

**IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

W.P.No.1106 of 2023

Saleem Akhtar Kiyani and others Versus Province of Punjab and others

JUDGMENT

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| Date of Hearing: | 05.06.2023 |
| Petitioners by: | Mr. Muhammad Asif Chaudhry, ASC in WP No. 1106 and 1681 of 2023. Ch. Umar Hayat, Advocate in WP 1148/2023. Mr. Rizwan Akhtar Awan, Advocate in WP 1680/2023 |
| Respondents by: | Syed Mudassar Nazir Naqvi, Assistant Advocate-General with Ajab Hussain, Law Officer, Commissioner, Rawalpindi. Mr. Muhammad Sajid Khan Tanoli, Deputy Attorney General and Arshad Muhammad Malik, Assistant Attorney General. Sardar M. Qadeer Hussain and Naeem-ul-Hassan, Advocates for Respondent No.6/RWMC with Salman Aziz, Manager, Corporate Affairs RWMC Maqbool Hussain Qureshi, Inspector EPA, Rawalpindi. Syed Zeeshan Haider Zaidi, Advocate for Respondent No.9/CDA with Malik Atta, Director Sanitation, CDA and Muhammad Anwar-ul-Haq, Member Environment, CDA. Mr. Naseem-ur-Rehman Shah, Director (EIA) EPA, Punjab and Muhammad Rafique, Deputy Director (Environment), Rawalpindi. Mr. Ossama Shahid Khawaja, Advocate. Mr. Rashid Mehmood, Research Officer. |

JAWAD HASSAN, J. Through this single judgment, I intend to dispose of this writ Petition as well as connected cases i.e. W.Ps. No.1681, 1148, 1680 of 2023 as similar question of law and facts are involved therein.

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2. The Petitioners through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”) have prayed as under:

“It is therefore, respectfully prayed that this honourable Court may be pleased to issue a writ of certiorari declaring the acts, deeds, designs and motives by CDA respondent No.9 together with those of respondents No.1(ii), 2 to 5 and 9 in so far as they contemplate of creating a new site adjacent to the existing one to use the same by the respondent No.9 for dumping garbage, waste and stash from the area of ICT, Islamabad as being illegal, unlawful, violative of law, oppressive to the lawful rights of petitioners and other residents of the vicinity under Article 4, 9, 14 and 15 of the Constitution of the Islamic Republic of Pakistan, 1973.

This honourable court may also issue a writ of mandamus directing the respondents to act upon decision/order dated 18.10.2019 immediately and through a writ of prohibition restraining the respondents No.6 and 7 from using the existing site in the area of village Lossar, Tehsil & District Rawalpindi for dumping of garbage, waste and stash.

Any additional relief deemed just and proper in view of law and principles of justice may also kindly be awarded to the petitioners.”

(I) CONTEXT

3. Context of the case is that back in 1986 the Respondent No.6/Municipal Corporation, Rawalpindi acquired land measuring 598 kanals 13 marlas under the Land Acquisition Act, 1894 (the “Act of 1894”) situated in village Losar, Tehsil and District, Rawalpindi, which was then handed over to the Respondent No.7/Rawalpindi Waste Management Company, who started dumping garbage/solid waste at the site. Statedly the site in question was a beautiful valley with lush green grassy land, natural water spring and people of the vicinity used to bring their cattle for grazing and drinking water but quite ironically the same is now become terribly dangerous, injurious and hazardous to the lives of the residents. Further averred in the petition that the Petitioners already filed a writ Petition No.2327/2019, which was disposed of and transmitted to the Respondent No.2/Commissioner Rawalpindi Division, Rawalpindi, who passed order dated 18.10.2019 directing the Respondent

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No.6 to take positive measures. But the land is now given to the Respondent No.9/Capital Development Authority, Islamabad (the “CDA”) for dumping the solid waste of the Capital City of Islamabad. Hence, this Petition.

(II) PETITIONER'S SUBMISSIONS

4. Learned counsel for the Petitioners submitted that the Respondent No.9/CDA without any lawful authority obtained the land for its use as dumping site of solid waste/garbage, which is not permissible even under Capital Development Authority Ordinance, 1960 (the “Ordinance”). He added that dumping of waste/garbage at site is creating blockage in flow of water of the area, which is causing serious health problems and diseases like hepatitis and bronchitis, etc. He further stated that in view of the above miserable agonies and life-threatening conditions the Petitioners many times approached the relevant authorities for implementation of the order dated 18.10.2019, passed by the Commissioner Rawalpindi but the Respondent No.9 is adamant to use the said land as waste dumping site, hence they are seeking intervention of this Court.

