Lack of Legal and Religious Justification for the alleged Perpetual Sanctity of the ‘mosque’ built Illegally at the Premises of the old Police Post at Rabwah (Chenab Nagar)

In the context of the ongoing agitation concerning the mosque in the premises of ex-Police Post at Chenab Nagar, it is appropriate to examine the legal and religious merit, or the absence of it, of the assertions of mullahs.

It would be recalled that the Police Post, Rabwah was located at a site loaned by the Ahmadiyya Community to the police more than quarter of a century ago. The post was recently shifted to another location by mutual consent, and the premises were handed over to Ahmadis. Some years ago, the police unauthorisedly constructed, first a platform, then a small one-room mosque in the courtyard, without consent of the owners. The mosque is still intact. Mischief monger mullahs fabricated the story of destruction of the mosque, and took up the issue to create serious law and order situation in the country. Subsequently, they conceded that the mosque was only ‘partially damaged’ (the WCs and water taps), but they continue to insist that, as a mosque is a house of Allah, it remains a mosque for ever and its status cannot be tampered with or changed under any circumstance. They, therefore, demand that the mosque (and also the Police Post) be handed over to Muslims for perpetual possession, access and worship, otherwise they threaten to unleash a violent countrywide movement against Ahmadis. Although this dogma of perpetuity is itself disputable, it is essential and compelling to examine whether this place of worship was really a regular and public mosque that deserves legal and religious sanctity and privilege as such. Even prima facie, it was not so. Here, we undertake a brief study of this case to prove the point that on this issue the mullah stands on legs of clay, and betrays his intelligence as that of a cockroach. He is only bent upon great mischief; in this he is inventive.

The police post mosque issue is not a case apart. Such an issue arose even in the life of the Holy Prophet (pbut), and the like have recurred off and on ever since. The Shariah and other courts have given repeated verdicts on the status of mosques built unauthorisedly on someone else’s property. A few precedences are quoted below.

Islamic history records that the Holy Prophet (pbut) intended extension of his mosque at Medina, but as the required land was property of two orphaned children, he did not undertake it till a Muslim purchased the land and dedicated it (Wakf) for the mosque.


More recently, in 1973 a case involving a mosque was placed before the Lahore High Court. The judgment given by a Bench comprising Justice Sardar Muhammad Iqbal and Justice Muhammad Siddique is particularly material as it takes into account not only the legal and constitutional provisions but also the dictates of Shariah. Before we give extracts of their Judgment, we give outline of the case to facilitate understanding. The case is PLD 1973 Lahore 500. The dispute related to a piece of land situated within municipal limits of Bhera, District Sargodha. The land in dispute was property of Evacuee Trust. It was allotted to Abdul Rashid (Respondent No.1). The Anjuman Araian (Appellant) through one Faiz Ahmad
contended the allotment on different forums, at last before this Division Bench at Lahore High Court. The contention of the Anjuman (an Association) was that since it had constructed a mosque and madrassah on the plot of land, it had acquired an interest in it, and was bound to be adversely affected by the sale. In other words the contention was that although the Anjuman was not owner of the land, yet the fact that it had built a mosque and madrassah on it, it had acquired an interest in it. The question, therefore arose whether a mosque can be constructed by usurping the land of another, and if it is constructed, can it be used as mosque. Relevant extracts of the judgment are reproduced below. These are verbatim, however emphasis is added.

**JUDGMENT**

**SARDAR MUHAMMAD IQBAL, J**

3. The Anjuman-Araian, Bhera through one Faiz Muhammad filed Writ Petition No. 574-R of 1970 praying that the allotment of Abdul Rashid respondent be declared to be without lawful authority and as such of no legal effect and that all subsequent transactions “especially the final order of approval by the President of Pakistan be declared to be void and inoperative.” The petition was dismissed in limine by our learned brother Aslam Riaz Hussain, J., by his order dated the 29th of September 1970, on the ground that the Anjuman was not an aggrieved person and, therefore, had “no locus standi whatsoever to invoke the jurisdiction of this Court under Article 98 of the Constitution. This is a Letters Patent Appeal.

