board, which authorizes

allotment of only one residential plot to either of the working spouse.

They have specifically called in question Rules 6 and 8 which are

mentioned herein-under:-

“Rule 6.Commutation of Merit: Quantitative assessment of length of service, meritorious achievement or adverse remarks/punishment imposed shall be carried out on the basis of following formula:-

a. For Officers holding post in BS-17 & above

(i) Length of Service 01 mark for each year of service.

*.....
.....*

c. Additional Marks

*1. Meritorious service applicable 01 mark-for each Commendation
to all officers in BS-16 & above. Certificate or Cash Award.*

.....

*Rule 8.Ineligibility: Following employees (serving/retired/
deceased) shall stand Ineligible for allotment:-*

*a. Employees who have been allotted plots in their own name
or in the name of their spouse in POF Employees Cooperative
House Building Society Scheme No.1, Officers Housing Scheme
Gulistan Colony or any other Schemes in WahCantt (~~Excluding~~
LalaRukh Scheme No.2).....”*

2. According to the petitioner the aforementioned Rules are against the Injunctions of Islam. He has prayed that the same may be declared repugnant to the Injunctions of Quran and Sunnah of the Holy Prophet (صلی اللہ علیہ وآلہ وسلم).

3. We may mention that the instant Shariat petition, filed on 04.4.2015, was admitted for regular hearing on 22.6.2015 and then comments were called from the respondents. The same are reproduced hereunder:-

(a) Comments of (Law, Justice and Human Rights) Government of Pakistan, Islamabad.

The petitioner through the instant petition intend to extend the said ruling of this Hon'ble Court to the allotment of residential plots in Government schemes as under the rules for allotment only one plot is allotted to married working couple. The issue is substantially related to other respondents as arrayed in the petition and the answering respondents have no concern with such issue as involved in the petition and for that reason the petitioner has reasonably not impleaded the answering respondent Department in the petition.

H

(b). Comments of respondent No. 2, Pakistan Ordinance Factories.

Preliminary Objections:-

1. That the instant petition is misconceived hence neither maintainable nor proceedable.
2. That the petitioners challenged POF Allotment Policy formulated by POF Board which has been challenged many times through various Writ Petitions before Lahore High Court Rawalpindi Bench, Rawalpindi. The Honorable High Court scrutinized and upheld the POF Allotment Policy.
3. That the instant petition is barred by law as it is hit by the doctrine of Res Subjudice. The petitioners have already invoked the jurisdiction of Federal Service Tribunal Islamabad and simultaneously filed instant petition.
4. That the instant petition is filed to vex the Respondents.

Reply to the brief facts:-

1. That the Para No.1 is not denied.
2. That the Para No.2 is not denied.
3. That the Para No.3 is partially accepted to the extent of ruling made by this Honorable Court. However, the petitioner's plea to implement the rule is not justified. It is imperative to mention here that 15 years service is the minimum eligibility criteria for allotment of plot but the allotment of plot in POF housing Schemes are subject to the approval of Federal Government which approved the independent allotment policy of POF. It is worth mentioning here that there are more than

H

70,000/- employees (retired and serving) and only 7300 plots have been allotted till now thus the overall ratio of allotment of plots to POF employees comes to 1:10. Hence POF motto is to provide shelters to maximum families by enforcement of said policy rather providing a monetary benefit to the persons as assumed by the petitioners.

4. That the Para No.4 is incorrect as stated hence denied vehemently. In fact being a Muslim we are bound to act upon the principles laid down by Islam in letter and spirit. No one can think about any deviation or refutation from them. The rationale of the policy for allotment of one plot to either spouse was based on the principle of Islam. It is further imperative to mention here that while formulation of allotment policy, all pros and cons related to discrimination amongst employees are taken care off according to the true spirit of Islam. The policy was framed to accommodate employees despite the limited availability of housing units. The husband/wives who have been provided government accommodation are in an advantageous position compared to those who have not been provided the housing facility. If maximum number of employees are not enjoying the facility than it would be against the principles of Islam to distribute the double benefit within persons of one family rather among various families of employees of POF. It is further imperative to mention here that when Prophet Muhammad (صلى الله عليه وآله وسلم) came to Madinah and the Muhajareen had no place for shelter than Prophet

