

IN THE FEDERAL SHARIAT COURT

(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE

MR. JUSTICE DR. SYED MUHAMMAD ANWER

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

SHARIAT PETITION NO.14-I OF 2020

1. Mst. Sakina Begum widow of Ghulam Mustafa, care of Haji Ahmed Din Butt, Mohallah Haveli Shakoor Khan, Rampura, Peshawar.
2. Haji Ahmed Din Butt son of Ghulam Muhammad Butt, Mohallah Haveli Shakoor Khan, Rampura, Peshawar.
3. Muhammad Javed son of Ghulam Mustafa, Mohallah Jogiwara, Hasht Nagri, Peshawar.
4. Mst. Nazir Begum daughter of Ghulam Mustafa, resident of Mohallah Jogiwara, Hasht Nagri, Peshawar.
5. Said Muhammad son of Alif Din, resident of Mohallah Jogiwara, Hasht Nagri, Peshawar.
6. Muhammad Ismail son of Peer Bukhsh, care of Haji Abdul Jalil, resident of Mohallah Sheikh Bahauddin, Peshawar.
7. Malik Ghulam Muhammad son of Malik Jaffar Khan, resident of Mohallah Wingregran, Karimpura, Peshawar.
8. Muhammad Ali son of Sahibzada Muhammad Umar Khan, resident of House No.4221, Karimpura, Peshawar.
9. Mst. Taj Begum daughter of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
10. Mst. Zeba Begum daughter of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
11. Mst. Sonia Begum daughter of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
12. Mst. Shagufta Bibi daughter of Manzoor Hussain, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
13. Abdul Qayyum son of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
14. Muhammad Aslam son of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.

15. Muhammad Kamal son of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
16. Mehmood Khan son of Ghulam Din, resident of Dhakki Na'albandi, Andar Shahar, Peshawar.
17. Mst. Sultan Jehan Begum daughter of Sahibzada Muhammad Turab Khan, resident of Mohallah Ghazi Abdur Rasheed, Peshawar.
18. Mian Sultan Muhammad son of Mian Muhammad Jan, resident of Mouza Swati Chowk, Bara Lane, Stadium Road, Peshawar.
19. Saeed Sultan,
20. Tariq Sultan,
21. Tahir Sultan, all sons of Mian Sultan Muhammad, resident of Mouza Swati, Peshawar.
22. Amanullah Khan son of Sahibzada Muhammad Turab Khan, resident of Mohallah Ghazi Abdur Rasheed, Karimpura, Peshawar.
23. Mst. Raees-un-Nisa Begum, w/o Rizwanullah,
24. Shahida Parveen, d/o Rizwanullah,
25. Quratul Ain, daughter of Rizwanullah,
26. Irfanullah,
27. Zeeshan Mozamil,
28. Rehan Mozamil,
29. Fakhre Alam, all sons of Amanullah Khan.
30. Sajid Ali Khan son of Sahibzada Muhammad Umar Khan, resident of Mohallah Ghazi Abdur Rasheed Karimpura, Peshawar.

PETITIONERS

VERSUS

1. Government of Pakistan through Secretary Ministry of Law and Justice and Parliamentary Affairs, Islamabad.
2. Government of NWFP through Chief Secretary, Peshawar.

3. Secretary, Law Department, Parliamentary Affairs, Government of NWFP.
4. Member, Board of Revenue-II, NWFP, Independent Chief Settlement Commissioner, Province of NWFP, Peshawar.
5. Assistant Director, Sericulture Department, Forest Colony, Shahi Road, Peshawar.

RESPONDENTS

Linked with

SHARIAT PETITION NO.15-I OF 2020

1. Tariq Mehboob,
 2. Tahir Mehboob,
 3. Shahid Mehboob,
- All sons of late Mehboob Khan, resident of 7-AA, Mehboob Lodge, Faisal Colony, G.T. Road, Peshawar City.

PETITIONERS

VERSUS

1. Government of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad.
2. Government of N.W.F.P. through Advocate-General, N.W.F.P., Peshawar.

RESPONDENTS

Linked with

SHARIAT PETITION NO.16-I OF 2020

1. Mr. Fida Mohammad Khan son of Late Tamas Khan.
2. Mst. Dilbar Sultan, w/o Mufti Masood Jan.
3. Mst. Zenat Sultan wife of Mian Mohammad Akhtar, Both daughters of late Tamas Khan, all resident of Bungalow No.26-A, Shami Road, Peshawar Cantt.