4. The facts have been fully stated in the order of the learned Single Judge. It is not necessary to restate them. The case depends on the determination of the question whether or not the Anjuman had the locus standi to file the petition under Article 98 of the late Constitution. The learned counsel for the parties have not advanced their cases beyond what they contended before the learned Single Judge. The contention of the respondent was noticed in para.6 of the Judgment as :-

“Major Ishaq M. Khan, counsel for respondent No.3, submitted that on its own showing the Anjuman is a trespasser on the land in question; that it is neither an allottee nor a transferee of the said land; that it is not even an applicant for its transfer and has not expressed any hope that the same might ultimately be transferred to it; and that the only right that the Anjuman claims with respect of the land in question is that it has constructed a Masjid and a Madrassah over it, without any authority or right whatsoever and even without getting the plan thereof sanctioned from the relevant Municipal Committee. He argued that: on these facts, the Anjuman cannot be regarded as an ‘aggrieved party’. “The case of the appellant, as was advanced by its counsel Mr. Mujaddid Mirza before the learned Judge, was that “to be an ‘aggrieved party’ within the meaning of Articles 98 of the Constitution, one need not have a ‘legal’ right in the property in question and it is enough if the person invoking the jurisdiction is in any manner hit or adversely affected by the impugned order. He admitted that the Anjuman was neither a transferee of the land nor had it applied for its transfer. He did not contend that a Masjid and Madrassah were built on the land in question in pursuance of any right ‘vested’ in the Anjuman or that the plan thereof had been got sanctioned from the relevant Municipal Committee.”
The learned Judge having considered the contention of the parties in this behalf held in paragraph 13 of the Judgment: “Anjuman Araian in the present case, however, had no legitimate right whatsoever over the land in dispute. Its status, by its own admission, is only that of a trespasser. It entered the land in question without the permission of the relevant authorities and started using for its own purpose. Subsequently, it constructed the Mosque and the madrassah without any right whatsoever and without obtaining permission from the relevant authorities. It did not care even to get the plan thereof sanctioned by the relevant Municipal Authorities. No doubt the impugned order is not to the Anjuman’s liking. The Anjuman would have liked to usurp the land and become owners of the same by adverse possession, but it certainly does not have legitimate right, vested or otherwise, in the land in question which would entitle it to maintain a writ petition.”

The appellant has not placed anything on the record, nor has it been contended before us that the facts on which reliance has been placed by the learned Judge to hold that Anjuman is a trespasser were incorrect. The appellant indeed in paragraph 13(viii) of the grounds of appeal alleged “that the construction of the mosque as well as the Madrassah was duly approved by the Municipality Bhera on 20.3.1967”. But it is only an assertion without any proof. There is no sanction of the Municipal Committee, Bhera in favor of the appellant.

5. The learned counsel for the Anjuman contended that since it had constructed mosque and Madrassah on a part of the land, it had acquired an interest in it and was bound to be adversely affected by the impugned sale. In other words, the contention is that although the Anjuman is not the owner of the land, yet by the fact that it has built a mosque and school on it, it has acquired an interest in it. The question, therefore, arises whether a mosque can be constructed by usurping the land of another person and if it is so constructed, can it be used as a mosque? The educational institution to impart religious instructions, of course, has not the same importance as a mosque has. If the construction of the mosque and its user is unauthorized and irreligious, the construction of the unauthorized Madrassah will, of course, create no right or interest in the Anjuman.

6. In Al-Hadis, an English translation of Mishkat-al Masabih, Part II, Chapter XIV by Alhaj Maulana Fazlul Karim, the usurpation is explained as: “Gaszb in its literal sense means forcibly taking a thing from another without the consent of the owner in such a manner as to destroy the owner’s possession of it”. In Fatawa-i-Alamgiri, Vol.1:

"If somebody built a mosque on his own share of the land which was a joint property and subsequently it was revealed that a part of it belonged to another shareholder, it would no longer remain a mosque owing to the proprietary nature of the land under it.”

