

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE GHULAM RABBANI
MR. JUSTICE KHALIL-UR-REHMAN RAMDAY

HUMAN RIGHTS CASE NO. 4668 OF 2006
HUMAN RIGHTS CASE NO. 1111 OF 2007
HUMAN RIGHTS CASE NO. 15283-G OF 2010

[Action taken on news clippings regarding
Fast Food outlet in F-9 Park Islamabad]

Applicant: Barrister Saadia Abbasi with
Mr. Amanullah Kanrani, ASC

For the CDA: Mian Allah Nawaz, Sr. ASC
Mr. Afnan Karim Kundi, ASC
Mr. Imtiaz Inayat Illahi, Chairman, CDA with
Mr. Mazhar Hussain, Member (Environment)
Mr. Abdul Jabbar Milano, Member Planning/
Engineering
Syed Mustafain Kazmi, Member
Administration
Mr. Mansoor Ali Khan, Director DMA

For Siza Foods: Mr. Anwar Kamal, Sr. ASC
With Amin Muhammad Lakhani

For NPC: Mr. M. Bilal, Sr. ASC

Mr. Shah Sharabeel in person

Dates of hearing: 06, 07, 10 & 13.05.2010

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JUDGMENT

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – In January
2005, the Capital Development Authority (CDA) leased out a plot
of 6000 square yards in F-9 Park (Fatima Jinnah Park) to M/S

Siza Foods (Pvt.) Ltd., hereinafter referred to as "M/S Siza Foods", a franchise holder in Pakistan of McDonald's Corporation, Delaware, USA, for setting up a fast foods restaurant (McDonald's Pakistan) on the western side of F-9 Park (Fatima Jinnah Park). The members of the civil society expressed grave concerns in a segment of the press about the legality/desirability of the project in a public park. Barrister Saadia Abbasi, Member, Senate of Pakistan also, *vide* application dated 14.02.2007 highlighted the issue and alleged that permission to set up a fast food restaurant in the public park was, in fact, a special favour/benefit bestowed upon a particular individual in sheer violation of CDA Rules and Regulations, which was also violative of several fundamental rights guaranteed to the citizens of the country under the Constitution. The matters were registered as Human Rights Cases.

2. During hearing, it was divulged that apart from the McDonald's Restaurant, some other buildings, namely, Aiwan-e-Quaid and Bowling Centre had already been constructed in F-9 Park and were operative, whereas Citizens Club was being constructed. In pursuance of the Court orders, the Chairman CDA filed comments/replies on all the above projects.

3. On the issue of McDonald's, it was stated, *inter alia*, that as per Master Plan developed by the Japan International Cooperation Agency (JICA), various areas for different activities, viz., amusement park, sport facilities and cuisine areas were earmarked for shops, food outlets, etc. In order to develop

multinational food chain in the Park, expression of interest from the interested parties through public advertisement was invited on 08.07.2004. Two firms, namely M/S Siza Food and M/S Sheikh Trading International, USA came forward. The expression of interest was evaluated by a committee headed by Director General (Environment), CDA, on whose recommendation, the case was placed before the CDA Board for leasing out an area of 6000 sq. yards to M/S Siza Foods @ Rs.275,000/- per month or 5% of the gross income from sales, whichever was higher for a period of 33 years. Offer letter was issued on 23.09.2004, the MoU was signed on 25.09.2004 while the lease agreement entered on 14.01.2005. Later on, a revised lease deed was entered into between the parties wherein lease amount was enhanced to Rs.316,250/- per month (15% higher than the earlier one). It was further agreed that the lessee would also develop five acres of the Park in two phases with its maintenance until the expiry of the lease period.

4. In the rejoinder filed in HRC No. 1111/207, the applicant alleged violation on the part of CDA authorities of Articles 9, 25, 26 and 38 of the Constitution in the light of the law laid down in the case of Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394) wherein it was held, *inter alia*, that commercial activities in public parks were violative of Article 26 of the Constitution, therefore, the lease agreement granting rights to a private company to operate a mini-golf course in a public park in Sector F-7, Islamabad was set aside.

5. On the question of allotment of plot to Nazriya Pakistan Council (NPC), the CDA submitted, inter alia, that vide letter dated 04.06.2001, Director General, Libraries, Ministry of Education informed CDA that Minister for Education had directed to request CDA for allotment of plot earmarked for Library to NPC for construction of Aiwan-e-Quaid, which would also house Islamabad Public Library. The CDA, in turn, informed them that as the provisions of Islamabad Land Disposal Regulations, 1993 did not allow allotment of such plots to private organizations, it might consider to allot the site to the Ministry of Education. As such, MoU was signed between Ministry of Education and NPC for establishment of Aiwan-e-Quaid on the said plot. In pursuance of Prime Minister Secretariat letter dated 30.05.2005, with the approval of the Chairman, CDA, allotment letter dated 02.08.2005 was issued to NPC.

6. On the issue of Citizens Club, it was submitted that the provision for a club house was there since long, which was reflected in the Master Plans of 1992 and 1995 (prepared by JICA). In June 2007, the then Chairman CDA, Mr. Kamran Lashari during his visit to the F-9 Park instructed Mr. Nayyar Ali Dada, the principal architect for development of the Park to prepare the concept design of Citizens' Club to be established in the Park. The construction of Citizens Club was earlier proposed in Sector H-11/2 but later on shifted to F-12 and then re-shifted to Fatima Jinnah Park, Sector F-9 due to non-acquisition of land in Sector F-12. The CDA Board, in its meetings held on

24.09.2007 and 01.10.2007 decided that M/S Nayyar Ali Dada & Associates were already working as consultants for the development of the Park as project consultants, therefore, there was no need of separate approval of the case. The engineering estimates prepared by the consultants were sanctioned for Rs.1.383 billion by Member (Planning), CDA on 29.10.2007. Pursuant to the invitation of tenders published in the newspaper, the lowest bid quoted by M/S Expertise (Pvt.) Ltd., was accepted by the Chairman. The club facilities would include auditorium, conference rooms, fitness centre, gymnasium & aerobic area, tennis courts, squash courts, billiard room, games room, swimming pools, banquet halls, restaurants, bakery, library, car parking and residential rooms for the members. The proposed membership structure of the club was 62.5% (private citizens), 15% (government officers & parliamentarians), 7.5% (CDA officers) and 15% (diplomats/corporate). Cost of the project excluding furnishing was worked at Rs.1254.149 million. An amount of Rs.575.146 million had been expended so far. Physical progress of the work was 69.16%.

7. On the question of bowling centre, it was stated that as per Master Plan prepared by JICA, a variety of amusement and entertainment facilities were to be provided in south-western part of the Park. On 11.06.1994, the CDA published notice for pre-qualification in the newspapers to lease out a plot measuring 2 acres of land for construction and operation of a bowling centre in F-9 Park to which seven parties responded. The highest bid of

Rs.752,000/- per annum was offered by M/S S&S Enterprizes. The CDA Board, in its meeting dated 27.11.1994, approved award of licence for a period of 20 years to M/S S&S Enterprizes. It was, inter alia, provided that it would be a single storeyed building having basement with a maximum covered area not exceeding $1/3^{\text{rd}}$ of the total land, which was reduced to 1.5 acres. In 1997-98, the CDA issued various notices to the licensee for illegal construction/extension of mezzanine floor, stair tower, construction of swimming pool, changing room and toilets at the basement level, 10 shops instead of 3 approved, extension of basement, solid wall instead of see-through fence and ice cream parlor. There was litigation between the licensee and the CDA. Ultimately, the CDA Board in its meeting dated 07.06.2007 regularized the unauthorized construction on payment of certain penalties/charges.

8. Mian Allah Nawaz, Sr. ASC, learned counsel representing CDA in the matter of M/S Siza Foods candidly conceded that no order for change in the Master Plan was available on record and that the CDA, vide publication dated 09.07.2004 did not invite any national food chain, which violated Article 18 of the Constitution. However, without controverting or disputing the facts leading to grant of lease for the construction of McDonald's restaurant, he insisted that as now huge amount had been spent, therefore, following the principle of equity, the violation of above constitutional provision and the law, if any, be

condoned by issuing direction in a manner that the restaurant might also continue functioning in the interest of the CDA.