Muhammad (صلى الله عليه وآله وسلم) asked the Ansaar to give half share in properties to accommodate the Muhajareen. He (صلى الله عليه وآله وسلم) even asked that who has two houses give one to Muhajar and who has two wives give divorce to one and gave it in the Nikah of an unmarried Mahajer. But the petitioners who on the basis of equal rights try to get another plot in the name of spouse whereas thousands of POF employees who retired/died without allotment of plots after rendering about 40-42 years of service. It may also be noted here that the petitioner No.1 Dr. Mazahir Alam's father Zaheer Alam had also served in POF and was lucky enough to get a single plot. Now the petitioner is trying to get the benefit for himself and his wife which is not only beyond the scope of POF allotment policy but also against the injunctions/teachings of Islam and practice of Prophet Muhammad (صلى الله عليه وآله وسلم).

Reply To The Grounds:-

5. That the Honorable Court may consider the fact that providing shelter to every family is the responsibility of Islamic government. If a family gets double benefits/plots it will be injustice and will create frustration among the deprived families. Allotment of plot is meant for provision of shelter to the families, whereas allotment to both spouses as claimed by the petitioner, the second option falls in the definition of monetary benefits.
6. That the condition of allotment of plot to either of the spouse was reckoned in all POF Housing Schemes on the plea to

provide shelters to maximum families whereas, the petitioner's demand is only for monetary benefits. As stated earlier allotment of plot is not a regular feature in POF, therefore, equalizing the allotment policy with grant of house rent as envisaged in the previous judgment dated 12-12-2012 passed by this Honorable Court is not justified.

7. That this para is denied in the light of submissions made in reply to Para No.4 above.

a) This point is made on the basis of mere assumptions which have no legal backing.

b) A working woman in Pakistan is in a better position in terms of financial status than a house wife, who is totally dependent on husband's earning. Therefore, here financial status cannot be compared with an employee who was the only bread earner of a family who leaves the family without shelter if he does not get a plot. The point is made on the basis of mere assumption which has no legal value. In case of assumed separation at old age, being a government servant monetary sources are available to them.

c) Denied as per the submissions made above.

d) Reply has already been given above.

e) Both husband and wife when living together shares the status of a family/unit. If either of them allotted a plot and other is enjoying its benefit there should be no deprivation for the other as both of them are provided shelter to live under one roof. Therefore, the petitioner's stance is unjustified.

8. That the Verse of Holy Quran connotes to the earning and earning has a different meaning. But in this case the allotment of a plot is not covered under earnings rather it is a benefit which the Government/ Employer confer upon the employee in

recognition of his/her service and as a shelter. The allotment of plot cannot be earned rather one can be eligible for allotment but it is not binding upon the employer and what is not considered to be binding upon by the Islam itself, the petitioner cannot claim it by filing either shariat petition or any form of writ.

9. That in this regard it can be submitted that allotment of a plot is not a right available to the employee rather it's a beneficial discretion of the Authority to provide with the employee a shelter for him and his dependants. Whereas, the petitioners are claiming the allotment of a plot for both spouses is totally unjustified. In fact the claim itself is against the injunctions of Islam as enumerated in the reply to the Para No.4.

10. That it is again necessary to submit that the claim of the petitioners is unjustified in accordance with the norms of Islamic Injunctions. It is imperative to mention here that the plots are not [فقير] to be distributed accordingly between bachelors and married employees rather it is to provide shelter to the needy families. Hence in the light of this the stance taken by the petitioners is not justified.

11. That the stance is denied vehemently. According to Quran and Sunnah an ignorant cannot compete with an intellectual than how a person with un-blemished service record is equal to the person who perform his duties with casual behaviour and have adversities in his service record. The policy for deduction of marks was introduced in the allotment policy which was

amended in the light of decision dated 07-04-2009 passed by Lahore High Court Rawalpindi Bench Rawalpindi in Writ petition No. 2336/2006 and attained finality.(Copy of the decision dated 07.04.2009 passed by Lahore High Court is attached herewith as"Annexure A".

12.Denied in the light of submissions made above.

13.Denied in the light of submissions made above.

14.Denied in the light of submissions made above.