We may refer to Majmuatual Fatawa by Maulana Abdul Hayee, Vol. I where it is stated:
It is not proper to offer prayers in a mosque built on the outer wall of a mosque for the reason that the latter belongs to the public and does not vest exclusively in God, the Almighty. It is just like offering prayers in a mosque built on a property unlawfully seized from its owner.

In connection with the conditions and qualifications of a valid Waqf it is mentioned in Fatawa-i-Alamgiri, Vol. I:-

"One of such conditions is that at time of dedication of the property the creator of the trust should be its absolute owner. If at the time of the creation of Waqf he forcibly seized the land belonging to somebody else and then dedicated it for the purpose of Waqf, the Waqf would not be validated even if subsequently he has paid the price of the land to the owner and has arrived at some settlement with him in lieu of some money."

In Fatawa-i-Alamgiri, Volition it is stated:

"If somebody took forcible possession of land belonging to another and planted trees in it or constructed a house thereon, he will be told to demolish the construction, remove the trees and return the land to its owner. If the demolition of the structure or removal of trees result in damage to the land, its owner will be entitled to retain them on payment of their price."

In Bukhari and Muslim it is said:

"Whoever unlawfully seized land belonging to another to the extent of one span of hand, on the day of Judgment all the seven earths will be hung round his neck with their full weight."

Doubtless the act of the members of the appellant-Anjuman in occupying the land in dispute is usurpation (Gasb). They had taken possession of the land without the permission of the Evacuee Trust Board in whom the property had vested. If they had intended to construct the mosque, the proper course for them was to have applied for a transfer from the Trust and they could also approach the Central Government under para 19(j) of the Scheme for the Management and Disposal of the Evacuee Property attached to Charitable, Religious or Educational trusts. They did
not take any steps to acquire the property lawfully. Since they took over the possession in an illegal and unauthorized manner, it is an act of usurpation.

In Al-Hadis an English translation of Miskatul Masabih, Part II, Chapter XIV by Alhaj Maulana Fazalul Karim, usurpation is condemned at page 229 in these words:-

"Usurpation is unlawful. Any person knowingly and willfully usurping the property of another is held to be a criminal and a sinner, and therefore he becomes liable for compensation. The object of Islam is peace. By encroachment of the rights of another, peace is disturbed and therefore a sin is committed. Forcible possession is oppression in an extreme form of which there is a strong condemnation both in the Holy Quran and Hadis. A usurper will be hurled down unto seven earth on the Resurrection Day - 4: 15, 14: 12, and he shall be made to bear the burden of earth that he usurped - 14: 295W. A marauder is not a follower of the Prophet, and Islam enjoins no compulsion in any action 1:70. Riot and loot are strictly unlawful -14:3. Prophet even instructed not to take a staff of his brother out of joke."

In Bokhari Salem from his father reported:

"Whoso extorts any portion of land unjustly will be sunk down unto seven earths on the Resurrection Day."

In Baihaqi Darqutni Abu Hurrah al-Raqqashi from his uncle reported that the Messenger of Allah said:

"Behold! oppress not. Behold! the property of a man is not lawful except with his voluntary consent."

In Ahmad Ya’la-b-Murrah reported that I heard the Messenger of Allah say:-

"Whoso encroaches upon a land without title therein will be put to bear the burden of its earth on the Congregation day.

Same reported: I heard the Messenger of Allah say:

"Whoso takes a span of land by oppression the Glorious and Almighty Allah will give him the trouble of digging it till he reaches the last of the seven earths, and then he will be thrown down up to the Resurrection Day till he will be brought for judgment among men - Ahmad.