(III) RESPONDENTS' SUBMISSIONS

(i) Submissions of Respondent No.6/MCR

5. Learned counsel for the Respondent No.6 submitted that the land in question was properly acquired and transferred to the Rawalpindi Waste Management Company vide mutation No.432 dated 03.05.2001 in consideration of Rs.33,80,436/- for the purpose of dumping waste. He stated that the site is located almost 30 kilometres away from the Rawalpindi and at that time no village was existed within approximately 1.5 kilometre in surroundings but now number of brick kilns (Bhattas) and their colonies have been constructed. Further stated that due to overwhelming development towards that area the land was illegally possessed by land grabbers, which was taken back by the Department. He added that the land was handed over to the RWMC under Clause 2(d) & 6(i) of the Service and Asset Management Agreement dated 28.04.2014 and the waste dumping site was already

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established back in 1987 as per rules and regulations, therefore, these Petitions are liable to be dismissed.

(ii) Submissions of CDA

6. Syed Zeeshan Haider Zaidi, Advocate for Respondent No.9/CDA submitted on the basis of their report and parawise comments that the Islamabad/Capital City is surrounded by Margala Hills, which provide peaceful and serene environment to the residents. He added that the CDA was already dumping the solid waste/garbage at Sector H-16 but the residents of the area filed a writ Petition before the Hon'ble Islamabad High Court on the ground that the garbage was hazardous for their health, which was disposed of vide order dated 07.02.2023 with the direction to put up a sustainable waste disposal management plan for Islamabad Capital Territory (ICT). He added that no proper place was located within the limit of the ICT, therefore, it was decided to acquire land in question through proper procedure. He objected to the maintainability of this Petition by submitting that the site in question is suitable and feasible for the purpose of dumping solid waste/garbage.

7. Heard. Record perused.

(IV) DETERMINATION BY COURT

8. Keeping in view the facts and circumstances of this case following questions arises:

(I) *Whether the Respondent No.6/MCR has violated any provision of law while granting permission to the Respondent No.9/CDA?*

(II) *Whether the project of dumping solid waste/garbage at site in question is being established by the Respondent No.9/CDA in violation of fundamental rights i.e. right to life, right to dignity and right to movement, guaranteed under the Constitution?*

(III) *Whether the Respondent No.9/CDA has fulfilled all the codal formalities under the relevant law, rules and regulations prior to the acquisition and use of land in question?*

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9. During the Court proceedings, pursuant to the order dated 23.05.2023, Mr. Zaheer Abbas Malik, Director General, Punjab Environmental Protection Agency, Government of the Punjab, Lahore (the “EPA”) appeared on 29.05.2023 and filed a Situational Report by stating that they have looked into the issue in hand and also suggested certain international best practices to resolve this issue of the residents of the area involved as well as the issues of the proponent of the project i.e. Solid Waste Department. When confronted whether the proponent of a project i.e. Respondent No.9/CDA has obtained ‘*No Objection Certificate*’ (NOC) under Section 12(1) of the Punjab Environmental Protection Act, 1997 (the “Act”) read with the Punjab Environmental Protection (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2022 (the “Regulations”) because it has to file an Environmental Impact Assessment (the “EIA”) as per the mandatory requirement of law; Director General, EPA submitted that under Section 12 read with Regulation 4 of the Regulations [Schedule-II] as per the list of projects requiring an EIA, the project falls in category “**G. Waste Storage and Disposal**”, including the landfill sites. He further submitted that though the proponent of the project/CDA has filed an EIA but it was not completed as per Section 12 of the Act and Regulation 8 of the Regulations requiring preliminary scrutiny and, in this regard, certain necessary documents were called from the CDA but the same have not been provided thus far. He has read from his Situational Report, which suggests that **the site is not suitable to be used as dumping site/landfill site as per international best practices** but once the CDA files formal documents before him with revised integrated solid management system and a detailed drawings alongwith 3-D elevations then the EPA will formally assess this and thereafter, publication of the newspaper and hearing will be conducted based on that revised report, which will be available to the public at large and anybody can object to the same during the process of hearing.