15.Denied in the light of submissions made above.

16.Denied. The total strength of POFs comes to about 25,000/- and the ratio of couples is enough which is under estimated by the petitioners, hence will have a greater impact on the organization. Moreover, the submissions have already made above and the prevailing policy is to accommodate maximum families to give shelter in accordance with tenets of Islam and the allotment policy is also based on the said principles of Islam.

PRAYER:-

In these circumstances, it is therefore, most respectfully prayed that keeping in view the larger interest of justice instant shariat petition may graciously be dismissed being unjustified in linking the house rent allowance which is a monitory benefit with the allotment of plot which is meant for providing shelter to needy families.

A

Any other equitable relief which this Honourable Court reckons just, apt and deem appropriate may kindly be granted to the Respondent.

(c). Comments of Federal Government Employees Housing foundation, Islamabad.

1. "That through the instant petition, the petitioners sought the jurisdiction of this Honourable Court to declare the relevant provisions of Pakistan Ordinance Factories and of Federal Government Allotment of residential plots under which only single plot is allotted to either of working spouse. In this regard it is submitted that the then Prime Minister of Pakistan has already approved the summary regarding allotment of plot by the answering respondent (Housing Foundation) to both the employees as well as their serving spouse at the same time. In this regard, in terms and conditions of Phase-VI housing scheme that, "In case both husband & wife are govt. servants, then both are eligible for the allotment of plot as individual service benefit and right, if they were not earlier allotted plot by CDA/FGEHF or any government agency"

(Copy of brochure Bharakahu Housing Scheme Islamabad Phase-VI is annexed as Annexure 'A')

A

2. That in view of the above policy formulated for Phase-VI, the present petition to the extent of the answering respondents has become infructuous.
3. That the petitioners are not entitled to claim any retrospective benefit on the basis of previous brochure annexed with their petition as the same are past and closed transactions.
4. That issue is substantially related to other respondents as arrayed in the petition and the answering respondents has no concern with such issue as involved in the petition and for that reason the petitioner has reasonably not impleaded the answering respondent department in the petition, hence the petition under reply is not maintainable under the law.
5. That the respondent department is a public functionary and performs its duties as per settled rules and regulations.

PARA-WISE REPLY

1. That para No.1 is denied being irrelevant.
2. That para No.2 of the petition is denied. The existing rules of the answering respondents for Phase-VI entitles both the spouse for allotment of plot.
3. That para No.3 of the petition is matter of record, however at present both the spouses are entitled to the service benefits separately and independently which is

evident from the policy formulated for Phase-VI Bharakahu Housing Scheme.

4. That para No.4 of the petition is denied. The respondent department being public functionary performs its functions according to rules and regulations without any discrimination.
5. That in regard to para No.5, it is submitted that the Honourable Court may consider the fact that providing shelter to every family is the responsibility of Islamic Government. If a family gets double benefits/plots, it will be injustice and will create frustration among the deprived families. Allotment of plot is meant for provision of shelter to the families.
6. That para No.6 of the petition pertains to court record, hence needs no comments.
7. That para No.7 of the petition along with its sub paras is denied being misconceived.
 - a. The contention of sub para 'a' is made on the basis of mere assumptions which has no legal backing.
 - b. In regard to sub para 'b' it is submitted that a working woman in Pakistan is in a better position in terms of financial status than a house wife, who is totally dependent on husband's earning. Therefore, her financial status cannot be compared with an employee who was the only bread earner of a family who leaves the family without shelter if he does not get a plot. The point is made on the basis of mere assumption which has no legal value. In case of

assumed separation at old age, being a government servant monitory sources are available to them.

- c. Denied as per the submissions made above.
- d. Reply has been given above.
- e. Both husband and wife when living together shares the status of a family/unit. If either of them is allotted a plot and other is enjoying its benefit, there should be no deprivation for the other as both of them are provided shelter to live under one roof. Therefore, the petitioner's stance is unjustified.

8. That the verse of Holy Quraan connotes to the earning and earning has a different meaning. But in this case the allotment of a plot is not covered under earning rather it is a benefit which the government/employer confers upon the employee in recognition of his/her service and as a shelter. The allotment of plot cannot be earned rather one can be eligible for allotment, but it is not binding upon the employer and what is not considered to be binding upon by the Islam itself, the petitioners cannot claim it by filing either Shariat Petition or any form of Writ.