9. Mr. Anwar Kamal also candidly accepted violation of Article 18 of the Constitution. However, his claim was that M/S Siza Foods, a franchise holder of McDonald's, hardly could be held responsible for the same as in response to a publication appeared in the newspaper in February 2004, they filed an application and as no further progress was made, therefore, when second publication appeared, M/S Siza Foods again submitted expression of interest wherein they initially demanded 4000 square yards and subsequently by negotiation the area was got increased to 6000 square yards at a monthly of Rs.275,000/- per month or 5% of gross sale, whichever was higher, which was later increased to Rs.316,250/- per month or 5% of gross sale, as aforesaid, which was being paid regularly. In addition to it, M/S Siza Foods had agreed to develop an area of 5 acres of land in the Park without charges from CDA, which indicated good faith on their part. However, any direction/suggestion, if given by the Court, including reducing the area leased out shall be accepted by M/S Siza Foods, but it would not be in the interest of the CDA and M/S Siza Foods to demolish the restaurant on the application filed by a person who otherwise had no legal right or interest in the continuation or otherwise of the restaurant, therefore, taking into consideration this aspect of the case, appropriate orders may be passed.

10. When his attention was drawn towards two letters written to the Prime Minister and the President, particularly to the latter, criticizing judgment of the Supreme Court in the case of Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394) in a sarcastic manner, he stated that as the CDA authorities were somehow reluctant to finalize bid of M/S Siza Foods, therefore, high ups were requested to intervene. However, he voluntarily stated that the author of the letter (Amin Muhammad Lakhani) had respect for the Courts and was ready to voluntarily explain his position, simultaneously tendering unconditional apology. Such explanation as well as apology, however, was filed later on.

11. It is to be noted that initially F-9 Park was a residential sector as per admissions and documents available on record. However, subsequently, in 1968, it was converted into a Park comprising 800 acres of land and generally it was known as Capital Park as well as Fatima Jinnah Park. There could not be two opinions in respect of importance of Master Plan. Despite our repeated insistence, original Master Plan was not produced except the one which was got prepared from JICA for establishing a Park. Sufficient time was given to CDA as the Court wanted to apprise itself about the facilities, provisions, activities in the Park. However, the photocopy of the Plan whatsoever was produced, which indicated number of activities like Children Park, Ladies Club, provision of restaurants at different places, which were to be constructed/provided inside the Park. And on the southern

side, an area was earmarked as cuisine pavilions with dense vegetation. As per plain meanings of the expression 'dense vegetation', there was no provision for setting up a large restaurant to be run by an international food chain. But, it did mean that such a restaurant could not be constructed of course after an amendment in the Master Plan made by the CDA Board, replacing cuisine pavilions having dense vegetation with a restaurant. According to section 14 of the CDA Ordinance, 1960, the CDA Board is empowered to prepare schemes with the approval of the Federal Government. As stated earlier, the change was quite possible, but subject to section 19 of the CDA Ordinance, 1960. No such document was placed on record, inasmuch as the directions of the Court were not being carried out, and prima facie it was ascertained that construction of the restaurant suffered from lack of transparency, therefore, notice was issued to Mr. Kamran Lashari, former Chairman CDA who seemed to be the architect of this project.

12. In response to the notice he appeared and submitted reply and also addressed the Court in person. His main emphasis was that McDonald's restaurant was constructed in the Park for the purpose of providing facilities, charm and temptation to the general public in good faith, otherwise he had no bad intentions. He explained that in the foreign countries as well, restaurants along with other facilities were provided in the Parks. As far as his explanation in exercising jurisdiction in good faith was concerned, it could not be accepted for want of transparency in

the construction of McDonald's and violation of the constitutional provision, which shall be discussed hereinbelow. At the cost of repetition, it may be mentioned that he could not satisfy as to why McDonald's restaurant was not allowed to be constructed strictly in accordance with the provisions of CDA Ordinance, discussed hereinbefore. It is also to be noted that in the Plan prepared by JICA, different spaces providing for construction of restaurant in the Park were available, but in the place of more than one cuisine pavilion areas, construction of one restaurant was not available. The incumbent Chairman, Imtiaz Inayat Illahi also could not help Mr. Kamran Lashari, the former Chairman in justifying violation of CDA Ordinance, 1960 as well as constitutional provision. It is to be noted that non-adherence to legislative provisions other than the Constitution is permissible, provided it does not entail penal consequences as there are two types of statutes/legislation, i.e. mandatory and directory. As far as mandatory provision of law is concerned, same is required to be enforced strictly without interpreting/construing it in any manner liberally. Such a principle of interpretation is discussed and applied in the case of Niaz Muhammad v. Mian Fazal Raqib (PLD 1974 SC 134) in the following words: -

"It is the duty of the Courts to try to get at the real intention of the Legislature, by carefully attending to the whole scope of the statute to be construed. As a general rule, however, a statute is understood to be directory when it contains matter merely of direction, but not when those directions are followed up by an express provision that, in default of following them,

the acts shall be null and void. To put it differently, if the Act is directory, its disobedience does not entail any invalidity; if the Act is mandatory, disobedience entails serious legal consequences amounting to the invalidity of the act done in disobedience to the provision".

In this respect it will be advantageous to refer to a celebrated passage from the Interpretation of Statutes by Maxwell (Tenth Edition – 1953): -

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and Government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed. but it does not affect the validity of the act done in disregard of them. It has often been held, for instance when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time."

The nature of a mandatory provision is described in the "Words and Phrases", Permanent Edition, Vol. 26, p. 463 in the following words: -

"Generally, where statutory provision concerning powers and duties of public officer affect the public

interest or are intended to protect a private citizen against loss or injuries to his property, provisions are "mandatory" rather than "director".

"A "mandatory provision" of a statute is one the failure to follow which renders the proceeding to which it relates illegal and void."

The other principle of jurisprudence in this very context is that the things are required to be done strictly according to law, or it should not be done at all. Reference in this behalf may be made to the case of Mir Dost Muhammad v. Govt. of Balochistan (PLD 1980 Quetta 1), relevant Para therefrom is reproduced below: -

"It is well settled principle of law that in a case where statute provides a procedure for doing of a thing in a particular manner, that thing should be done in that manner and in no other way or it should not be done at all. Indeed such statute impliedly prohibits doing of thing in any other manner; particularly when the procedure is laid down for taking proceedings before a Tribunal or a Court where such procedure before a Court or Tribunal is usually construed to be an imperative one as doing of the act or a thing under that statute is a condition precedent to conferring upon the jurisdiction on a Court or a Tribunal, as the case may be. The compliance of such act or thing in no way could be either ignored or dispensed with. Their non-compliance would certainly invalidate all the proceedings, orders made or passed by the same authority or any other authority either superior or inferior thereto in respect of the same. Our views get support from cases: -

- (i) E. A. Evans v. Muhammad Ashraf P L D 1964 S C 536;

- (ii) Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore Division Lahore and 2 others P L D 1971 S C 61;
- (iii) Muhammad Yousaf Khan Khattak v. S. M. Ayub and 2 others P L D 1972 Pesh. 151; and
- (iv) In the Statutory Laws, 6th Edn., Craies has said that :-

"When a Statute confers jurisdiction upon a Tribunal of a limited authority and statutory origin, the conditions and qualifications annexed to the ground must be strictly complied with."

The same principle has been reiterated by High Courts as well as this court in various judgments. Reference may be made to Mazhar Illahi v. State (PLD 2008 Pesh. 162), Commissioner of Income Tax/Wealth Tax v. M/s Idara-i-Kissan (2006 PTD 2569), Iftikhar Ahmed alias Ali v. State (2006 YLR 2826), Dr. Ishtiaq Hussain v. Special Judge Anti-Corruption (2004 YLR 716) and Muhammad Iqbal v. SHO, PS New Anarkali, Lahore (2000 PCRLJ 1924), Ghulam Hassan v. Jamshaid Ali (2001 SCMR 1001).