We may also refer to Verses 108 and 109 of Sura Tauba translated by Marmaduke Pickthall:
“108. Never stand (to pray) there. A place of worship which was founded upon duty (to Allah) from the first day is more worthy that thou should stand (to pray) therein wherein are men who love to purify themselves. Allah loveth the purifiers.”


109. Is he who founded his building upon duty to Allah and His good pleasure better, or he who founded his building on the brink of a crumbling, overhanging precipice so that it toppled with him into the fire of hell? Allah guideth not wrongdoing folk."

We may again refer to Al-Hadis (English Translation by Maulana Fazalul Karim) where while dealing with the Civil Liabilities of a usurper it was observed:

"An usurper of land is liable for any damage occasioned by the cultivation of it, and a trespasser usurper acquires no right in a property."

8. The precise question was considered by their Lordships of the Supreme Court in Fazal Din v. Lahore Improvement Trust (I) and it was held that "under the Muslim Law; both Hanafi and Shahi Schools; it is a condition that the property dedicated should be the Wakif’s otherwise the Wakf is not valid. Ameer Ali in his Muhammadan Law, Volume I, P. 134 states that ‘the subject-matter of dedication must be the property of the Wakif at the time the Wakf is made, that is he must be in a position to exercise dominion over it. To make a valid dedication it is essential that the person dedicating must be vested with full proprietary right at the time of dedication, for, even the subsequent acquisition of such a right will not validate it unless the proprietor also ratifies.”

9. The appellant has failed to establish any legal right. Doubtless, it has no right in the juristic sense. It has also not been able to show that the sale has resulted “in the loss of some personal benefit” to it. ..............

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13. We find no merit in this appeal which is dismissed with costs.

Appeal dismissed.

Honorable Sindh High Court reaffirmed this legal position most recently in year 2002 vide its judgment reported at 2003 CLC 607 titled as PAKISTAN EMPLOYEES’ COOPERATIVE HOUSING SOCIETY.... Plaintiff verses MESSERS AWAMI CONSTRUCTIONS CO. LTD and another..... Defendants. The honorable judge, in his Judgment reproduced the legal and Shariah reasoning of the Lahore High Court PLD 1973 Lahore 500 (quoted above in this note) and referring to Mr Iqbal Kazi (for Defendants) concluded his Judgment as follows:

Mr. Iqbal Kazi also referred para 5. of the plaint of Suit No. 1251 of 1975 filed by the applicant against the company to contend that such platform cannot be taken as a public place or mosque. The said para, is as follows:-

"that about 20 or 25 years ago, the said Society (PECHS) had erected a platform on the southern-western portion of its office premises for the purpose of offering facilities for its employee and members, who visit its office to offer Namaz thereat."
Mr. Iqbal Kazi to support his contention has referred the judgment of Lahore High Court in Sh. Nanki Devi v. Habib Ullah and others AIR 1936 Lah. 876:

"Namaz can be offered at any place but that place cannot be treated as 'Masjid', unless the owner dedicates the land or the land has been purchased from the owner. Therefore, applicant cannot claim on their own right the portion or any part of the platform."

In the light of my findings on points referred to above and as a consequence thereof, the application has no merits, the same is dismissed, however, the parties are left to bear their costs.

S.A.K./P-55/K

Application dismissed.

Above mentioned established opinion is well known to scholars and authorities. The Daily Express of February 18, 2004 reported the edict (Fatwa) of Mufti Abdul Qawi of Multan as: “When required, mosques and madrassahs can be demolished. Prayers offered at mosque built (on a site) without payment are wrong, even though the mosque was built years ago.”

The daily Jang, Lahore of November 16, 1999 quoted Maulana Abdul Qadir Azad, the ex-Khatib of the Badshahi Mosque, Lahore as: “The last government demolished (shaheed) 78 mosques as excuse to broaden the roads”. The daily Khbrain of April 12, 2002 reported a decision of Justice Ejaz Chaudhri of the Lahore High Court in following headlines: “Prayers offered in unlawfully constructed mosques are not valid; it is proper to demolish these (mosques). Muslims have made it a habit to construct shops at ground level and a mosque above on unauthorized lands, in order to maintain their hold (on the site). Neither Islam nor the courts can permit illegal construction of mosques.”