9. That in regard to para No.9 it is submitted that allotment of a plot is not a right available to the employee rather it is a beneficial discretion of the Authority to provide with the employee a shelter for him and is dependents. Whereas the petitioners are claiming the allotment of a plot for both spouses in

✱

totally unjustified. In fact the claim itself is against the injunctions of Islam.

10. That in regard to para No.10 it is submitted that claim of the petitioners is unjustified in accordance with the norms of Islamic Injunctions. It is imperative to mention here that the plots are not to be distributed accordingly between bachelors and married employees rather it is to provide shelter to the needy families. Hence in the light of this, the stance taken by the petitioners is not justified.
11. That para No.12 of the petition is denied. According to Holy Quraanand Sunnah, an ignorant cannot compete with intellectual than how a person with unblemished service record is equal to the person who perform his duties with casual behavior and have adversities in his service record.
12. That para No.13 is denied in the light of submissions made above.
13. That para No.20 is denied in the light of submissions made above.
14. That para No.21 is denied in the light of submissions made above.
15. That para No.22 is denied in the light of submissions made above.
16. That in regard to para No.23 it is submitted that according to the existing policy for allotment of plots in

Phase VI of Bharakahu Housing Scheme, the working couples are entitled to apply for allotment of plots and get the same upon fulfillment of the criteria.

PRAYER

In view of the above, it is, therefore, respectfully prayed that the petition under reply is infructuous to the extent of the answering respondent department as the existing policy entitles the couple to allotment of plots separately, hence the names of the answering respondents may graciously be deleted from the array of respondents in the interest of justice.”

4. We have heard learned counsel for the parties and have also perused the record containing comments submitted by the Federal Government i.e Law, Justice and Human rights, Pakistan Ordnance Factories Board and Federal Government Employees Housing Foundation, Islamabad.

5. The petitioner Dr. Muhammad Mazahir Alam vehemently contended that the policy of allotment of one plot to a married couple, while each one of them is employee of the POF, is against the Injunctions of Islam. He added that both husband and wife being

AK

employees of the POF have independent equal roles and deprivation of either of them amounts to injustice. Both of them draw their own salaries, pension and enjoy all other service benefits, therefore each one should be allotted a separate plot as well. He placed reliance on a judgment of this Court dated 12.12.2012, delivered in Shariat Petitions No. 8/I of 2004-linked with Shariat Petition No. 6/I of 1994 linked with Shariat Petitions No. 8/I of 1994, Shariat Petition No. 12/I of 1994 and Shariat Misc. No. 69/I of 1994-which entitles both husband and wife -if employees of the Government etc.- to house rent allowance on the basis of their personal service. He also placed reliance on a number of Verses from the Holly Quran and a Hadith as well as the practice followed by Hazrat Umar (R.A) as narrated in Katab-ul-Amwal by Abu Abid Al Qasim.

6. Learned counsel for POF submitted that according to demands of justice, the first priority for allotment of plots has to be given to those employees who do not have any residential plot. Khalid Mehmood, Assistant Incharge, POF stated that the previous scheme for

sc

allotment of plot had been completed and presently there was no plot available for handing over to any employee of POF. He further stated that in case land was made available and any new scheme was introduced, then fresh rules for allotment of plots would be framed. He further added that more than 30,000/- employees have applied for allotment of plot but there is absolutely no possibility to accommodate so many employees even in upcoming housing schemes.

7. On the other hand, learned Assistant Attorney General, representing the Federation argued that while allotting the plots in any scheme of POF, the most eligible person for consideration shall be the one who does not have any plot for constructing his own residence. If an employee has already been allotted a plot, then instead of the other spouse so many other employees who have not been allotted even a single plot should have the priority. He further argued that this petition is not maintainable at this stage especially for the reason that no new scheme has so far been announced or launched for allotment of plots by POF.