13. Non-production of Master Plan of the Park leads us to draw inference that construction of a pakka restaurant perhaps was not provided therein. Be that as it may, the CDA Board may have taken a policy decision to convert cuisine pavilions with dense vegetation, but no such decision has been brought on file. Contrary to it, the CDA officials admitted that no such decision was taken by the Board. Therefore, whole exercise has been done illegally by Mr. Kamran Lashari, former Chairman, CDA. No doubt, the Authority is competent to make alterations in the Master Plan, but as discussed in Fazal Din v.

Lahore Improvement Trust (PLD 1969 SC 223), the alteration or modification of a sanctioned scheme is permissible in the manner prescribed by the relevant statute.

14. Now turning towards violation of constitutional provision, there is no need to highlight this aspect of the case in view of the admission made by learned counsel for the CDA as well as M/S Siza Foods and to substantiate their plea, it would be appropriate to refer to the publication appeared in the newspaper on 09.07.2004 under the caption, "SPACE AVAILABLE FOR INTERNATIONAL FOOD CHAIN". It recited, *inter alia*, that the CDA intended to provide an opportunity for setting up/opening a branch of a "MULTI-NATIONAL FOOD CHAIN" (fast food) or coffee/ice-cream chain, with all features including children play area etc., in F-9 Park and the interested parties were requested to express their interest and submit their applications by 25.09.2004 for pre-qualification with detailed technical proposal, area required, terms and conditions, etc. Thus, as the citizens/local chains were deprived to participate in the competition, therefore, action taken by the Chairman is in violation of Article 18 of the Constitution. It is to be noted that by inviting expression of interest from international food chains alone, not only Article 18 has been violated, but at the same time the Chairman had allowed international food chains to have monopoly, which, under clause (c) to the Proviso to Article 18 of the Constitution was available to no one else except the government. In this behalf, reference may be made to the case

of Arshad Mehmood v. Government of Punjab (PLD 2005 SC 193). In the precedent case, the Court examined the question whether section 69-A of the West Pakistan Motor Vehicles Ordinance, 1965 was contrary to the fundamental rights of the appellants enshrined in Article 18 of the Constitution who were restrained/ousted completely from the trade/business of transport, which they were carrying on against valid route permits issued by competent authority under the provisions of the Ordinance for the last many years and in which they had made huge investments by purchasing of vehicles i.e. wagons, suzukies, etc. Another grievance was that the right of movement of the general public could not be limited by compelling them to undertake journey in the transport owned by the private respondents because they had obtained franchise rights and were charging exorbitant fare compared to other transporters who used to ply buses on the same route, and if competition was allowed, they would charge less fare from them, as such citizens, having limited resources of income were not bound to pay fare to respondents transporters at high rates. It was held that though the right of trade/business or profession under Article 18 of the Constitution was not an absolute right, but so long a trade or business was lawful, a citizen, who was eligible to carry out the same, could not be deprived from undertaking the same. In another case titled Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394), this Court observed as under: -

"13. From perusal of publications, appeared initially on 1st and 2nd February 2004 in "Daily Frontier Post" and "Daily Jang" respectively as well as the publication appeared on 14th August 2004 in "Daily Jang" and "Daily Dawn", it is abundantly clear that no area was earmarked for the purpose of establishing/developing Mini Golf Course at the site of Jubilee Park in Sector F-7. It seems that this device was adopted to keep the interested parties out of competition, except the respondent No.2, who statedly had the experience of running identical project at Lahore. Thus, we are of the opinion that disclosure of the area, on which the Mini Golf Course was to be developed, was necessary in the publication and in this way the interested parties would have given much higher bids than the one, on which, C.D.A. had leased out land to respondent No.2 i.e. Rs.2.55 million per annum. We were told that admittedly the plot of five acres, leased out to respondent No.2, is situated in most expensive location of Sector F-7 and is situated adjacent to the main road, therefore, it is a prime land being situated in the heart of the Capital.

Following observations made in the course of the above judgment, being relevant in the context of the present case, are also reproduced below: -

"18. It is to be observed that under section 49 of the Ordinance, 1960 C.D.A. retains powers for the purpose of leasing, selling, exchanging the land etc. vested in it. For the purpose of achieving the object of this section, from time to time, Rules and Regulations are framed, as it is evident from the contents of Notification dated 18th December 1993 (No. CDAS-30(2)(NOTI)-Coord 93). Reference of some of the

Regulations, framed thereunder, has already been made herein above. [The Islamabad Land Disposal Regulation 1993]. It is equally important to note that learned counsel for petitioner when called upon to satisfy as to whether in terms of Ordinance 1960, the master plan is available with the C.D.A., he produced the same but stated that according to its contents Sector-wise division of the Capital has not been made. He also explained that in Sector F-7, one public park under discussion was created by means of preparing PC-1, therefore, it may be presumed that the plan submitted along with PC-1 must be having separate identification of the Jubilee Park, where the Mini Golf Course is being established. In this behalf he has referred to a copy of the site plan attached with the reply of the C.D.A. to demonstrate that the Jubilee Park is situated in the area of Markaz F-7. He was called upon to produce the original file/documents, including PC-1 as we wanted to ascertain the status of the plot in question for the purpose of examining the proposition that in terms of section 49 of the Ordinance, 1960, the lease has rightly been executed in favour of respondent No.2 by C.D.A. or not? But despite of our demand, said file was not produced and ultimately Chairman C.D.A. gave a statement in writing expressing disability of the authority to produce the file. The contents, whereof are reproduced herein below for reference:

"The file of PC-1 of Sector F-7 is presently not available and being traced out. It will be produced before the learned Court as it is found out.

(Sd.)
Chairman C.D.A."

None-production of above file persuades us to draw adverse inference against the C.D.A., necessarily with all consequences.

"23. Thus, in view of above discussion, it is held that the mala fides of respondent No.1 in concluding the transaction with respondent No.2 are abundantly apparent on record. This Court in the case of Government of West Pakistan v. Begum Agha Abdul Kharim Shorash Kashmiri (PLD 1969 SC 14) has held that mala fide is to be proved on record. This view has been reiterated by this Court in the case of Ahmad Hassan v. Government of Punjab (2005 SCMR 186). Therefore, applying the test laid down in these judgments on the facts of the present case, we are inclined to hold that in view of the admitted facts on record, mala fides on the part of respondent No.1 in granting lease to respondent No.2 are apparent, thus, the lease agreement dated 4th June, 2005 is not transparent.

"25. Learned counsel stated that the right of entertainment can only be made available subject to law as it is defined in section 2(d) of the West Pakistan Entertainment Act, 1958. There is no cavil with his this argument but subject to the condition that if the arrangements of providing such entertainment to the citizens is made in transparent manner by an authority in exercise of lawful jurisdiction which lacks in instant case as discussed above."

The above observations are fully attracted in the present case.

15. It is beyond our comprehension that as to why provisions of Article 18 of the Constitution were not applicable.

There could be two reasons: firstly, exclusive powers in this behalf had been assumed by the then Chairman himself, or secondly, on the intervention of high ups this exercise was carried out to accommodate M/S Siza Foods. As far as investors of outside country are concerned, they should be encouraged to make investment, but subject to the law of the land, particularly constitutional provisions. It is a fact that there are good number of investors who belong to outside the country and are doing trade/business in the country subject to following the law on the subject and not otherwise. However, since violation of legal provisions noted hereinabove also entails consequences because the Park is only to be used for the purpose for which it has been established and not for running a business/trade. In this behalf, judicial notice can be taken of the fact that such facilities in parks are used by general masses belonging to all walks of life including citizens and children belonging to the families who are living below poverty line. The persons like McDonald's are bound to earn profit as per its international standards, which is beyond the reach of an ordinary person comparing to a local restaurant providing food to the visitors of the Park at a cheaper rate. Importance of such public parks has been adequately examined by this Court in the case of Iqbal Haider (*supra*) in the following paragraphs, which read as under: -

"16. There is yet another important provision of law, which prohibits C.D.A. to amend the scheme i.e. sections 19 and 21. Admittedly, in instant case, in terms of these sections, neither the permission was

sought to convert the Public Park into the Mini Golf Park nor before doing so objections were invited from the general public in terms of I section 21 of the Ordinance, 1960. This Court way back in 1969 in the case of Mian Fazal Din v. Lahore Development Trust, Lahore (PLD 1969 SC 223) has held that "the plots in a Housing Scheme for public use cannot be converted for other use". Relevant Para from this judgment has already been reproduced in the order dated 26th December 2005. Admittedly a Public Park, if is earmarked in a housing scheme, creates a right amongst the public and that right includes their entry in the Park without any obstacle, being fundamental right enshrined in Article 26 read with Article 9 of the Constitution. It may be noted that liberty of a person, to have access or utilize a right available to him, cannot be taken away by converting such facility into commercial one, for the purpose of extending benefit to a third person, because in instant case considerably a big plot of land, measuring five acres, has been handed over to respondent No.2 at a throwaway lease money, causing huge loss to the public exchequer, therefore, tax payers have a right to inquire from C.D.A. as to how a right of life and liberty can be denied to them. As in instant case, above facts are admitted, therefore, no formal evidence is required to prove these facts. Reference in this behalf can be made to Government of Punjab v. Crescent Textile (PLD 2004 SC 108)."

