

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Arshad Hussain Khan**

Constitutional Petition No. 40 of 2021

Munawar Ali Sagar & others
Versus
Province of Sindh & others

A N D

Constitutional Petition No. 1127 of 2023

Shanker Lal Advocate
Versus
Province of Sindh & others

Date of Hearing:	30.08.2023 and 05.09.2023
Petitioner in CP No.D-40 of 2021:	Through Mr. Ghulam Mustafa Hingorjo Advocate.
Petitioner in CP No.D-1127 of 2023:	In person.
Official Respondents in both the petitions:	Through Mr. Rafiq Ahmed Dahri, Assistant Advocate General Sindh along with i) Mir Aziz Ali Talpur, Deputy Conservator Wildlife Division Mirpurkhas; ii) Ms. Sindhu Chandio, Assistant Director Culture Department; iii) Ms. Koshalya Punhani, Assistant Director Culture Department; iv) Rabel Sarwar, Assistant Director Mineral Development Tharparkar @ Mithi; and v) Muhammad Saleh Bhatti, Superintendent Mines & Mineral Hyderabad.
Private respondents No.7 to 12 in CP No.D-40 of 2021:	Through Mr. Zaheer ul Hassan Minhas Advocate.
Amici Curiae :	M/s Sajjad Ahmed Chandio and Ishrat Ali Lohar Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J. - The subject of these two petitions is preservation, maintenance and resurrection of an “international

heritage” classified as “Karoonjhar Hills/mountains”, which site has been subjected to private excavation for minerals since 1979. These petitions are filed by some of the residents of Taluka Nagarparkar, District Tharparkar, in public interest to save this international heritage that existed within district Tharparkar, since billions of years, as archeologist estimated.

Following is the “Karoonjhar Hills/Mountain” as was in existence:



2. At the very outset, we were informed by learned Assistant Advocate General that although these ranges of small and big hills commonly called “Karoonjhar Hills”, which contained a sanctuary, providing habitat for a variety of species, have been subjected to private excavation for minerals, by way of a permission, but all such leases/licenses in respect of such Karoonjhar Hills and the land around,

have now been cancelled. It is, however, pleaded by petitioners that it is a modus operandi that whenever such a challenge is thrown to such mining leases/licenses, the officials tend to cancel them, while later they permit them even without any formal permission, hence adjudication insisted.

3. The individuals who filed this petition at some of point of time were appearing in person whereafter two amicus were appointed vide order dated 07.01.2021.

4. We have heard petitioner Shankar Lal in person, M/s. Sajjad Chandio and Ishrat Ali Lohar Advocates, appointed as amicus, Mr. Zaheer-ul-Hassan Minhas, appearing for private respondents whose mining leases/licenses have been cancelled, and learned Assistant Advocate General.

5. This petition includes multiple subjects such as mining excavation, antiquities cultural heritage, sanctuary for different species etc. and multiple laws are applicable but remained without any benefit to the subjects.

6. Previously, before 18th Amendment in the year 2010, the subjects were governed by concurrent list/Federal Legislative List, under 4th Schedule, such as cultural heritage, ancient monuments preservation, antiquities, mines and minerals etc. Available legislation to some extent served the earlier period under Antiquities Act, 1968 followed by 1975's Act, Sindh Cultural Heritage Act, 1994 (Preservation) however the same now falls within the exclusive legislative competence of Province of Sindh. None of the counsels raised objections to such extent. Before 18th Amendment the concurrent list via Entry 24¹ and 37² served for such legislative enactments whereafter it came in provincial domain.

¹ Environmental Pollution and Ecology

² Ancient and Historical Monument, Archeological Sites and Remains

7. In the initial days (before partition) the subject matter of this petition was considered under Ancient Monument Preservation Act, 1904 of the British Indian Government, which assumed its new shape of legislation in 1968 as Antiquities Act, 1968 (XIV of 1968); it then followed by Antiquities Act, 1975 and rules at different point of time were/are framed under then existing enactments.

8. Chronologically the law somehow covering the subjects are:

1. Ancient Monument Preservation Act, 1904
2. Antiquities Act, 1968
Antiquities Act, 1975
3. Sindh Wildlife Protection Ordinance, 1972 (Sindh Ordinance V of 1972)
4. Sindh Cultural Heritage (Preservation) Act, 1994
5. Sindh Environment Protection Act, 2014
6. Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020
7. Sindh Mines & Minerals Governance Act, 2021 (Sindh Act No.XXXIV of 2021)
8. National Climate Change Policy, 2021
9. Sindh Mines & Minerals Governance Rules 2023
10. Sindh Concession (Granite) Order 2007

All laws detailed above had its importance over the site at the relevant time, but the effects were not found beneficial.