AK

8. We have anxiously examined the impugned policy/rules but have found nothing that is against the injunctions of Islam. The Hadith as well as the Quranic Verses cited by the petitioners are general in nature and do not pertain to the issue under consideration. Regarding the impugned rule 6 pertaining to commutation of merit, it is sufficient to state that there is absolutely nothing which can, by any stretch of imagination, be termed as un-Islamic. In fact, acknowledgement of meritorious achievement or consideration of adverse remarks or imposition of punishment etc is basically an Islamic criteria to judge proficiency or performance of an employee for his/her promotion, reward, award of monetary or other benefit. This is what fair administration of justice demands. The following translation of Verses of Holy Quran pertaining to grant of reward in this world as well as in the hereafter make it quite clear.

“To all are degrees (or ranks), according to their deeds: For thy Lord is not unmindful of anything that they do.”

(6:132)

“To the righteous (When) it is said, “What is it that your Lord has revealed?” they say, “All that is good.” To those who do good, there is good in this world, and the Home of the Hereafter is even better and excellent indeed is the Home of the righteous----”

(16:30)

“Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure, and We will bestow on such their reward according to the best of their actions.”

(16:97)

“As to those who believe and work righteousness, verily, We shall not suffer to perish the reward of any who do a (single) righteous deed.”

(18:30)

“Those who believe and work righteous deeds---from them shall We blot out all evil (that may be) in them and We shall reward them according to the best of their deeds.”

(29:7)

“Say: “O ye My servants who believe! Fear your Lord, Good is (the reward) for those who do good in this world. Spacious is Allah’s earth! Those who patiently persevere will truly receive a reward without measure!”

(39:10)

“So that Allah will turn off from them (even) the worst in their deeds and give them their reward according to the best of what they have done.”

(39:35)

“And to all are (assigned) degrees according to the deeds which they (have done), and in order that (Allah) may recompense their deeds, and no injustice be done to them.”

(46:19)

9. It would be appreciated that the judgment of this Court dated 12.12.2012, referred to above by the petitioner, is distinguishable in the sense that terms and conditions of service of each employee includes house rent as a substantive part of the mutual agreement right from the start of his/her career, irrespective of the marital status. However, the allotment of plot is not at all a right of the employee nor a part of the agreement pertaining to terms/conditions of service. One

may or may not get a plot during his/her whole service as it all depends on the availability of plots as well as the number of applicant employees in any set up. As stated by Mr. Khalid Mehmood, Assistant Incharge POF, the number of employees in the POF is approximately 30,000/- and they all have a genuine concern to be considered on priority basis.

10. We may mention that according to Islamic Injunctions the State is supposed to be a welfare State in all respects, not only for its functionaries but for its citizens as well and as such it is obligatory for the Government to provide all facilities including food, shelter, clothes, education, medical treatment, security and take care of all other necessary requirements of all citizens as far as possible. Therefore, the housing foundation and other similar organizations are duty-bound to make reasonable arrangements for providing basic facilities as far as possible. In this connection we may, however, refer to the fact that the citizens are also required to exercise due restraint, self-control and forego greed and avarice to let other brothers/sisters have their own



proportionate share. The spirit of Islamic Injunctions can be well ascertained from the following verse of the Holy Quran:-

وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ الْآيَاتِ
لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٥١﴾

Translated by Maulana Taqi 'Uthmani

“And they ask you as to what they should spend. Say, :The surplus . This is how Allah makes His verses clear to you, so that you may ponder.”

Translated by Yousef Ali

“They ask thee how much they are to spend; Say: "What is beyond your needs." Thus doth Allah Make clear to you His Signs: In order that ye may consider- “

Translated by 'Allama Asad.

“And they will ask thee as to what they should spend [in God's cause]. Say: "Whatever you can spare." In this way God makes clear unto you His messages, so that you might reflect.”

11. The following sayings of the Holy Prophet (صلى الله عليه وآله وسلم)

also emphasize the same spirit.