"24. Learned counsel for respondent No.2 however, persuaded to convince us that as status of the Public Park has not been changed, therefore, provisions of Regulation No.12(3) of the Regulation would not be attracted. To substantiate his plea, he made reference

from the books written by Architects with regard to explain the idea of planning and development of the Islamabad. One of the Paras from the said book compiled by C.D.A., Government of Pakistan i.e. Communities and Housing, composed by Doxiadis Associates, Consulting Engineers is reproduced herein below for convenience: -

"305. The second and third categories of open spaces, that is the public playgrounds, playing-fields, parks and public gardens, have to be reckoned together as this stage, since it is as yet too early to define exactly how much will go for playing-fields and how much for green spaces. These spaces are usually planned together in broader areas, and only after detailed planning is a decision taken in each case as to exactly how much will go for playgrounds and how much for gardens and parks. It has to be borne in mind that all these are general averages, since the need for parks, gardens and playgrounds differs enormously from area to area, and from one social, professional or income group to another. For example, high income groups, which have their private gardens, do not need public gardens and parks as such as the low income groups, which are deprived of the benefit of having their own private garden. On the contrary, higher income groups may need playing-fields requiring more space, like tennis, playgrounds, etc. which the lower income groups may not need to the same extent."

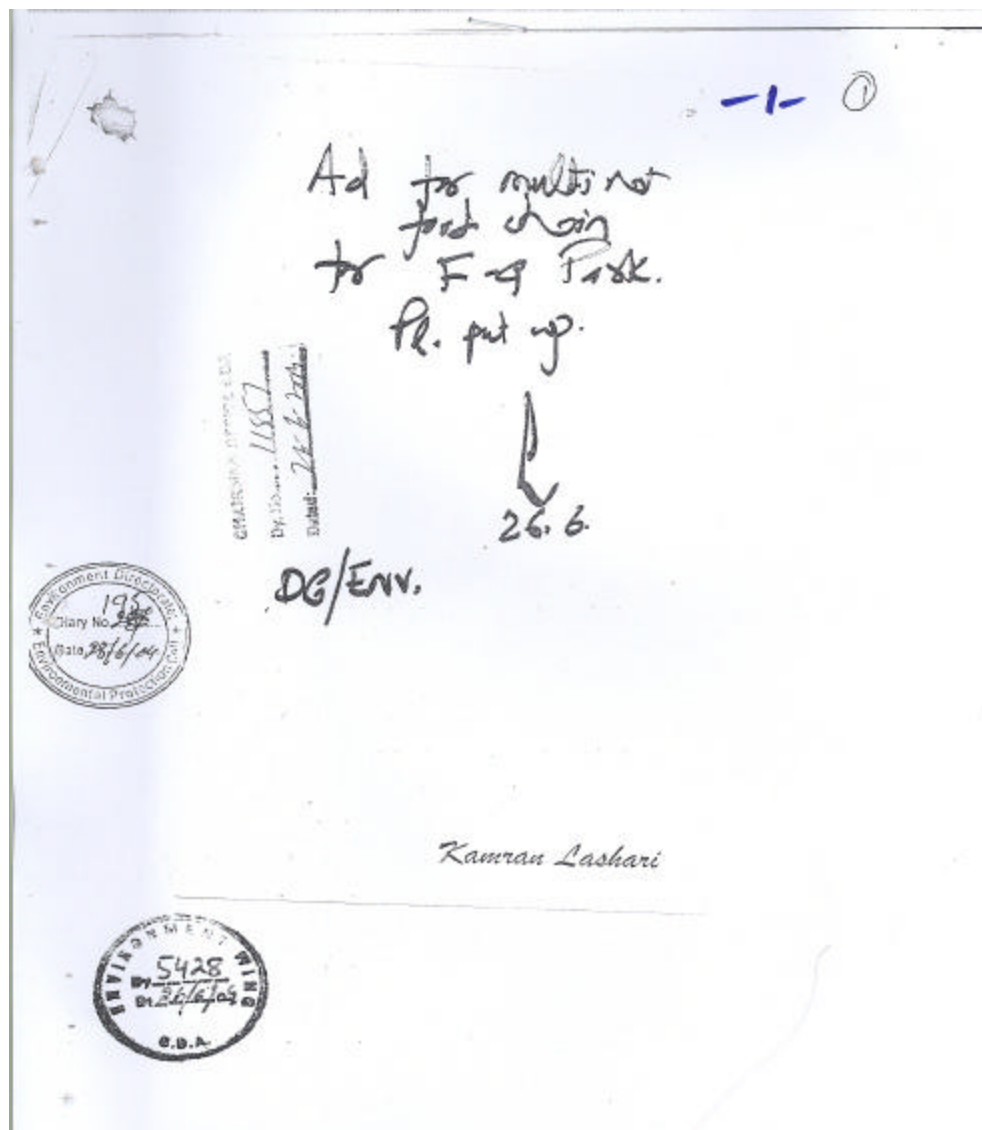
A perusal of above Para is sufficient to hold that the jubilee Park of Public Park is meant for the use of general public, majority of which i.e. is more than

90% is living in the vicinity. Under Article 26 of the Constitution, it is fundamental right of the citizens to have access to public places of entertainment or resorts. As per the socio-financial status of the citizens of Pakistan, majority of public is not in a position to afford luxury of joining Mini Golf Course along with children, subject to F payment of tickets etc.

"25. Learned counsel stated that the right of entertainment can only be made available subject to law as it is defined in section 2(d) of the West Pakistan Entertainment Act, 1958. There is no cavil with his this argument but subject to the condition that if the arrangements of providing such entertainment to the citizens is made in transparent manner by an authority in exercise of lawful jurisdiction which lacks in instant case as discussed above."

Thus, in absence of any decision by the CDA Board, the use of the restaurant by the masses is tantamount to defeating the object/purpose for which the public park has been established in view of the discussion in the judgment, relevant Para therefrom are discussed hereinabove.

16. In addition to above, next important question relates to transparency in granting lease to M/S Siza Foods. As it has been pointed out that there was no decision by the CDA Board either, and exercise of accommodating M/S Siza Foods on the basis of chit issued under the signature of Mr. Kamran Lashari, former Chairman, CDA, scanned image whereof is given below: -



17. After having seen the state of affairs on the basis of which proceedings started, nothing is left to be discussed as the above conduct of the then Chairman speaks for itself and needs no further deliberation. Therefore, by no stretch of imagination, it can be held that the transaction was a transparent one. It may be noted that reportedly one of the parties who filed expression of interest, namely, M/S Sheikh Trading International, when inquired about the original application submitted by it, same was not produced or shown except placing on record its photo copy. Publication appeared in the newspaper indicates that 16 days were given to international food chains to submit expression of

interest. How it is possible for the chains working outside the country and any investor interested to run the business, following certain provision of law including its registration under the Companies Ordinance as well as meeting the criteria laid down by the Board of Investment.

18. This Court, time and again, has insisted upon public functionaries to adhere to the principle of transparency in the performance of their duties. In the case of Messrs Airport Support Services v. The Airport Manager (1998 SCMR 2268), this Court dealt with the question whether a concluded contract could be struck down on the grounds of *mala fides*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness, etc. Relevant portion from the judgment is reproduced below: -

"Further a contract, carrying elements of public interest, concluded by functionaries of the State, has to be just, proper, transparent, reasonable and free of any taint of mala fides, all such aspects remaining open for judicial review. The rule is founded on the premise that public functionaries, deriving authority from, or under law, are obligated to act justly, fairly equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Deviation, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution. In such behalf even where a contract, pure and simple, is involved, provided always that public element presents itself and the dispute does not entail

evidentiary facts of a disputed nature, redress may be provided."