In the light of these conclusive legal and Shariah verdicts given by appellate courts and authorities, the status of the private property owned by Ahmadis, and of the police post mosque, subsequent to the shifting of the post is very clear. Any encroachment on this land is trespassing. Any claims or declared intentions about this property are intended usurpation. These have been condemned by law and the Shariah in severest terms. However, it is amazing that the authorities undertook or permitted the following serious infractions of the law after the shifting of the police post:

- Destroyed a private wall of this property in response to clerics’ protest.
- Maulvi Tahir Mahmud Ashrafi, in his capacity as Advisor to the Governor of Punjab on religious affairs led approximately 35 mullahs to the location on July 23, trespassed the private property and offered Asr prayers in the mosque. He did this despite advice by the police to desist from violation of the law. He paraded his official position, and compromised the station of the Governor in a delicate matter that deserved utmost care.
- The police accompanied a mullah from Dawar, a nearby village, who offered Fajr prayers at the site on July 26.
- On July 29, mullahs were allowed to trespass the property five times for offering prayers. They brought along a youngster and gave him a lesson from a primer, as if the place was a madrassah. It is noteworthy that never before, this mosque had been visited by these mullahs. It was not a public mosque and was never used as such.
- According to press reports, the police on July 30 stopped at the river bridge a horde led by Mullah Muhammad Hussain coming over from Chiniot to offer prayers at this mosque, and promised to let them do their wish after 15 days.

It is however learnt that these days the police are firmly stopping visitors who intend to take the law in their own hands.
The mullah however is active to persist in his mischief, regardless of the dictates of the Shariah and the law of the land. For example:

- Mullahs arranged for approximately 700 of their acolytes to converge on Rabwah on July 23 to listen to their most provocative and fiery speeches at the Station mosque which is located almost in the city centre.
- Qari Allah Yar Arshad threatened in an open gathering at Chiniot on July 18 to target all the Ahmadiyya mosques all over the country. He also proposed a complete blockade of Rabwah.
- Qari Muhammad Ayub of Jamiat Ahle Hadith, in the same meeting, urged the audience to totally destroy Rabwah (eent se eent baja dain) when the call is given.
- Mullah Muhammad Hussain Chinioti, at the same occasion asked for 313 vigilantes so as to replay the Battle of Badr, that very day. He declared that this was not the time to protest; this was the time for violence (dandeey ka waqt). “If I am taken to the DSP’s (Deputy Superintendent of Police) office, I shall be first to thrash him with my shoe”, the mullah bellowed.
- Mullah Ilyas Chinioti suggested that if he asked for suicide attackers (kafan posh naujawan), Qadianis and the administration will not be able to resist their onslaught (sailab).
- Mullah Zahid Mahmud Qasmi (of JUI-MMA) said, “If the Police Post is not shifted back to the mosque, we shall launch a countrywide agitation”. The daily Nawa-i-Waqt; July 30, 2004. A number of other mullahs have made the same demand. This appears to be their new line of action.
- “Majlis Khatme Nabuwat gives one week’s deadline for the recovery of the mosque. If the administration fails to solve the problem, we shall recover it ourselves. This is not a hollow threat - Maulana Ilyas Chinioti”

*The Daily Jang, Lahore; July 31, 2004*

The mullah, who claims to be the guardian of the Shariah, does not mind violating its provisions if these do not support his vulgar designs. Such is the darkness of the closed mind of these bullies and bigots. The mullah is willfully perverting the great religion of Islam and is choking in his own rage. It is time that the government stops flirting with these fundamentalists and dispatches them to dustbin of history where they now belong.