حَدَّثَنَا شَيْبَانُ بْنُ فَرُّوخَ حَدَّثَنَا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ بَيْنَمَا نَحْنُ فِي سَفَرٍ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذْ جَاءَ رَجُلٌ عَلَى رَاحِلَةٍ لَهُ قَالَ فَجَعَلَ يَضْرِبُ بَصْرَهُ يَمِينًا وَشِمَالًا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ كَانَ مَعَهُ فَضْلٌ ظَهَرَ فَلْيَعُدْ

بِهِ عَلَى مَنْ لَا ظَهْرَ لَهُ وَمَنْ كَانَ لَهُ فَضْلٌ مِنْ زَادٍ فَلْيُعْطِ بِهِ عَلَى مَنْ لَا زَادَ لَهُ قَالَ فَذَكَرَ مِنْ
أَصْنَافِ الْمَالِ مَا ذَكَرَ حَتَّى رَأَيْنَا أَنَّهُ لَا حَقَّ لِأَحَدٍ مِنَّا فِي فَضْلٍ

[4517] 18 – (1728) “It was narrated that Abu Sa’eed Al-Khudri said: Whilst we were on a journey with the Prophet (صلى الله عليه وآله وسلم), a man came to him on a mount of his and started looking to his right and left. The Messenger of Allah (صلى الله عليه وآله وسلم), said: “Whoever has a surplus amount, let him give it to one who has no mount, and whoever has surplus provisions, let him give them to one who has no provisions.”

He mentioned various kinds of wealth, until we thought that none of us had any right to any kind of surplus”.

حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْخُزَاعِيُّ وَمُوسَى بْنُ إِسْمَاعِيلَ قَالَا حَدَّثَنَا أَبُو الْأَشْهَبِ عَنْ أَبِي نَضْرَةَ
عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ بَيْنَمَا نَحْنُ مَعَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي سَفَرٍ إِذْ جَاءَ
رَجُلٌ عَلَى نَاقَةٍ لَهُ فَيَجْعَلُ يُصَوِّرُهَا يَمِينًا وَشِمَالًا فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ
كَانَ عِنْدَهُ فَضْلٌ ظَهَرَ فَلْيُعْطِ بِهِ عَلَى مَنْ لَا ظَهْرَ لَهُ وَمَنْ كَانَ عِنْدَهُ فَضْلٌ زَادٍ فَلْيُعْطِ بِهِ عَلَى
مَنْ لَا زَادَ لَهُ حَتَّى ظَنَنَّا أَنَّهُ لَا حَقَّ لِأَحَدٍ مِنَّا فِي الْفَضْلِ

“1663. Abu Sa’eed Al-Khudri narrated: “Once, while we were travelling with the Messenger of Allah (صلى الله عليه وآله وسلم), a man came to him on a she-camel that he owned, and he was turning it left and right. The Prophet (صلى الله عليه وآله وسلم) said, “Whoever has extra mount, let him give it to someone who has no mount, and whoever has extra provisions, let him give it to someone who has no

provision," until they thought that they had no right to anything extra that they had. (Sahih).

۷۸- حضرت عبداللہ بن مسعود رضی اللہ عنہ روایت کرتے ہیں کہ:

قالت: يا رسول الله! اي الظلم اظلم؛ فقال: ذراع من الارض ينتقصها البرء المسلم من حق اخيه، الا طوقها يوم القيامة الى قعر الارض ولا يعلم قعرها الا الله الذي خلقها

میں نے عرض کیا یا رسول اللہ! سب سے بڑا ظلم کیا ہے؟ آپ نے فرمایا: ایک گز زمین بھی کوئی مسلمان شخص اپنے بھائی کے حق میں سے کم کرے، تو اسے قیامت کے دن زمین کی تہہ تک اس کی گردن میں طوق بنا دیا جائے گا، اور زمین کی تہہ کا علم اللہ کے سوا کسی کو نہیں جس نے اسے پیدا کیا ہے۔

(مجمع الزوائد ص ۷۴ و ۷۵ ج ۳ و مسند احمد ج ۱ ص ۳۹۷، و معجم کبیر للطبرانی، و اسناد احمد حسن)۔

۷۹- حضرت ابوماک اشعری رضی اللہ تعالیٰ عنہ روایت کرتے ہیں کہ آنحضرت صلی اللہ علیہ وسلم نے ارشاد فرمایا:

اعظم الغلول عند الله عز وجل ذراع من الارض، تجدون الرجلين جارين في الارض او في الدار، فيقتطع احدهما من خط صاحبه ذراعاً اذا اقتطعه طوقه من سبع ارضين الى يوم القيامة.