In the case of Shams and Brothers v. Government of Pakistan (2007 CLD 125), a Division Bench of the High Court of Sindh, Karachi, while dealing with the issue of causing heavy financial loss to the exchequer in awarding a contract, held as under: -

"23. From the above discussion, we have come to an irresistible conclusion that the whole process of inviting of tender/sealed offers by the respondent No.2 on the first occasion as well as on the second occasion was game of fraud and cheating full of ulterior motive and mala fide, aimed to oblige some particular party (respondent No.4) and for causing heavy financial loss to public exchequer. Thus, we have no option but to allow and dispose of this petition in the terms that the acceptance of the bid of respondent No.4 in the sum of Rs.6,05,000; subsequent awarding of contract in his favour and the whole process of bidding conducted by respondents Nos.1 and 2 for this purpose is illegal, without lawful authority and of no legal effect. The respondents Nos. 1 and 2 are, therefore, directed to invite fresh bids/offers for granting of lease of Pakistan Sports Board Coaching Centre plot at Sir Shah Suleman Road, Karachi for the purpose of marriage lawn, by incorporation of only such conditions, which are available in the first advertisement or relevant and necessary to safeguard the interest of respondents Nos.1 and 2 properly."

In Sheri-CBE v. Lahore Development Authority (2006 SCMR 1202), this Court while dealing with the issue of lease of amenity

plot to a private company for construction of big complex including cinema and shopping mall, noted the following questions/issues: -

"30. The question is, could the concerned authorities be permitted to play around with Gulberg Scheme on the pretext of non-availability of the scheme? Since it is the respondents who wished to put a piece of land which had been preserved and used as an open space for over half a century, to a different use, the onus lay on the said authorities to establish that such a use was permitted by law. The question could thus also be whether a mere plea of non-availability of the said basic document could ever be considered a sufficient discharge of the said burden and a further question would be as to why adverse inferences should not be drawn against the respondents in the said matter on account of their said conduct?

"31. Referring to the provisions of section 5 of the Disposal of land by Development Authorities (Regulation) Act No.XII of 1998, it was argued that there was a complete and absolute prohibition on converting a Public Utility area or a Public Amenity plot to any other use and that the contravention of the said prohibition was an offence in terms of section 6 thereof which was punishable with imprisonment up to one year or with fine which could extend up to Rs.1,000 per day from the date of such a conversion till the default continued, or with both. It was added that since the respondents could not offer any proof and were, according to their own admission, not possessed of any evidence that the plot in question was not a public utility area or a public amenity park,

therefore, all concerned were guilty of the commission of the said offence and were liable to be prosecuted and punished for the same.

"33. Emphasis was next laid by the learned Advocate Supreme Court for the petitioners on the transfer of the said piece of land to the said company for the said purpose. It was submitted that by virtue of the provisions of section 47 of the L.D.A. Act of 1975, all functions and powers relating to all such schemes including Gulberg, together with all properties and assets etc. pertaining to the same, had got vested in the Lahore Development Authority whereafter, as per section 6(3)(iv) of the said Act, the said assets and properties could be sold, leased out, exchanged or otherwise disposed of only by the said Authority and even a licence or concession in respect thereof could not be granted by any one except the Lahore Development Authority which according to the provisions of section 4 of the said Act consisted of the members named therein with Zila Nazim of Lahore as its Chairman.

"34. It was argued that even on the said score, the entire action was illegal because it was never the case of the respondents that the land in question had ever been sold or leased out or even a licence or concession in respect thereof had been granted to the said company by the L.D.A. The case of the respondents before the High Court, in this connection was, that it was the Chief Minister of Punjab, who on a summary submitted to him for the purpose, had leased out the said land to the said company for a period of 25 years.

"35. Was this then a legal and a valid transfer/entrustment of the said property vesting in the L.D.A. to the said company?

"36. It was next complained that the building in question which was intended to be a huge complex was being constructed at the site without the sanctioning of its plans by the competent authority. The plea of the respondents was that construction of Government buildings did not require sanctioning of their building plans. The question is whether there was any law exempting Government building from the operation of the said legal requirement and question would also be whether a building constructed by the said company which was an independent legal entity having been incorporated as such under the Companies Ordinance of 1984, could be said to be a Government building?

"37. It was submitted that the complex in question which involved construction of a huge building with an initial estimated cost of Rs.1500 million; which involved use of roads in a residential locality by a large number of additional persons and vehicles visiting the said plaza and which also involved a change of land use, fell within the purview of a 'Project' as defined by section 2(xxxv) of the Pakistan Environmental Protection Act No.XXXIV of 1997 and in view of the provisions of section 12 of the said Act of 1997, the very commencement of its construction without filing an initial environmental examination with the Federal Agency and without its approval regarding the environmental impact assessment, was grossly illegal and was even a culpable offence under the said Act. This-issue also requires examination.

"38. It was next argued that the respondent Government had entered into a contract with a foreign company by the name of IMAX for the supply of equipment for the cinema in question and that this contract worth about Twenty-five crores in Pakistani currency had been entered into with the said foreign supplier/company in violation of the law, the rules and the policy on the subject and also in violation of all norms of transparency and good governance as no advertisement or notice had ever been issued in the national or international press inviting tenders, bids and offers with respect to the same and the deal had been finalized in secrecy and in a clandestine manner.

"40. Serious reservations had been expressed by the petitioners even about the reasonableness and the lack of bona fides regarding the conception of the project in question. As has been noticed above, the land on which the said project was being constructed was worth around 2500 million rupees. It is on record that the initial estimate of the project in question was 1500 million Rupees which would of course be subject to escalation and inflation. It was submitted that more than 4000 million Rupees of public money were thus being dumped to produce a Cinema Hall and a shopping complex on the pretext of showing educational movies to the children which movies the children could watch and were watching on Discovery Channel and such-like other educational channels of the T.V. every day; that there was hardly a household in the city which did not have a television and further that there was also no dirt of shopping plazas in the city or even in Gulberg. It was added that a cinema of the kind was available in a neighbouring country and

the per person ticket to watch a movie in the said cinema was around Rs.4,000 (four thousand Pakistani Rupees). It was contended that in a country like ours where thousands were giving away their precious lives yearning for a bed in a hospital or a single dose of life-saving drugs and where millions were getting afflicted with deadly diseases on account of non-availability of clean drinking water, it did not behove the Government to be involved in building luxurious three dimensional movies theatres and expensive shopping malls for the rich and the famous and that also by j investing millions from the hard-earned money of the public. We were asked whether such a use of public money could never be condoned as a reasonable exercise of executive power? We need to answer it.

"41. Grave apprehensions and reservations had also been expressed by the petitioners about the manner in which the said company had been created; the allegedly surreptitious manner in which a contract had been settled by the Government with a foreign company; the manner in which an invaluable piece of land which even otherwise was a public amenity area had been transferred to it and the manner in which hundreds of millions of rupees of the public were transferred to the said company which was then directed to own the above-mentioned foreign contract entered by the government and to produce a cinema hall and a shopping complex on the site in question. It was submitted that the said company, according to its Memorandum and Articles of Association, was a company formed by Twelve persons, each one of them contributing "(A sum not exceeding Rs.1000 Rupees one thousand only) with a "Paid up capital of Rs.1100

(Rupees eleven hundred only)" whereafter the "Equity of the Company" was to be provided by the Government in the form of fifty laks shares of Rs.100 each amounting to Rs. One Hundred and fifty million only. It was added that only because ten of the said twelve sponsors happened to be public servants posted with the Government of Punjab could not ever mean that the said was a company sponsored, floated, formed or owned by the Government. It was further submitted that nothing precluded these Twelve, in law, from amending or altering the Memorandum or the Articles of Association, that these ten public servant sponsors were even otherwise guilty of misconduct having involved themselves in a trade/business as they had failed to show any permission, in law, allowing them to indulge in such an activity; that even if the Government of Punjab thought that it had accomplished all other tasks and discharged all its other all important obligations and had now nothing better to do than running cinemas, theaters and shops then it could have directly gone into the said business instead of entrusting millions of public money to a company which was an entity in itself independent of all Governmental checks including the control of the authorities established by the Constitution to audit public accounts.