PETITIONERS

VERSUS

1. The Government of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad.

2. The Government of N.W.F.P. through Chief Secretary, N.W.F.P., Peshawar.

RESPONDENTS

Linked with

SHARIAT PETITION NO.17-I OF 2020

Salar Soofi Haji Abdul Ghani son of Soofi Abdul Samad, resident of Illaqa Karimpura, Mohalla Ghazi Abdul Rashid, House No.1796-K, Peshawar City.

PETITIONER

VERSUS

1. Government of Pakistan through Secretary, Ministry of Law Justice and Parliamentary Affairs, Islamabad.
2. Government of N.W.F.P. through Advocate-General, N.W.F.P., Peshawar.

RESPONDENTS

Counsel for the petitioner	...	Mr. Saeed Butt, Advocate.
Counsel for the Federal Government	...	Ch. Ishtiaq Mehrban, Deputy Attorney-General for Pakistan.
Counsel for the Provincial Government	...	Malik Akhtar Hussain Awan, Additional Advocate-General, KPK and Barrister Babar Shahzad Imran, Additional Advocate-General, KPK.
Date of Institution of Petition	...	23.12.2021 (remanded by Hon'ble Supreme Court)
Date of Hearing	...	11.01.2022
Date of Judgment	...	07.02.2022

JUDGMENT:

DR. SYED MUHAMMAD ANWER, J. The Hon'ble Supreme Court vide its judgment dated 03.12.2020 allowed appeals against the judgment passed in Shariat Petitions No.29-I, 43-I, 64-I and 67-I of 1992, whereby the impugned judgment dated 07.05.2008 of Federal Shariat Court was set aside and the matter was remanded back for decision afresh strictly within the precincts of Article 203D of the Constitution.

2. In this case, the core dispute between the parties is related to a land comprising Khasra Nos.147, 148, 149 and 150 situated in Mahal Terai, Tehsil and District Peshawar, measuring 79 Kanals and 8 Marlas, which was an evacuee property. This land was allotted on temporary basis by Deputy Rehabilitation Commissioner, Peshawar to Sericulture Department on 04.11.1953 and formal order was issued by the Deputy Rehabilitation Commissioner on 18.01.1954. Out of the above land, an area of 20 Kanals and 18 Marlas comprising Khasra No.149 Min and 150 Min was allotted in the name of four displaced persons namely Mst. Murtaza Bano, Maqbool Ahmad, Maqsood Ahmad and Tasleem Ahmad on 25.08.1966. The remaining land was also allotted to some other refugees on the ground that the allotment order in the name of Sericulture Department was without jurisdiction. Against this order, the Sericulture Department filed an appeal before the Additional Settlement Commissioner, Peshawar to set aside the allotment order in favour of

the refugees. The Additional Settlement Commissioner set aside the allotment in favour of refugees on 25.09.1969 and directed the Sericulture Department to move for outright sale. One Mr. Fida Muhammad Khan who had purchased 20 Kanals and 08 Marlas of land in Khasra No.149 and 150 Min, went to High Court in revision against the judgment of Additional Settlement Commissioner, Peshawar. Upon dismissal of his revision petition on 29.01.1970 from High Court he went in appeal to Hon'ble Supreme Court which set aside the impugned order of the High Court and remanded the case to Chief Settlement Commissioner/Member, Board of Revenue, NWFP with the direction to decide whether the land should be sold to Sericulture Department under provision of section 12(b) or should be allotted to the refugees. The Chief Settlement Commissioner vide his judgment, dated 26.10.1983 decided to transfer the whole of the land to the refugees. Again, this decision was challenged by the department in the High Court but before any decision Martial Law Order No.425 was issued on 19.04.1984 by the Martial Law Administrator, Zone B and published in Official Gazette on 14.05.1984, whereby this land was transferred to the Sericulture Department with effect from 25.10.1983.