9. We may first discuss why preservation and resurrection of Karoonjhar hills, in its original form is important. The existence of the Karoonjhar Hills goes almost as far back as the history of this globe is. Some archeologists suggest that it is one of the fewest mountains existing since approximately 3 billion years. This globe is only 4 to 4.5 billion years old. There are certainly quite a few ranges, which are older than this Karoonjhar Range as the historians/archeologists say but the present one cannot be ignored and undermined because of its history. There are countless mountains on this globe with oceans, sea, river

planes and Plutos etc. and if not all, some have significance attached that requires attention. The earth was/is one of the balanced structures of this universe created by God and we alter it for the sake of personal gains and human consumption.

10. This range of mountain (under consideration) in fact is extension of Aravalli Range. The aravalli range belongs to Achaean period which makes it one of the oldest rock system³. The Karoonjhar Hills also form part of “Runn Kutch Wildlife Sanctuary” and is supposed to be protected by wildlife department, presently, via Sindh Wildlife Protection, Preservation, Conservation and Management Act 2020 and the site is prohibited from being damage under the present enactment. The Act also restricts interference in natural structure, quarrying, causing or fashioning of natural stones, exploration and exploitation of mines and minerals in a desired manner. “Excavation for resources” cannot be ignored for human existence, however, generally structured rules and regulations to utilize resources would govern the subject but could not be applied to “international heritage”. Preservation of antiquities, cultural importance and economic needs are often found head to head and a balanced approach is very important; archeological importance of Karoonjhar Hills would prevail over economic importance in many aspects.

11. At some point in time, the followers of Jain religions have considered this range as a sacred place and constructed hundreds of temples within the planes and curves of the then Karoonjhar Hill in such a way that entire range was found full of scattered “Jain Temples” and within such temples there were monuments of worship/statues (movable antiquities) as far as followers of Jain religion is concerned. The history shows that Nagarparkar landscape at some point of time formed

³ Samejo, Saif (The importance of preserving the Karoonjhar Mountain) Express Tribune Retrieved 2022-06-20.

important center of religion and culture and remained as such for centuries. The Jain worshippers for a considerable period dominated the region and its followers were merchants and advisers. They dominated through Port of Parinagar (which perhaps existed at the relevant time) and the statistics show that it was founded in 5th BC and now only vestige of such Port could be traced. The site remains an inspiration for a number of poets and writers of Sindh who, in many verses in Sindhi and Gujrati poetry have described Karoonjhar. Myths and lores of Sadwant and Sharanga, Hothlal Pari (nature's fairy), Odho Jam (Sindhi lore) and Bherio Garori (wolf's ring) are regarded and articulated to this range.

12. It (Karoonyhar Hills) has more or less 109 hills which have been named separately. Apart from these 109 continuous/consecutive hills/range of mountain, there are other hills in Tharparkar which are approximately 45 in number. It is no doubt has had a significant importance as far as our world's archeological and historical concepts are concerned and needs our attention and care.

13. One of the laws that is considered to have its application on the subject is Sindh Cultural Heritage (Preservation) Act, 1994. The said Act is an Act to preserve and protect ancient places and objects of architectural, historical, archaeological, artistic, ethnological anthropological and national interest in the Province of Sindh. A number of sites have already been declared as protected heritage within the meaning of aforesaid Act. It is on the recommendation of Advisory Committee on Sindh Cultural Heritage, in its meeting held on 29.03.2022, that the Culture, Tourism, Antiquities & Archives Department, that the Government of Sindh was pleased to declare the site as protected heritage.

14. UNESCO has designated some sites in Pakistan as world heritage sites and 26 sites presently are on the tentative list. This program of

preserving world heritage triggered and unveiled with the Convention concerning the Protection of World Cultural and Natural Heritage, which was adopted by the General Conference of UNESCO on 16.02.1962 in Paris. Pakistan ratified the Convention on 23.07.1976 thus making its historical sites available/eligible for inclusion in such lists.

