JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P No.17085 of 2022

Nooruddin Feerasta & others

Versus

Lahore Development Authority (LDA) & others

J U D G M E N T

Date of Hearing.	21-02-2024
PETITIONERS BY:	M/s Syed Ali Zafar, Jahanzeb Sukhaira, Talib Hussain, Asfand Waheed, Muhammmad Adeel Chaudhry and Abdul Latif, Advocates.
RESPONDENTS BY:	M/s Muhammad Iftikhar ud Din Riaz, Ahmad Abdul Rehman and Muhammad Umer Rafiq, Advocates for respondent No.3. Sahibzada Muzaffar Ali, Advocate for respondent-LDA. Mr. Hassan Ijaz Cheema, A.A.G.

Shahid Karim, J:-. In this petition, the petitioners are owners of a house off Zafar Ali Road, Gulberg-V, Lahore (the petitioner No.1). During these proceedings, the petitioners no.2, 3 and 5 withdrew their challenge and only petitioners No.1 and 4 sought to pursue the petition. This fact does not detract from the issues of law which are required to be decided upon by this Court.

2. The petitioners are aggrieved of the construction of an apartment building by respondent No.3 adjacent to the residential plot No.29 (off Zafar Ali Road) Gulberg-V, Lahore. (**The disputed building**) In a nub, respondent No.3 has been granted permission by the Lahore Development Authority (**LDA**) Town Planning Wing for construction of a 14-Storey high-rise apartment building on the residential plot in question. As adumbrated a number of challenges have featured during the course of the oral arguments addressed by the learned counsel for the petitioners. At the

heart of these proceedings is the promulgation of Lahore Development Authority Building and Zoning Regulations, 2019 (**2019 Regulations**) which were enacted pursuant to a change of policy by LDA for construction of apartment buildings at different locations within the jurisdiction of LDA. Apartment building has been defined in the 2019 Regulations as:

> *"Apartment building means a building containing more than two apartments sharing common stair case lift or access spaces".*

3. Mr. Ali Zafar, Advocate learned counsel for the petitioners based his challenge on a number of grounds which will be dealt with *in seriatim*.

4. The first ground invokes Regulation 10.3.3 of the 2019 Regulations which relates to multi-storey buildings and buildings of public assembly. Clause 'g' of Regulation 10.3.3 provides that:

> ***"g. NOC from EPA***
>
> *Subject to the provisions of Pakistan Environment Protection Act 1997, every application concerning following buildings shall be accompanied by an EIA and a No Objection Certificate from EPA.*
> *i. Industrial Buildings*
>
> *ii. Hospitals*
>
> *iii. Hotels*
>
> *iv. Urban Development Projects*
>
> *v. Complex of buildings on a plot of 20 Kanal or above LDA will conduct the EIA and cost which will be incurred on the study, shall be charged from the individual/owner at the time of approval of building plan.*
>
> *vi. Residential Apartment(s), Education Institution(s), Restaurant(s) and hotels with height above 70 feet and area four Kanals and above.*

5. On the strength of the above provision, the learned counsel for the petitioners stated that the disputed building falls in category 'vi' being a residential apartment building with a height of 70 feet and area of 4-Kanal and therefore

would require an NOC from Environmental Protection Agency (EPA) and for an NOC to be had from EPA, the application must be accompanied by an EIA. This, according to the learned counsel, is a *sina qua non* to the sanctioning of any apartment building and since this condition has gone abegging, the construction of the disputed building cannot be continued under any circumstances.

6. Learned counsel for respondent No.3 and LDA confirmed that only an IEE was obtained for seeking sanction of building plan of the disputed building and according to them that was the only requirement and the construction of such buildings did not require an EIA for obtaining an NOC from EPA.

7. Clause 'g' of Regulation 10.3.3 begins with the words "*subject to the provisions of Pakistan Environment Protection Act, 1997*". Therefore, the said clause and the pre-condition of an NOC from EPA has been made subject to the provisions of the 1997 Act. It would suffice that the subject of environment is now within the provincial domain and this is not a disputed fact. Consequently by the Punjab Environment Protection (Amendment) Act, 2012, necessary amendments have already been made to comport the 1997 Act for the purposes of Province of Punjab. The primary provision dealing with the requirements of Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA) have been provided in section 12 of the 2012 Act which provides that:

> ***12. Initial environmental examination and environmental impact assessment***.– *(1) No proponent of a project shall commence construction or operation unless he has filed*

with the Provincial Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Provincial Agency approval in respect thereof.