اللہ تعالیٰ کے نزدیک عظیم ترین خیانت ایک گز زمین (میں خیانت) ہے، تم اگر دیکھو کہ دو آدمی کسی زمین یا کسی گھر میں پڑوسی ہیں، پھر ان میں سے ایک شخص اپنے ساتھی کے حصے سے ایک گز کاٹ کر لے لیتا ہے تو جب وہ ایسا کریگا تو قیامت کے دن اس کے گلے میں سات زمینوں کا طوق ڈالا جائیگا۔

(اسنادہ حسن کمانی مجمع الزوائد ص ۷۵ ج ۳ و مسند احمد ج ۵ ص ۳۲۱)۔

۸۰- حضرت سعد بن ابی وقاصؓ روایت فرماتے ہیں کہ آنحضرت صلی اللہ علیہ وسلم نے ارشاد فرمایا:

من اخذ شيئاً من الارض بغير حقه طوقه من سبع ارضين لا يقبل منه صرف ولا عدل.

جو شخص زمین کا کچھ حصہ کسی جائز وجہ کے بغیر لے لے تو اسے سات زمینوں کا طوق پہنایا جائیگا، اور اس سے کوئی معاوضہ یا فدیہ قبول نہیں کیا جائیگا۔

(مجمع الزوائد ص ۷۵ ج ۳ و کشف الاستار ج ۲ ص ۱۳۵)۔

لو استقبلت من امری ما استدابرت لاخذت فضول اموال الاغنياء فقسمتها على فقراء المهاجرين.

(تاریخ طبری ص ۲۹۱، ج ۳ مطبوعہ قاہرہ ۱۳۵۷ و واقعات ۲۲۳)۔

”اگر شروع میں میری رائے وہ ہو جاتی جو بعد میں ہوئی تو میں مال داروں کا فاضل مال لے کر اسے محتاج مہاجرین میں تقسیم کر دیتا۔“

۱۱

12. In view of the above, one can clearly make out that the Islamic State and its relevant organizations have to consider providing shelter to its citizens and make proper arrangements for the same within reasonable limits but by no means at the cost of someone else.

13. Regarding the instant petition, we may point out that allotment of plot is not at all a part of the terms and conditions of service. Therefore the Government, POF or other organization are not obliged to allot two plots to each and every married couple who happens to be its employees because it may amount to deprivation of certain other employees who have got no plot whatsoever. We have reproduced views of the respondent in this respect and fully support the same. Thousands of employees of the State organizations who are still waiting for allotment of plots, should have top priority for allotment of plots as compared to the spouses one of whom has already got a plot.

14. We may mention that the rationale of policy formulated by POF for allotment of one plot to either spouse is aimed to accommodate as many employees as possible and it seems quite reasonably justified on

account of the limited availability of residential plots. As stated by learned counsel for the respondent, a large number of employees are not enjoying the said facility as the number of plots is extremely limited/insufficient to meet the needs and accommodate all of them. As stated above, one should realize the fact that on account of non availability of sufficient number of plots, there must be many employees who have not been able to get any plot during their whole service. We may add further that it is the responsibility of an Islamic Government to provide shelter to every family and this can only be made possible if the ground reality of availability of plots is kept in view and a suitable policy is planned on the basis of "justice for all". It is obvious that after getting a plot both husband and wife as well as their children assume the status of one family and getting a plot facilitates residential accommodation for all of them. Allotment of double plots to one family and depriving hundreds of other families from the same facility would amount to a great injustice which cannot be defended according to Islamic principles designed for dispensation of justice. Hence, the prayer

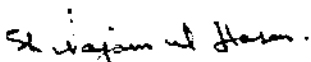
A

made by the petitioner is not at all justified on the touchstone of Islamic Injunctions.

15. In view of the above, we dismiss this petition being misconceived.

16. These are the reasons for our short order dated 20.02.2018.



MR.JUSTICE ALLAMA DR.FIDA MUHAMMAD KHAN


MR.JUSTICE SH NAJAM UL HASAN
CHIEF JUSTICE


MR. JUSTICE MEHMOOD MAQBOOL BAJWA

Islamabad the 19th March, 2018.
Faryad Ali*

Fit for reporting


19.3.2018