15. Present site is also found as a “tentative site” for a declaration as world heritage by UN, apart from others. A fact finding committee notified by Chief Secretary Sindh under the chairmanship of Secretary, Mines and Mineral Development Department including Director General Mines & Miner Development Department, Director General Culture and Director General Environmental Protection Agency Sindh, Chief Conservator Forest Department, Deputy Commissioner District Tharparkar at Mithi, Director Settlement Survey and Land Records, Board of Revenue Sindh, got together and on 30.01.2020 made following recommendations:-

“1. The definition, jurisdiction and parameters of Karoonjhar Range must be clearly defined in the wake of Granite Order 2007 which specifically bans mining of granite in the Karoonjhar Range. This has to be done keeping in view the following priorities:

- i. That all the cultural, historical, religious and potential tourism sites have to be excluded and their sustainability has to be safeguarded.*
- ii. That all the Forest Land has to be excluded from the area in which Granite (and any other mineral) mining will be allowed.*
- iii. That the entire Karoonjhar Range and its surrounding areas fall under the protected wildlife sanctuary. In order to allow mining, this potential area need to be excluded from the notified area, its general Environmental Impact Assessment (EIA) may be carried out and mitigation measures may be suggested by the Environment Protection Agency. This would require:*
 - a) Exclusion of an area of about 150,000 acres by Forest and Wildlife Department through a notification so that it would become convenient to issue mining premises/licenses*
 - b) Directions to Environment Protection Department to carry out EIA and suggest the mitigation measures to safeguard the environment and its flora, fauna and habitat.*

2. *Mining may be allowed in Karoonjhar range outside the protected/prohibited area and a comprehensive mining policy may be issued by the Government of Sindh with the following important decisions and changes:*

- i. *The entire area of Karoonjhar and its surroundings, which has the potential of containing granite reserves, has been divided into GIS based grids/blocks of roughly 200 acres each. Hence the mining licenses may be granted through a due process in terms of such blocks to ensure accuracy, curtail the practice of exceeding the permissible limits and to bring it in conformity with international best practices of mining.*
- ii. *The role of mines Committee as provided in Sindh Mining Concession Rules 2002 (SCMR 2002) may be restricted to vetting, shortlisting and finalization of the applications for granite mining permits and licenses and once this is done, open auction for a specific block (or a number of blocks) may be done amongst the shortlisted candidates/firms in order to ensure transparency, curtail corruption and favoritism and to achieve greater revenues for the Government of Sindh.*
- iii. *The license/permit for Granite Mining in Karoonjhar area may be made conditional with setting up of Industry within the limits of Tharparkar District in order to ensure value addition, employment generation and positive social benefits of this activity. Needless to say, Corporate Social Responsibility (CSR) would be an integral part of such permissions.*
- iv. *Failure to put up an industry within one year (with a permissible grace period of another 6 months) may result in automatic cancellation of licenses and permissions and forfeiture of all the fees etc.*
- v. *At least one third (1/3rd) of the mining licenses/permits may be reserved for the local residents of Tharparkar District to ensure their inclusion/participation in the mining activity. These permissions may not be transferred to any other party without prior permission of the Government.*
- vi. *Defence Ministry may be requested to provide a blanket permission to start mining and industrial activity in this area as similar activity is being carried out by FWO within the Karoonjhar Range and India has also been carrying out mining of granite and its processing through its local industry across the border.*
- vii. *The Government of Sindh may, on a war footing basis, establish a granite city at an appropriate location to facilitate the establishment of local industry and provide basic facilities like Road, electricity, water, gas and if possible, tax concessions as well.*

3. *In order to improve the existing legal structure governing the mining sector in Sindh (including granite mining), it is suggested that amendments in following laws/Acts and rules may be made in order to simplify the rules, avoid multiplicity and duplications and contradictions, and also to combine different laws together.*

- i. *Sindh Mining Concession Act, 2020, as after 18th Amendment, Sindh has no mining law/Act of its own and the Department is still carrying out its functions in the light of SCMR 2002.*
- ii. *Amendments in Sindh Mining Concession Granite Order 2007, for the purposes of exclusion of protected areas and allowing the granite mining in the permissible areas to be notified by the Government.*
- iii. *Amendment in the notified area reserved for wildlife in Tharparkar District notified u/s 38(c) of The Sindh Wildlife and Protection Areas Act, 2010.*
- iv. *Alternatively, if the Government of Sindh agrees, several acts can be repealed and included in the proposed Sindh Mining Concession Act 2020 so that the regulatory mechanism can be streamlined and simplified, that includes repealing of:*
 - a. *The Sindh (Prohibition of taking Minerals including Reti (Sand) and Bajri from any land) Act, 2003.*
 - b. *Sindh Mining Concession Granite Order 2007.*

4. There are Granite Mining Permits of many companies which covers about 624 acres, are as follows:

S.No.	Name of Company	No. of Leases	Lease from (Year)	Lease up to (Year)
1.	M/s Kohinoor Marble Industries	19	1999/2000	2030
2.	M/s FWO	1	2000	2030
3.	M/s Thar Mineral Processing	2	1992/1994	2019/ 2022
4.	M/s Parkar Granite	2	2012	2013
5.	Rana Munir Ahmed	1	2013	2014
6.	M/s Red Bricks	1	2014	2015
7.	Mr. Abdul Jabbar	1	2016	2017

Considering the fact that those companies who have long standing and valid permits and have gone through a series of litigations, their valid permits which fall in the prohibited areas (to be notified) may be shifted and an alternate site may be provided to them within the permissible area. This shifting may be decided by Mining Committee as per rules.