(2) The Provincial Agency shall–

(a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to–

(i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director - General of the Provincial Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or

(ii) International relations, national security or maintenance of law and order, except with the consent of the Government; or

(iii) matters covered by legal professional privilege.

(4) The Provincial Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

(5) Subject to sub-section (4) the Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Provincial Agency shall maintain separate Registers for initial environmental examination and environmental

> *impact assessment project, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3).*

8. At the outset, it may be reiterated that clause 'g' of Regulation 10.3.3 cannot be read in isolation and has been made subject to the provisions of 1997 Act (or 2012 Act) and it cannot be stated without fear of contradiction that an NOC from EPA requires an EIA as a pre-condition. For the purpose, the provisions of 2012 Act will have to be read in conjunction with clause 'g' of Regulation 10.3.3. A reading of section 12 of the 1997 Act would, at first blush, indicate that an EIA is required where a project is likely to cause an adverse environmental effect. This is a general condition and considered literally, every project is likely to cause an adverse environmental effect and so would require an EIA for seeking an NOC from EPA. Sub-section (6) of section 12 however makes it clear that the provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed and the term 'prescribe' has been defined to mean "prescribed by rules or regulations".

9. In this regard, learned counsel for respondent No.3 relied upon Pakistan Environmental Protection Agency (Review of IEE & EIA) Regulations, 2000 (**2000 Regulations**). These were also relied upon by the learned counsel for the petitioners to contend that the disputed building is one of the projects which require an EIA in terms of Regulation 4 which provides that:

> *"4. Project requiring an EIA*
>
> *A proponent of a project falling in any category listed in Schedule II shall file an EIA with the Federal Agency, and the provisions of section 12 shall apply to such project."*

10. Regulation 4, set out above, provides for the projects requiring an EIA. A proponent of a project falling in a category listed in Schedule II shall file an EIA with the Federal Agency and the provisions of section 12 shall apply to such project. These Regulations are enacted pursuant to sub-section (6) of section 12 of the 1997 Act and prescribe the projects which would require either an IEE or EIA. The reliance of the learned counsel for the petitioners was primarily on the projects mentioned against Serial No.J (2) which reads:

> *"(2) any other project likely to cause an adverse environmental effect".*

11. The above provision is a broad based provision and would include any project likely to cause an adverse environmental effect. This would however require a labeling of the project as such by the regulatory authority or an agency tasked with dealing with permissions to be granted for such projects. In individual cases it must be held by that agency regarding the impact likely to be caused by the project on the environment and thus requiring an EIA to be obtained. In my opinion, serial No. J of Schedule II to the 2000 Regulations does not help the cause of the petitioners, in that, by a circuitous route, instead of prescribing the category of projects which would require an EIA, a general provision has been made regarding projects likely to cause an adverse environmental effect. The ineluctable conclusion would be that such project will, in

any case, have to be identified by the regulator or the agency and label them being ones which are likely to cause an adverse environmental effect. In the absence of prescribing such a category of projects, it cannot be argued that a certain project would require an EIA and must be made subject to the pre-condition given in clause 'g' of Regulation 10.3.3 of the 2019 Regulations. A similar question came up for determination before the Sindh High Court in a judgment reported as *Standard Chartered Bank Limited through Constituted Attorney v. Karachi Municipal Corporation through Administrator and 9 others* ***(2015 YLR 1303)*** and a Division Bench of Sindh High Court stated that:

> *"We turn to consider paragraph J:2. This appears to be a general or catch all provision: "Any other project likely to cause an adverse environmental effect". At first sight, this seems reasonable enough. However, in our view, a closer look reveals a fundamental flaw. The reason is sub-section (1). It will be recalled that that requires an EIA to be filed in relation to a project that is likely to cause an adverse environmental effect. Thus, the categories of projects that are required to be set out in the regulations made pursuant to sub-section (6) are ipso facto those which are likely to have such an effect. Put differently, the very listing of a category of project in the second schedule indicates that (at least in the view of the environmental agency) it is likely to have an adverse environmental impact. Paragraph J:2 therefore tells us nothing. It has no substantive content. It is circular, simply referring back to its origination (sub-section (1)). Indeed, it may well be ultra vires the requirements of sub-section (6). This is so because the categories of projects that are required to be specified must be the projects that are or can be actually undertaken, and must therefore be those which can be identified or described by some measure other than their adverse environmental effect. This paragraph also therefore does not advance the petitioner's case. "*

12. Therefore, it is clear that for a project to require an EIA, it must be categorized as a project likely to cause an adverse environmental effect and this must have been done by LDA or EPA in the present case. Since it has not been done in respect of the disputed project, it cannot be argued that the disputed project required an EIA as a pre condition

to the grant of an NOC by EPA. In the present case, IEE would suffice. This would also be the retort of an additional ground *viz*. that LDA does not require an EIA for such projects which run into hundreds and which are under construction in and around Lahore. Since the regulator did not mean this as a condition, it cannot be argued that respondent No.3 commenced the construction of the disputed building without fulfilling the conditions imposed by the regulator.