3. After the above-mentioned lengthy litigation between the parties, the matter kept on lingering in cross claims between the parties. In the

meanwhile, the petitioners invoked the jurisdiction of Federal Shariat Court, through above Shariat Petitions with following prayers:

۱. متذکرہ مارشل لاء نمبر ۴۲۵ کو قرآن و سنت کے منافی قرار دیا جائے۔
۲. متذکرہ مارشل لاء آرڈر نمبر ۴۲۵ کو دیا گیا تحفظ غیر اسلامی قرار دیا جائے۔
۳. حکومت صوبہ سرحد کو ہدایت جاری فرمائی جائے کہ اسے اگر جملہ یا جزوی اراضی کی ضرورت ہو تو اپنی کینیٹ میٹنگ مورخہ 2-4-88 کے فیصلہ کے مطابق اسلامی اقدار کو تسلیم کرتے ہوئے بذریعہ لینڈ ایکویزیشن ایکٹ، ترمیمی بل یا ڈائریکٹ سودا کر کے حسب ضرورت اراضی سائلن مالکان سے خریدے۔ بصورت دیگر بمطابق اسلامی ہدایات پیراگراف ۴۳ صفحہ ۱۶ (اپیل ہذا) حکومت اراضی کو خالی کرنے کی پابند ہے۔ کیونکہ متذکرہ جملہ اسلامی ہدایات اس اپیل کے ضمن میں کسی بھی ایگزیکٹو یا عدالت کے حکم یا فیصلے کی وجہ سے نظر انداز نہیں کی جاسکتیں۔ قرآن حکیم از خود کائنات میں عظیم تر آئین ہے جس پر کسی دیگر آئین اور انسانی فیصلوں کو ترجیح دینا قرآن و سنت کو تسلیم کرنے سے انکار کے برابر ہے۔

This Court decided the matter vide its judgment dated 07.05.2008.

The said judgment of Federal Shariat Court was challenged in the Hon'ble Shariat Appellate Bench of the Supreme Court. Resultantly, that appeal was heard and decided on 03.12.2020 by the Hon'ble Shariat Appellate Bench of the Supreme Court by virtue of which the impugned judgment was set aside and the matter was remanded back to the Federal Shariat Court with the following direction:

“In view of the above, these appeals are allowed, impugned order so also the judgment passed in Shariat Petitions No.29/I, 43/I, 64/I and 67/I of 1992 are set aside and the matters are remanded to the Federal Shariat Court for decision afresh, strictly within the precincts of Article 203-D of the Constitution. Since the matter is old one, it is desirable that Federal Shariat Court will decide the matter preferably within a period of three months.”

4. We have heard the parties at length and perused the record of the case thoroughly and concluded that in the light of Article 203D of the Constitution only one point of this case is relevant to be reviewed by this Court and that is “whether the Martial Law Order No.425 issued by the Martial Law Administrator, Zone-B on 19.04.1984 and published on 14.05.1984 is repugnant to injunctions of Holy Quran and Sunnah or not”. The other questions related to these petitions raised by the petitioner in the Shariat Petition are not relevant to the jurisdiction of this Court; hence, they do not fall within the precincts of Article 203D of the Constitution.

5. The impugned MLO No.425 is reproduced below for ready reference:

“MARTIAL LAW ORDER NO.425

Notwithstanding anything contained in any Judgment decree or order of any court, including the Supreme Court or a High Court or any tribunal body or Authority whatsoever, the land measuring 79 Kanals and 8 Marlas and bearing Khasra Nos.147, 148, 149 and 150, situated in Mahal Terai, Tehsil and District Peshawar, shall stand transferred to Sericulture Department, N.-W.F.P. and shall be deemed to have been so transferred with effect from 25th October, 1983, without being subject to any encumbrance or liability.

LIEUTENANT GENERAL FAZLE HAQ.
Martial Law Administrator Zone “B”.

Peshawar Cantt.

Dated: 19th April, 1984.”

6. The Martial Law Order No.425 dated 19.04.1984 published in the Official Gazette dated 14.05.1984 has the force of law; therefore, Federal Shariat Court has the jurisdiction under the Constitution to decide whether it is repugnant to the injunctions of Islam as laid down in Holy Quran and Sunnah or not. It is also argued by the respondent that MLO No.425 was subsequently, i.e., after notification, validated as such by Article 270 of the Constitution. The issue whether the Martial Regulations and Martial Law Orders are protected by the Constitution after validation has been discussed by the Apex Court in many cases. It was fully discussed by this Court in the case of Hafiz MUHAMMAD AMEEN ETC versus ISLAMIC REPUBLIC OF PAKISTAN AND OTHERS PLD 1981 FSC 23 at page 47. Relevant portion is reproduced bellow:

“-----The validation is regarding the competence of the authority enacting the Regulation. The ouster of jurisdiction of Courts in that Article is overridden by the provisions of Article 203-A and this Court has jurisdiction to determine the question of repugnancy of these provisions with the Islamic Injunctions notwithstanding anything in Article 269. The other relevant provision is in Article 268(2) which restrains the Parliament from altering, amending and even repealing these provisions except with the previous sanction of the President. But it does not present any difficulty since under Article 203-D(3) (a) the President is bound to take steps to amend the Regulation so as to bring it into conformity with the Injunctions of Islam if this Court arrives at a finding of its repugnancy with the Qur’an and Sunnah of the Holy Prophet. The Court’s jurisdiction to go into the vires of paras, 22, 24, and 25 of the Regulation is not ousted.”

In Qazalbash Waqf Vs Chief Land Commissioner, the Shariat appellate bench of the Supreme Court discussed this issue in much detail. The State cannot take any piece of land of any citizen without due compensation. Any such action by the State of taking land of anybody without due compensation is completely un-Islamic and forbidden under the Islamic law. This question was discussed at length in *Qazalbash* case (PLD 1990 SC 99). The relevant verses of the Quran and some of the Ahadis which were discussed in *Qazalbash* case are reproduced herein below for ready reference, which are mentioned in the referred judgment:

قرآن کریم کا ارشاد ہے:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ ۖ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ۚ وَمَنْ يَفْعَلْ ذَلِكَ عُدْوَانًا وَّظُلْمًا فَسَوْفَ نُصَلِّيهِ نَارًا ۖ وَكَانَ ذَلِكَ عَلَى اللَّهِ يَسِيرًا ۚ

اے ایمان والو! آپس میں ایک دوسرے کے مال ناحق طور پر مت کھاؤ، لیکن کوئی تجارت ہو جو باہمی رضامندی سے واقع ہو تو مضائقہ نہیں، اور تم ایک دوسرے کو قتل نہ کرو، بلاشبہ اللہ تعالیٰ تم پر بڑے مہربان ہیں۔ (النساء ۴: ۲۹ و ۳۰)

اس آیت میں یہ اصول واضح طور پر بیان کر دیا گیا ہے کہ کسی بھی شخص کا کوئی مال اس کی مرضی اور معاوضے کے بغیر کسی کے لئے حلال نہیں، آیت میں جو ”ناحق طور پر“ کہا گیا ہے، اس کی تفسیر میں امام فخرالدین رازمی امام المفسرین حضرت عبداللہ بن عباس اور حضرت حسن بصری سے نقل کرتے ہیں:

الباطل هو كل ما يتوخذ من الانسان بغير عوض.

(۱) چنانچہ مشہور محدث اور فقیہ امام اوزاعی نے اس حدیث کی یہی تشریح فرمائی ہے کہ اس سے مراد حکام کی طرف سے لوگوں کے اموال پر قبضہ کرنا ہے۔

(دیکھیے: لسان العرب ص ۲۵ ج ۶)

ناحق ہر وہ مال ہے جو کسی انسان سے بلا معاوضہ (زبردستی) لیا جائے۔

(التفسیر الکبیر للرازی؛ ۶۹ و ۷۰، ج ۱۰، مطبوعہ ایران)

اسی اصول کو ایک دوسری جگہ اس طرح ارشاد فرمایا گیا ہے:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتَذَلُّوا بِهَا إِلَى الْخُكَّامِ

لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ O

اور آپس میں ایک دوسرے کے مال ناحق مت کھاؤ، اور ان کو حکام کے پاس اس غرض

سے مت لے جاؤ، کہ لوگوں کے مال کا ایک حصہ گناہ کے طریقے پر کھاؤ، جب کہ تمہیں

علم بھی ہو (کہ ایسا کرنا جائز نہیں)۔ (البقرہ ۲: ۱۸۸)

لوگوں کی جائز املاک کے مکمل احترام کی تاکید اور ان پر ان کی رضامندی کے بغیر دست

اندازی کی مذمت قرآن کریم نے اور بھی کئی آیتوں میں بیان فرمائی ہے۔ (مثلاً ملاحظہ ہو: النساء ۴ : ۱۰

و ۱۶۱، والتوبة ۹: ۳۴ والانعام ۶: ۱۵۲، و بنی اسرائیل ۱۷: ۳۴)۔

حضرت عائشہ رضی اللہ عنہا روایت فرماتی ہیں کہ آنحضرت ﷺ نے ارشاد فرمایا:

من ظلم قید شبر من الأرض طوقه من سبع أرضين-

جو شخص کسی کی بالشت بھر زمین بھی ناحق لے لے، اس کے گلے میں سات زمینوں کا طوق

ڈالا جائیگا۔

(صحیح البخاری، کتاب المظالم، باب نمبر ۱۳، حدیث نمبر ۲۴۵۳ و کتاب بدء الخلق، حدیث نمبر ۳۱۹۵)

حضرت سعید بن زید رضی اللہ عنہ روایت کرتے ہیں کہ آنحضرت ﷺ نے ارشاد فرمایا:

من ظلم قید شبر من الأرض شیاً طوقه من سبع أرضين-

جو شخص زمین کا کچھ حصہ ناحق لے لے، اس کے گلے میں سات زمینوں کا طوق ڈالا جائیگا۔

(صحیح البخاری، کتاب المظالم، باب نمبر ۱۳، حدیث نمبر ۴۳۵۲ و بدء الخلق، حدیث نمبر ۳۱۹۸)

7. The matter of validation of such Martial Law Order was

discussed at length and decided by the Hon'ble Supreme Court in C.A.

No.838/1984 and 839/1984 titled Pakistan through Secretary Cabinet

Division, etc. Vs. Nawabzada Muhammad Umar Khan and others. In

these appeals, legal effect of validation upon a Martial Law Order

No.47 dated 01.02.1972 was thoroughly discussed and dilated upon by

the Hon'ble Apex Court and it concluded that:

“The validation by the Constitution (Article 269) covers legislative measures of all types, proclamations, Presidential Orders etc., but what could neither be a legislative measure nor a Martial Law Order or Regulation does not stand validated. For that reason, such an instrument as happens to be Martial Law Order No.47, it does not stand constitutionally validated.”

Hence, on the same analogy impugned MLO 425 cannot be considered as ever validated by any provision of the Constitution.

8. The wording of MLO 425 openly flouts the "Order, judgment and the status of the Apex Court when it says:

"Notwithstanding anything contained in any judgment, decree or order of any court including the Supreme Court."

Despite having knowledge that there exists a judgment of the Hon'ble Supreme Court related to the matter in issue, this act of the Martial Law Administration was not only amounting to contemptuous act but was clearly a mala fide on his part. The Martial Law Administrator clearly flouted the judgment of the Hon'ble Supreme Court whereby the case was remanded to the Chief Settlement Commissioner, N.W.F.P., who decided the matter and gave a judgment upon it on 26.10.1983. In addition to that, it is also in clear violation of Article 25 of the Constitution of Pakistan, whereby all citizens are not only equal before law but they are entitled to equal protection of law.

9. While the litigation between the parties was going in an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court set aside the impugned order of the High Court and remanded the case back to the Chief Settlement Commissioner/Member, Board of Revenue NWFP on 17.12.1980 in appeal cases Nos.26-P, 27-P and 28-P of 1971 with the direction to decide whether the land should be sold to Sericulture Department under provision of Section 12-B or should it be

allotted to the refugees. Consequently, the Chief Settlement Commissioner vide his judgment dated 26.10.1983 decided to transfer the whole of the land to the refugees. Again this decision was challenged in the High Court but before any decision this impugned Martial Law Order No.425 was issued by the Martial Law Administrator on 19.04.1984, whereby the land in question was transferred to the Sericulture Department retrospectively, i.e., w.e.f. 25.10.1983, meaning thereby, this order was given retrospective effect, one day prior to announcement of judgment by the Chief Settlement Commissioner, NWFP. The Chief Settlement Commissioner announced a detailed judgment on 26.10.1983 and MLO No.425 dated 19.04.1984 was given legal effect from 25.10.1983. This act of giving the MLO a retrospective effect shows the clear ulterior motive on the part of the Martial Law Administrator, who thereby hampered the way of justice very blatantly, thwarting and derailing the due process of law, as the judgment of the Chief Settlement Commissioner dated 26.10.1983, which was challenged in the High Court and was pending adjudication in the High Court but before its final decision this impugned Martial Law Order No.425 was notified.