"42. Mr. S.M. Zafar, the learned Senior Advocate Supreme Court attempted to put these apprehensions at peace by submitting that the said company was a State/Government-owned company; that its Memorandum and Article of Association prohibited its Sponsors/Directors to change the same; that it was a global trend all over the world to achieve governmental objectives by setting up companies

which was a more efficient and effective mode of securing the said objects as these companies, not being Government departments, were free of bureaucratic red-tapism and controls; that the company in question was to sovereign and was subject to governmental controls and that the public money entrusted to it was safe.

"44. The learned Advocate Supreme Court for the petitioners, at this juncture, reminded us of an earlier ruler of this Province who, despite being not an elected representatives of the people, had resisted all temptations of converting available vacant spaces in the city into residential and commercial complexes and had blessed the people of Lahore with powerful public lungs in the form of Race-Course (now Jilani) Park, Gulshan-e-Iqbal Park, Model Town Park, Iqbal Park (old Minto Park), Jallo Park, Lahore Park, a park adjacent to Pearl-Continental Hotel on the Mall and so on and that thousands of hands rose everyday praying for his noble soul. He also made repeated references to a recent judgment of this Court relating to public amenity area in Islamabad and added that such examples could be a valuable guide and a good food for thought for all concerned."

19. There is another important aspect of the case that after executing the lease in pursuance whereof an area of 6000 square yards has been given for 33 years to M/S Siza Foods in respect of most valuable property, which was actually earmarked for Blue Area, but its subsequent change from residential sector into Park has not been brought into our notice. In future, it would

be constructed along the site of F-9 Park where the McDonald's has been constructed.

20. No one appearing on behalf of CDA has assisted us about the formula followed in calculating the rent. It is most interesting part of this case that in the publication dated 09.07.2004, following conditions were mentioned: -

CDA intends to provide an opportunity for setting up/opening a branch of a "MULTI-NATIONAL FOOD CHAIN" (fast food) or coffee/ice-cream chain, with all features including children play area etc., in F-9 Park, Islamabad. Interested parties are, therefore, requested to express their interest and submit their applications by 25.09.2004 for pre-qualification with detailed technical proposal, area required, terms and conditions"

A perusal thereof indicates that the CDA had not disclosed the location in which the area would be available for the said purpose. Thus, incomplete advertisement was given so that no one should have a clear idea about the future business prospects. It is also not understandable as to why CDA agreed to lease out $4000 + 2000 = 6000$ square yards of a valuable piece of land for 33 years at a rent of Rs. 316,250/- or 5% of gross sales. Undoubtedly, CDA is an authority, which is supposed to discharge its functions in the interest of public and if, in any manner, establishment of restaurant was permissible, they should have tried to fetch maximum price of the land. As far as developing 5 acres of land is concerned, this was also not without an object and purpose, as it has been observed hereinabove to confer

exclusive rights on M/s Siza Foods. The CDA had signed MoU with M/S Siza Foods, perusal whereof indicates that a third party, namely, M/S Lakson group was also involved. Para 11 of the MoU provided that construction and development of the Park may be undertaken by M/S Lakson Group or any of its group company and such Group/group company shall be entitled to advertise and display its logo in the Park. The size/design of logo shall be mutually agreed between CDA and Lakson Group/its group company. It is not on record about the interest of M/S Siza Foods with Lakson Group, but one can imagine that full facility is being extended to install signage, etc. Such permission exclusively cannot be granted by CDA in the garb of MoU between CDA and M/S Siza Foods. There is no indication that after installing such signage, benefit will be extended to the CDA or M/S Siza Foods. Therefore, it is not correct to say that the Park was being developed free of cost. In addition to it, MoU also indicates that the CDA, even before the execution of the lease deed, permitted and authorized M/S Siza Foods to undertake work to an agreeable level and design. Thus, there was no transparency, rather it was a shabby deal in violation of the Constitution and the law.

21. A perusal of the letters which were sent by Amin Muhammad Lakhani to the then Prime Minister and the President, prima facie, showed use of influence. An officer of the status of Chairman CDA (Mr. Kamran Lashari) has succumbed to the pressure, and had not only violated the service discipline and the

provisions of the Constitution and the law, but *prima facie* has also exposed himself to legal action because government functionaries are not bound to carry out/implement any order which is not in accordance with law.

22. It is pertinent to mention here that this was not the first time that such irregularities were committed. Similar instances have come before the Court on more than one occasion in different cases. In the case of Iqbal Haider (*supra*) this Court had dealt with a similar situation as under: -

"33. It is most important to note that functionaries, exercising statutory powers like C.D.A., are bound to discharge their functions strictly in accordance with law, otherwise the action contrary to law would not be sustainable and such authority shall expose itself for disciplinary action. This Court in the case of Fazal Din v. Lahore Improvement Trust (PLD 1969 SC 223), reference of which has already been [made] herein above, has discouraged denial of valuable rights of the residents in respect of the plot, meant for specific purpose. This principle has also been reiterated in the case of Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883), wherein it has been held that without obtaining no objection from the general public, such plots cannot be used for any other purpose. As it has been noted herein above that in instant case, objections were not invited from the general public by the competent authority before converting the Jubilee Park into a commercial oriented amusement Park, with the collaboration of multinational companies, delegating powers to respondent No.2 to enter into joint venture or franchise for giving licences to local or international

parties, food chains, etc. In our opinion, such delegation to private person to watch his financial interests of the high degree [is] tantamount to depriving the authority as well as the public from their valuable rights, for whose benefits such authority has been created, and apparently such action has got no legal sanctity, therefore, action against such responsible officer/official of the authority is called for in view of the judgment of this Court *Pervaiz Oliver v. St. Gabriel School* (PLD 1999 SC 26), wherein it has been held that "no public property, big or small, tangible or intangible, can be disposed of except in accordance with law. Those who transgress, expose themselves to the severest penalty under the law". As a consequence of this observation, finally following directions were made to the authority: --

"While, in this background, upholding the order of the High Court, we dismiss the above listed three petitions with costs, the one filed by the Assistant Administrator also on the ground of limitation, we would also direct the Chairman of the Evacuee Trust Board to personally hold an enquiry about the conduct of the above said several functionaries involved by departmentally proceeding with the matter and taking appropriate action(s). This would also include the examination of the question as to by whom and under what circumstances sanction was accorded firstly, for defending the petition in the High Court and secondly, for preferring the leave petition in this Court. The Chairman of the Board would be required to submit the final enquiry report(s) with details of action taken, within four months before the High Court of Balochistan, copies being endorsed to this Court. It will then be for the High Court to pass such orders in the matter as it deems fit, including due activation, if required, of the Federal Ombudsman and the Chief Ehtesab Commissioner. A copy of this order would be forwarded to the Chairman of the Board, the Chief Ehtesab Commissioner the Federal Ombudsman and the Secretary, Law and Justice Division, of the concerned Ministry, for action and for record."