13. Learned counsel for the petitioners next referred to Regulation 11.1 which relates to height zones and prescribes the distribution of height zones. It has been stated by learned counsel for LDA that height zones have already been notified by LDA in terms of Regulation 11.1 and there is no rebuttal to this fact. A declaration of height zones has already been made and that declaration relates to residential apartments as well. It was further contended that the disputed building and its construction violates Regulation 11.3 which provides that:

> *"11.3. DECLARATION OF NEW ZONES*
>
> *1. The Authority may prepare a height zone plan for an area to be known as height zone for High Rise, Medium Rise-1, Medium Rise-2, High Rise-1, High rise-2 for higher category of high rise to the declared category of high rise zones defined at 11.1*
>
> *2. Height zones plan so prepared may comprise any one or more height zones.*

14. Suffice to say that Regulation 11.3 is not engaged in this case and does not apply in the case of disputed building of the respondent. Regulation 11.3 comes into effect where LDA intends to prescribe higher category of high rise to the already declared category of high rise zones defined at 11.1.

This is merely a continuation of the permission granted by Regulation 11.2(2) which states that:

> *"Moreover, any zone may be raised to any higher height zone from time to time as per procedure and criteria laid in these regulations."*

15. Regulation 11.3 is the procedure and criteria which has been prescribed in case any zone is sought to be raised in to any higher height zone from time to time. Clearly, Regulation 11.3 is inapplicable in these cases.

16. Finally, the learned counsel for the petitioners contended that there has to be a 40 feet **right of way** in terms of Regulation 2.5 for the construction of disputed building. It is the case of the petitioners that 40 feet right of way has not been provided by the owners of the disputed building.

17. Regulation 2.5, while referring to the right of way, has used the expression, 'ROW of Road. The term 'right of way' has been defined in the 2019 Regulations to mean:

> *"Right of way: means width of road /street between two opposite property lines".*

The term 'property line' has also been defined as:

> *"Property line: means the boundary wall of the plot".*

18. It is clear from the definitions above, that right of way would mean the width of the street between to opposite property lines. It does not mean merely the road on which vehicles are intended to ply. It will also include, in my opinion, footpaths for the passengers as also green areas which are required to be maintained outside the buildings by the owners. There is no rebuttal to the assertion that there is a 40 feet right of way between the property line of the disputed building and boundary wall of the opposite plot.

Be that as it may, there is no contention that 40 feet right of way has to be maintained in the construction of Apartment buildings and since this requires a factual inquiry, LDA shall, at its own, ensure its compliance in letter and spirit. According to learned counsel for LDA a number of inspections have been made and the regulations have not been found to be violated by the owners of the disputed building. This is also evident from the reply submitted by TEPA which granted the approval and followed up with inspections in this regard.

19. Before I tear myself away, Regulation 10.3.3(g) begins with the words "Subject to the provisions of Pakistan Environment Protection Act, 1997," (The Condition) and thereby engages the 1997 Act in its entirety. This part of Regulation 10.3.3.(g) travels beyond the primary enactment *viz*. The Lahore Development Authority Act, 1975. Such a condition could not be provided in the Regulations if the 1975 Act did not place such a clog. The decision to require an EIA or an IEE is for the LDA to make and Regulation 10.3.3(g) does in fact require an EIA, but for this condition. The policy regarding Apartment Buildings cannot be viewed in isolation and in the setting of one particular building only. The canvass has to be widened and the entire array of buildings being constructed and their impact on environment has to be at the heart of the policy. The Condition is a serious clog on such an effort and must be struck down. Consequently, LDA is directed to issue revised edition of 2019 Regulations by deleting the Condition. Henceforth any

construction of an Apartment building would require an EIA and No Objection Certificate for EPA.

20. In view of the above, this petition is without merit and is ***dismissed***.

(SHAHID KARIM)
JUDGE

Announced in open Court on 29-02-2024

Approved for reporting

JUDGE

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Rafaqat Ali