5. *Likewise, there is about 25,000 acres of area which is under mining of different minerals including China Clay, Fuller Earth and Iron Ore. The leased area falling under the protected area also needs to be shifted through the same policy to alternate sites by the Mines Committee.”*

16. Unfortunately some of the sites which are of international importance, are only in the form of “Ruins” of Moenjodaro, Buddhist “Ruins” of Takht-e-Bahi and its neighboring city remains as Sahr-e-Bahlol and Taxila. These places have been included as of cultural significance in 1980. In 1981 two additional places i.e. Fort and Shalamar Garden

Lahore and historical monuments of Makli were inscribed and the last site to be designated as world heritage was Rohtas Fort in 1997. These inscribed as permanent six sites and 26 tentative sites are listed in the cultural category and the officials of provincial government, responsible for their preservation, are bent upon to eliminate each one of them, one way or the other such as excavation for minerals etc.

17. We may clarify that this tentative list is an inventory of important heritage and natural sites that our country is considering for inscription on the World Heritage List thereby it becomes a World Heritage Site. Updated version of the tentative list includes:

- (1) *Badshahi Mosque, Lahore*
- (2) *Wazir Khan Mosque, Lahore*
- (3) *Tombs of Jahanir, Tomb of Asif Khan and Akbari Sarai, Lahore*
- (4) *Hiran Minar and Tank, Sheikhpura*
- (5) *Katasraj Temple, Chakwal*
- (6) *Ranikot Fort, Dadu*
- (7) *Shah Jahan Mosque, Thatta*
- (8) *Chaukhandi Tombs, Karachi*
- (9) *Archaeological site of Mehrgarh*
- (10) *Archaeological site of Rehman Dheri*
- (11) *Archaeological site of Harappa*
- (12) *Archaeological site of Ranigat*
- (13) *Shahbazgarhi Rock Edicts*
- (14) *Mansehra Rock Edicts*
- (15) *Baltit Fort*
- (16) *Tombs of Bibi Jawindi, Baha'al-Halim and Ustead and the tomb and mosque of Jalaluddin Bukhari*
- (17) *Tomb of Shah Rukn-e-Alam*
- (18) *Port of Banghore*
- (19) *Derawar and the Desert Forts of Cholistan*
- (20) *Hingol National Park*
- (21) *Karez System Cultural Landscape,*
- (22) **Nagarparkar Cultural Landscape or Nagarparkar Jain temples**
- (23) *Central Karakoram National Park*
- (24) *Deosai National Park*

(25) Ziarat Juniper Forest and

(26) The Salt Range and Khewra Salt Mine.

18. We do not enjoy a good history in preserving such monuments of world's importance. We let them fall/ruin and then save the leftovers only. The site ought to have been preserved as a cultural monument years before.

19. The subject site is already subjected to excavation for minerals since 1979 for the purpose of private commercial gain as the site is rich in mineral. Should these excavators be allowed to play hide and seek game with the help of government officials or should a stern action is required? It is time now that serious measures and prompt action be taken.

20. The subject site at one point of time remained a sanctuary for a number of animals which could hardly be seen now. Most of the temples and worship statues (movable antiquities) have been taken away and demolished and even the forests are no more in its prime form; as of now it gives a deserted look. Forest department, except for maintaining an office at site, is doing no work to resurrect the forests to provide a natural habitat for a number of species, to thrive in their natural habitats.

21. Recent and important promulgation of the present times in respect of wildlife importance and its protection, considering the threat posed by the climate change and its horrifying effects, which have started to flow and have hit enormously, is totally ignored. In the recent past unprecedented rains caused devastations and destructions, and *ibid* laws⁴ aimed at combatting such international challenge, therefore, terms of the provisions, contained in Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020, makes it

⁴ At Sr. No.4 and 5 of Para 8 above.

abundantly clear that mining activities in the areas, such as Karoonjhar, (a protected forest and a wildlife sanctuary), cannot take place under the garb of exploration, rather such conduct of government functionaries, to destroy the natural habitat and ecosystem, are adamant of committing “Ecocide” (destruction of natural environment by deliberate and negligent human action), the world over. There is thus a unanimous and united call for the importance of imminent legislation and its enforcement on this burning issue of destruction of mother nature, and here in our country such “ecocide” being committed at the sweet will of these sitting in the power corridors and “mining permits” is an evidence of such will. The 2020 Act explicitly enacted keeping us at par with international environment commitments and multilateral agreements with a view to observe precautionary measures in order to address the effects of climate change.