23. This Court, on a number of occasions, has emphasized upon the government functionaries to perform their duties strictly in accordance with law. In the case of Government of Balochistan v. Muhammad Ali (2007 SCMR 1574), this Court held as under: -

"7. Undisputedly, the respondents have lodged the claim in respect of the land measuring 4300 acres approximately recorded in favour of the Provincial Government in the year 1964-65 which being in nature of the public property was supposed to have been used, utilized and dealt with by the Provincial Government or its Departments to whom it was transferred in the year 1979 in the sole public interest being the custodian of the public property and likewise the public functionaries are supposed and required to act accordingly under the law and to defend any legal proceedings concerning the public property before any Court or forum effectively; preserve, protect, and defend the title, rights and interest of public property in accordance with the law which did not vest or belong to any of the public functionaries. It was the bounden duty of all the concerned to have acted and proceeded promptly and effectively to take appropriate steps and to pursue the available remedies against any proceedings, order or decree of a Court within the prescribed period of limitation. The serious lapses on the part of all the concerned in withholding the matter and not having filed the appeal before the learned Majlis-e-Shoora within the prescribed period of limitation and after dismissal of the revision petition by the learned High Court, even approached to this Court after a considerable delay of

320 days in filing C.P.L.A. speaks about the inaction, inefficiency or deliberate omission by all the concerned though being under legal obligation to have taken the prompt action in availing the legal remedies but not so done as above noted; cannot be ignored, yet; no action in such behalf appears to have been taken by the competent authority against the delinquents. Due to the serious lapses and failure to discharge the legal duties promptly and within the prescribed period of limitation by all the concerned in the matter in view of the decree of the trial Court; of course no actual loss, damage or deprivation of rights has occurred to the public functionaries concerned in the matter, rather; the Government and the Forest Department stands completely deprived of the public property solely meant to be used, utilized and dealt with in the public interest being a public property of which the Government and the Department through its functionaries are the custodian but decree of the trial Court was not assailed before Majlis-e-Shoora within the prescribed period of limitation and for such reason alone, appeal was dismissed, upheld by the learned High Court as well; consequently the Government stood divested of huge public property for being its custodian and thereby interests of the public stood completely jeopardized merely because of the grave omissions and inaction on the part of the concerned public functionaries

In Capital Development Authority v. Shaheen Farooq (2007 SCMR 1328), this Court held as under: -

"7. We have gone through the impugned order, relevant record and also attended to rival contentions so raised before us. There is no cavil with

the proposition that the order of cancellation of allotments had not been passed by the Chairman, as despite repeated asking, learned counsel for the petitioner was unable to point out any document showing that the cancellation orders were passed by the Chairman except referring to certain documents whereby a reference has been made to the verbal orders of the Chairman. Verbal order has no sanctity in law and such orders are alien to the process of the law and the Courts. All orders I passed and acts performed, particularly, by the State/public functionaries and adversely affecting anyone must be in writing, as section 24-A(1) of the General Clauses Act, 1897 envisages that the powers shall be exercised reasonably, fairly and justly and subsection (2) further makes it necessary that the authority passing orders shall, so far as necessary or appropriate, give reasons for making the orders and unless the order is in writing, the reasons and fairness etc. thereof cannot be ascertained/ adjudged."

In the case of Mehr Ali v. Noor Muhammad (2007 SCMR 1965), this Court held as under: -

"It is a settled law that public functionaries are duty bound to decide the controversy between the parties after judicial application of mind as envisaged by section 24-A of General Clauses Act and Article 4 of the Constitution as law laid down by this Court in Aslam Warraich's case PLD 1991 SC 2330, Mollah Ejahar Ali's case PLD 1970 SC 173 and Gouranga Mohan Sikdar's case PLD 1970 SC 158. It is the command of the Constitution by virtue of Articles 4 and 5(2) that the public functionaries have to decide the controversy between the parties in accordance

with law and not in derogation of law as law laid down by this Court in Utility Stores' case PLD 1987 SC 447. The contention of the learned counsel for the petitioner that the highest forum in the hierarchy of Revenue Officers is the Member, Board of Revenue, therefore, High Court had erred in law to interfere in the findings with regard to appointment of Lambardar has no force in view of aforesaid discussion that Member, Board of Revenue is duty bound to decide the cases in accordance with law and shall not disturb the findings of fact recorded by the Tribunals below unless and until the same are suffered from illegality or irregularity or in violation of any law laid down by the superior Courts."

In Iqbal Hussain v. Province of Sindh (2008 SCMR 105), it was

held as under: -

"3. We are in complete agreement with the view taken by the Division Bench of the High Court when it says that public functionaries including the Chief Minister can deal with the public property only under a prescribed procedure within the parameters of law under a duly sanctioned scheme and not at their whims. Even if such order was passed by the Chief Minister in favour of the petitioner, authorities concerned would not be bound to follow such illegal and void order of a superior authority. It would rather be in the exigencies of good order of administration and their duty to point out to the high-ups that they were acting in excess of their lawful authority and in violation of law and the constitutional mandate. They may be apprised of the legal consequences flowing from such acts. The compliance of any illegal and arbitrary order is

neither binding on the subordinate forums nor valid in the eyes of law. Reference in this behalf may be made to decision of this Court in Abdul Haq Indhar V. Province of Sindh 2000 SCMR 907 and (ii) Taj Muhammad v. Town Committee 1994 CLC 2214."

In the case of Government of Pakistan v. Farheen Rashid [2009 PLC (C.S.) 966], this Court held as under: -

"It is the inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the Constitution. It is the duty and obligation of the public functionaries to act within the four corners of the mandate of the Constitution and law. Even the Chief Executive of the country is not above the Constitution and is bound to obey the command of the Constitution as envisaged under Article 5(2) of the Constitution and law laid down by the Court in various pronouncements."

In the case of Secretary Ministry of Health v. Rehana Hameed (2010 SCMR 511) this Court made the following observations: -

"After addition of section 24-A in the General Clauses Act, it is the duty and obligation of the public functionaries to redress the grievances of the citizens/their sub-ordinates with reasons as law laid down by this Court in Messrs Airport Services case 1998 SCMR 2268. We may observe that since Pakistan is founded on the basis of religion of Islam, efforts should be made to bring out an egalitarian society based on Islamic concept of fairplay and social justice. Therefore public functionaries are expected to act fairly and justly in a manner which should not give to any one any cause of complaint on account of discriminatory treatment or otherwise."

24. This Court has also emphasized that the departmental functionaries are only obliged to carry out lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should have put on record their dissenting note. Reference in this behalf can be made to the case of Zahid Akhtar v. Government of Punjab through Secretary, Local Government and Rural Development (PLD 1995 SC 530).

Relevant Para therefrom is reproduced herein below: -

".....We need not stress here that a tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as incharge of administrative departments, of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is, to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with law. Succumbing to each and every order or direction of such elected functionaries without bringing to their notice the legal infirmities in such orders/directions may sometimes amount to an act of 'indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. It hardly needs to be mentioned that a Government servant is expected to comply only those orders/directions of his superior

which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."

This view was further reiterated by this Court in the case of Muhammad Akhtar Shirani v. Punjab Tex Book Board (2004 SCMR 1077). Relevant portion therefrom is reproduced below: -

"We have noted with pain that departmental authorities responsible to run its affairs do submit to whims and wishes of their superiors and never feel hesitation in implementing even an illegal order, knowing well that it has no legal sanction and if such order is implemented it is bound to give rise to a number of complications in the future. This Court time and again has emphasized that the departmental functionaries are only obliged to carry out lawful orders of their superiors and if they are being pressurized to implement an illegal order they should have put on record their dissenting note and if such practice is followed chances of issuing/passing illegal orders shall be minimized."

25. Coming to the issue of NPC, we have examined, with the assistance of the learned counsel for the NPC as also the learned counsel for the CDA, the relevant record regarding allotment of plot to the NPC for construction of Aiwan-e-Quaid on the pattern of Aiwan-e-Iqbal, Lahore. To begin with, it may be noted that Islamabad Land Disposal Regulation 1993, which laid

down different procedures for allotment of land of community buildings and facilities in the public and private sectors. Under regulation 12(2), community buildings and facilities shall be allotted to government organizations at amenity rates whereas under regulation 15(2), plots for other private institutions, including plots for hospitals, maternity homes, clinics, art-galleries, gymnasium, amusements parks, etc., shall be sold/leased by auction. Clearly, NPC was a private entity, hence not entitled to be allotted a plot on amenity rate as provided under regulation 12(2). The procedure governing allotment of plots to private institutions envisaged by regulation 15(2), viz., sale/lease by auction was not followed in the matter of allotment of plot to NPC. In this view of the matter, the learned counsel for the CDA did not support the transaction and stated that the CDA was ready to take over the plot/building.

26. At this stage, we would like to advert to the MoU dated 30.10.2001, signed between Ministry of Education and the NPC. Evidently, the NPC had been approaching the CDA and other governmental functionaries for allotment of plot reserved for Islamabad Public Library in F-9 Park for establishment of Aiwan-e-Quaid. However, keeping in view the afore-noted provisions of the Regulation of 1993, no plot on amenity rate could be allotted to a private organization, therefore, the aforesaid MoU was reached, which provided as under: -

- (1) Cost of plot as demanded by C.D.A. will be arranged by the Council after President of the Islamic Republic

of Pakistan lays down the foundation stone of the project.