10. The Additional Advocate-General, KPK, while arguing the case pleaded that this MLO No.425 was not a law but a decision of Martial Law Administrator of NWFP to solve a dispute between the parties. By

no means, the impugned MLO was made by the Martial Law Administrator to solve a dispute between the parties as asserted by the Additional Advocate-General, KPK. In either case, it is admitted fact that this MLO No.425 is related to a land which is subject matter of a legal dispute between the parties. In addition to that, it is also an admitted fact that the then Martial Law Administrator of NWFP did not offer or provide the opportunity to the petitioners to be heard; hence, they were condemned unheard despite the known fact that they were the interested party to a dispute directly related with the order so passed vide MLO No.425. This act of the Martial Law Administrator as it was executed is against a principle of Islamic Law as laid down in the following Hadith of the Prophet (S.A.W.) narrated by Hazrat Ali (R.A.):

باب كيف القضاء

عَنْ عَلِيٍّ، عَلَيْهِ السَّلَامُ قَالَ بَعَثَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَى الْيَمَنِ قَاضِيًا، فَقُلْتُ يَا رَسُولَ اللَّهِ تُرْسِلُنِي وَأَنَا حَدِيثُ السِّنِّ وَلَا عِلْمَ لِي بِالْقَضَاءِ فَقَالَ «إِنَّ اللَّهَ سَيَهْدِي قَلْبَكَ وَيُنَبِّئُ لِسَانَكَ فَإِذَا جَلَسَ بَيْنَ يَدَيْكَ الْخَصْمَانِ فَلَا تَفْضِيَنَّ حَتَّى تَسْمَعَ مِنَ الْآخِرِ كَمَا سَمِعْتَ مِنَ الْأَوَّلِ فَإِنَّهُ آخِرُ أَنْ يَنْبَيَّنَ لَكَ الْقَضَاءُ»

حضرت علیؑ فرماتے ہیں کہ مجھے رسول کریم ﷺ نے یمن کا قاضی بنا کر بھیجا تو میں نے عرض کیا اے اللہ کے رسول! آپ مجھے (قاضی) بنا کر بھیج رہے ہیں جبکہ میں کم عمر ہوں اور قضاء کا علم بھی مجھے نہیں ہے۔ تو آپ نے فرمایا ”عنقریب اللہ تعالیٰ تمہارے دل کی رہنمائی کرے گا اور تمہاری زبان کو ثابت رکھے گا، جب تم فیصلہ کرنے بیٹھو اور تمہارے سامنے دونوں فریق موجود ہوں تو جب تک تم دوسرے کا بیان اسی طرح نہ سن لو جس طرح پہلے کا سنا ہے فیصلہ نہ کرو کیونکہ اس سے معاملے کی حقیقت ظاہر ہو کر سامنے آجائے گی۔“

Narrated Hazrat Ali (R.A.) ibn Abu Talib:

The Messenger of Allah ﷺ sent me to the Yemen as judge, and I asked: Messenger ﷺ of Allah, are you sending me when I am young and have no knowledge of the duties of a judge? He ﷺ replied: Allah will guide your heart and keep your tongue true. **When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say;** for it is best that you should have a clear idea of the best decision.

(Abu-Dawood Kitab ul Aqziya)

11. The crux of this Hadith is that no one should be condemned unheard. The legal maxim *audi alteram partem* coincides with this principle of Islamic law.
12. Needless to observe that in the light of above-discussion and as per the Constitutional mandate, this Court can exercise jurisdiction only to the extent of reliefs prayed for in the prayer clause vide reliefs No.1 & 2.
13. After hearing the parties, perusing the record and for the reasons recorded hereinabove, we are of the view that the Martial Law Order No.425 dated 19.04.1984 as published in Official Gazette on 14.05.1984 is against the injunctions of Islam being an Order to solve an issue between the parties as claimed by the Additional Advocate-General, KPK and was notified in violation of the Islamic principle of law as discussed supra. Hence, the Shariat Petitions are accepted, the Martial

Law Order No.425 dated 19.04.1984 passed by the Martial Law Administrator is declared contrary to injunctions of Islam. All the other questions raised by the parties regarding their title over the disputed land and or manner and quantum of compensation are outside the scope of jurisdiction of this Court, as they do not fall within the precincts of the Article 203-D of the Constitution.

JUSTICE DR. SYED MUHAMMAD ANWER

**JUSTICE MUHAMMAD NOOR MESKANZAI,
CHIEF JUSTICE**

JUSTICE KHADIM HUSSAIN M. SHAIKH

Dated the 07th February, 2022
at Islamabad.

Mubashir