22. Section 12 and 13 of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020 also provides for declarations of National Park & Wild Life Sanctuary. It is high time now that the officials acting under the Act may resurrect National Parks and Wildlife Sanctuaries including the present one, to maintain it in its original form, as much as possible.

23. The Antiquity Act 1975 provides preservation and protection of ancient antiquities which was never followed.

24. Sindh Mining Concession (Granite) Order of 2007 also restricts, in term of its Section 25, that no lease can be granted in Karoonjhar Mountainous Range. This may have taken some time to legislate but this is high time for protecting the monuments of national and international interest, though the law existed for the preservation and protection of aforesaid site even before, which law too was not implemented. The Ancient Monuments Act, 1994, as it stood, by definition of the

preservation of ancient monuments and object of architectural, historical, archaeological, artistic, ethnological anthropological and national interest, frames Karoonjhar Hills as being qualified for such preservation.

25. Section 3 of Sindh Mines & Mineral Governance Act, 2021 also protect and prohibits grant of any license to prospect for mineral or for exploration/quarrying/permit/lease/license of mines & minerals. This provision is negatively couched which expresses its mandatory nature.

26. Sindh Environmental Protection Act, 2014 promulgated to address various environmental related issues and its application over subject site for maintaining the long existing sanctuary as a forest life cannot be ignored and overlooked.

27. It is a matter of concern that despite international Conventions over the exploitation of minerals, oil and gas exploration over the world heritage sites, the responsibilities have not been shouldered properly, which has resulted in diminishing such valuable sites of international importance. We tend to wake up only when the site of international importance is about to deplete. The extraction activities over these world heritage properties are growing in our society, which is a matter of concern. The International Union for Conversation of Nature (IUCN) outlined new world heritage advice that mineral and oil/gas exploration and exploitation should not be permitted within natural world heritage sites.

28. Cumulative effect of above discussion would yield that such sites need our attention to be saved. In view of the above, we conclude/ direct respondents as under:-

- A) The site “Karoonjhar Hills” is not available for excavation of any nature whatsoever except excavation for discovering

historical monuments and that too after following international guidelines and archeological department;

- B) Mines & Mineral Department do not enjoy the jurisdiction over it since it is protected heritage and not available as a site for mining/excavation;
- C) Entire range Karoonjhar Hills in “one monument” under the law and cannot be divided into pieces and portions and to make some part of it (range) available for any prohibited excavation. Its importance lies in preserving the entire range and not permitting mineral excavation in between as it would not only destroy the beauty but at the conclusion of mining process would destroy the existing topography;
- D) The Forrest and Wild Life Department, Government of Sindh shall take all and immediate measures to resurrect the sanctuary for all those animals, birds, species whose habitat is/was Karoonjhar Hills.
- E) Process of resurrecting the forest should start “NOW” and the process of plantation of the trees, which could grow and thrive in the said region, should be started and record⁵ of plantation be maintained and each hill with plantation process and plants/trees be monitored and quarterly (three monthly) report to this effect be filed before this Court;
- F) Office Deputy Commissioner Tharparkar at Mithi together with SHO of concerned police station are responsible that no commercial activity of any nature, that could said to be of mining or excavation, be carried out within the Karoonjhar Hills, defined above; and above officials are considered to be responsible persons for maintaining the above restrictions

⁵ It required all trees be numbered and identified.

and/or compliance; other officials under the enactments discussed above have their duties to be delivered and failure would be considered as negligence and avoidance of the order of this Court;

- G) Government of Sindh shall ensure that these range of mountain be maintained as ordered and required under the law. In case any mining permit or any action or inaction is found to have been triggered or issued or if any private mining work is seen and found in progress, the Secretary of Mines & Mineral and all officials concerned shall be primarily held responsible and be taken to task, besides others;
- H) Each and every Jain Temple should be resurrected in its original form with the assistance of experts and each and every stone shall be laid to restore it to its original shape and glory and the officers responsible for the protection of these heritage will be held responsible;
- I) The statutes (moveable antiquities) that were declared world heritage should also be made available so that this world heritage be protected in its original form.

29. Petitions stand disposed of in the above terms along with pending applications.

Dated: 16/10/2023

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