10. Perusal of Section 12 of the Act explains that no proponent of a project shall commence construction or operation unless he has filed with the Federal

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Agency an Initial Environmental Examination or, where the project is likely to cause an adverse environmental effect, an Environmental Impact assessment, and approval from Federal Agency has to be obtained. Statedly the proponent of the project/CDA has filed an EIA under Section 12 of the Act but it was not completed by the EPA under Regulation 8 of the Regulations, due to non-provision of certain necessary documents by the CDA. But the procedure as per Section 12 (2), (4) and (7) is still incomplete. For ready reference Section 12 is reproduced as under:

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 Federal 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 Federal Agency approval in respect thereof.

(2) The Federal 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)

(4) The Federal 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 provision of this Act and the rules and regulations made thereunder.

(5)

(6)

(7) The Federal Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions

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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).

Regulation 8 of the Regulations reads as under:

8. **Preliminary scrutiny.** (1) *The Agency, within ten working days of filing of initial environmental examination or environmental impact assessment, shall:*
 - (a) *confirm that the initial environmental examination or environmental impact assessment is complete for the purpose of initiation of the review process; or*
 - (b) *require the proponent to submit such additional information as may be required; or*
 - (c) *return the initial environmental examination or environmental impact assessment to the proponent, clearly listing the contents requiring further study and discussion.*
 - (2) *In case the proponent fails to submit the required documents or conduct further study or discussion after three notices served to him by the Agency, with a gap of not less than seven days, his application shall be closed and he shall be required to submit a afresh application for approval.*
 - (3) *In case of closure of application under sub-regulation (2), the Review Fee shall remain valid for a period of six months from the date of closure of Application.*
 - (4) *Nothing in sub-regulation (1) shall prohibit the Agency from requiring the proponent to submit additional information at any stage during the review process.*

Hence, the Respondent No.9/CDA is bound to fulfill all the mandatory requirements of law and fill up all lacunas on their part so that the EPA should decide the EIA before starting use of land in question for the abovesaid purposes. As per Section 7 ibid the EPA shall maintain Registers for initial environmental examination and environmental impact assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, 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 ibid. All shows that the public has a right to receive the documents/information before the EPA and

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they can also file objection therein. Once the EPA complete the EIA and communicate to CDA, who shall complete all the process and then they can start work on its project. Guidance is sought from the judgments reported as “Naimatullah Khan Advocate and others v. Federation of Pakistan and others” (**2020 SCMR 1499**), “Muhammad Shahid v. Punjab Environmental Tribunal, Lahore and others” (**2018 CLD 506**), “Maple Leaf Cement Factory Ltd. v. Environmental Protection Agency and others” (**2018 CLD 153**), “Pakistan Mobile Communication Limited v. Abrar Ahmed and 4 others” (**2019 CLD 578**) and “Haji Sher Zaman Khan v. Government of Khyber Pakhtunkhwa through Chief Secretary and 8 others” (**2020 CLD 1232**).

11. The Supreme Court of Pakistan in the judgment **2020 SCMR 1499** (supra) on the point of projects having a negative impact on the ecology and environment, has observed that:

“even the Federal Government does not have the authority to sanction an Act which is not supported by statutory dispensation and has a direct negative impact on the ecology and environment in which future generations of the people of Pakistan have an overriding and inherent interest.”

12. Today, Syed Zeeshan Haider Zaidi, Advocate for Respondent No.9/CDA submitted that admittedly the EIA is still incomplete, therefore, they be granted an opportunity to submit their documents before the EPA. Learned counsel for the Petitioners and other Respondents did not raise any objection rather conceded with the same provided a direction be issued for its expeditious completion.

13. Be that as it may, these Petitions stand disposed of with the direction that the Respondent No.9/CDA shall submit all the required documents/records in the EIA before the EPA, who shall conduct scrutiny within the time frame, then make publication in newspapers (Urdu and English newspapers), place it in District Council Hall Rawalpindi and complete the same in accordance with law, rules, regulations (Section 12 and Regulation 8 ibid) and policy applicable thereto, after providing proper

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hearing to all the concerned including the Petitioners. Parties are directed to appear there and submit their objections/documents, if so advised.

**(JAWAD HASSAN)
JUDGE**

ZIA.UR.REHMAN