- (2) Cost of building structure, equipment, fixtures, etc., being integral part of the project, will be borne by the council.
- (3) Design of the buildings on the plot will be prepared by the Capital Development Authority in consultation with Director General Libraries and Nazria Pakistan Council according to their requirements.
- (4) This will be a project of Department of Libraries, Ministry of Education.
- (5) The PC-1 will be prepared by the Department of Libraries of the Ministry of Education and will be subject to approval by the Planning Commission and will be completed within 24 months of its commencement.
- (6) Any alteration or addition in the project building will be the right of Department of Libraries.
- (7) Maintenance cost of the project buildings will be borne by the Department of Libraries of the Ministry of Education.
- (8) Revenues on account of renting out auditorium & other parts of the building will be revenues of the Department of Libraries. Rules for use of the facilities will be approved by the Secretary to the Government of Pakistan, Ministry of Education.
- (9) An Executive Committee comprising Representative of Nazria Pakistan Council (Mr. Ashraf Nadeem), Joint Educational Adviser (HE&LB) of Ministry of Education and Director General, Department of Libraries will administer the affairs of the project till its completion. Thereafter, the Director General, Department of Libraries will be responsible for its operations.
- (10) To ensure smooth and prompt implementation of the project, Aiwan-e-Quaid Authority on the pattern of

Aiwan-e-Iqbal Authority, Lahore, has been set up by the Education Minister with the following composition: -

a. Minister for Education	Chairman
b. Minister for Interior	Member
c. Joint Secretary (ICT-CDA)	Member
d. Chairman, CDA	Member
e. Mr. Mahmood Ali (NPC)	Member
f. Joint Secretary (Admn) Ministry of Education	Member
g. Gen. (Retd.) Imran Ullah Khan Executive Committee of NPC	Member
h. Director General Libraries	Member
i. President, NPC (Mr. Zahid Malik)	Secretary General"

It transpired during the hearing that the cost of land was paid from the government exchequer on a directive of the Prime Minister and the funds for construction of the project were also granted by the government, though as per MoU, the cost of plot as also cost of building structure, equipment, fixtures, etc, being integral part of the project was to be borne by the NPC. Further, according to the MoU, it was a project of Department of Libraries, Ministry of Education and was to be run by the Aiwan-e-Quaid Authority set up on the pattern of Aiwan-e-Iqbal Authority, Lahore by the Education Minister with the composition mentioned in the MoU. However, it appears that no such Authority was set up and instead the project was given in the hands of NPC. It was nothing but grabbing of State land, that too, unfortunately in the name of the father of the nation, Quaid-e-Azam Muhammad Ali Jinnah.

27. On the last date of hearing, the learned counsel filed application on behalf of NPC, containing decisions of the Executive Committee of the Council, which are reproduced below: -

- (1) That keeping in view the observations of the Honourable Court and realizing that while the Council acted in good faith, yet there is a legal aspect of the case which may adversely affect the status of the lease deed granted by the CDA the same can, therefore, be treated as cancelled thus reverting the plot to the CDA. NPC is not interested in ownership of the property but in the concept and in the process of running the Library.
- (2) A request be made to the Honourable Court that Nazriya Pakistan Council may be allowed to continue and operate Aiwan-e-Quaid.
- (3) Finally that NPC would like the CDA to nominate its representative to the Executive Committee of the Council."

We have given anxious consideration to the submission of the NPC in the light of the provisions of MoU. In our view, the Aiwan-e-Quaid ought to be managed and controlled on the pattern of Aiwan-e-Iqbal Authority, Lahore, as envisaged by the aforesaid MoU dated 30.10.2001, signed between the Ministry of Education and the NPC. We, therefore, direct that the project shall be taken over by the above mentioned Aiwan-e-Quaid Authority. Necessary legal cover will be provided to it by the concerned quarters.

28. Now we take up the establishment of Citizens Club in F-9 Park. Admittedly, according to the Master plan of F-9 Park, no residential building for lodging/boarding of the members of the Citizens Club could be constructed without approval of the competent authority and without taking into consideration the requirements of the public park. The revised Master Plan of 1995, which envisaged establishment of a club, itself was not a legal document in absence of approval by the Federal Government in terms of section 19 of the CDA Ordinance, 1960; therefore, no superstructure could be built upon it and no scheme prepared in pursuance thereof. It is pertinent to mention here that as per minutes of the decisions of the CDA Board taken in the meetings held on 24.09.2007 and 01.10.2007, the construction of Citizens' Club was earlier proposed in Sector H-11, but later on shifted to Sector F-12 and then re-shifted to Sector F-9 (Fatima Jinnah Park) due to non-acquisition of land in Sector F-12. The scheme for a full-fledged Citizens' Club with 18 holes golf course and amphitheatre, ladies club and for children sports area was examined and approved in a meeting presided over by the Chairman CDA, and attended by officers of the CDA Environment Directorate. Here too, the scheme was approved neither by the CDA Board nor by the Federal Government in accordance with the provisions of the CDA Ordinance, 1960, referred to hereinabove. Further, assuming for the sake of argument, though not accepting, there was a provision for establishing a club in the Park, an elitist club with a commercial perspective was hardly

justified considering the primary aims and objectives of the public park. In the case of Iqbal Haider (supra), this Court considered the issue of establishment of a mini golf course in the Jubilee Park situated in Sector F-7, Islamabad, relevant paragraphs have already been reproduced in Para 15 above. In this view of the matter, the establishment of Citizens' Club aimed at providing facilities to the elitist class alone was not for the general masses for whom F-9 Park was primarily meant. As such, the same was not permissible.

29. In the case of Bangalore Medical Trust v. B.S. Muddappa (AIR 1991 SC 1902) the Supreme Court of India considered the issue of construction of a hospital in the space reserved for Public Park. According to the facts of the case, an improvement scheme was adopted under the City of Bangalore Improvement Act, 1945 and, in terms of the Bangalore Development Authority Act, 1976, was deemed to have been prepared and duly sanctioned by the Government. Under the scheme, a site was reserved as an open space for Public Park. Pursuant to the orders of the State Government, and by a Resolution, the Bangalore Development Authority (BDA) allotted the said open space in favour of a private medical trust, for the purpose of constructing a hospital. This allotment and diversion of the user of the site was challenged before the High Court by the respondents, as residents of the locality and as general public, contending that it was contrary to the provisions of the Act and the scheme sanctioned thereunder, and the legislative

intent to protect and preserve the environment by reserving open space for ventilation, recreation and playgrounds and parks for the general public. A Single Judge of the High Court dismissed the Writ Petition holding that a hospital being a civic amenity, the allotment of the site by the BDA in favour of the appellant for the purpose of constructing a hospital was valid and in accordance with law, and, rejected the claim of the petitioners that the BDA had no power to alter the scheme, and in any event, a site reserved for a civic amenity could not have been allotted for construction of a hospital, on the ground that the scheme could be altered under Section 19(4) of the Act, and it was done with approval of State Govt. On appeal, a Division Bench of the High Court held that though the BDA had the authority to deal with the plot in question, the area having been reserved in the sanctioned scheme for a Public Park, its diversion from that object and allotment in favour of a private body was not permissible under the Act, even if the object of the allotment was the construction of a hospital, since a hospital could not be considered to be an amenity, and that in allotting the site to the Trust, a largesse was conferred on it in utter violation of law and rules, and set aside the allotment of the site in question with liberty to the BDA to make a fresh allotment of any alternative site in favour of the Trust. While dismissing the appeal, the Supreme Court held as under: -

“A private Nursing Home could neither be considered to be an amenity nor it could be considered improvement over necessity like a public park. The

exercise of power, therefore, was contrary to the purpose for which it is conferred under the statute.

“Financial gain by a local authority at the cost of public welfare has never been considered as legitimate purpose even if the objective is laudable. Sadly the law was thrown to winds for a private purpose. The extract of the Chief Minister's order quoted in the letter of Chairman of the BDA leaves no doubt that the end result having been decided by the highest executive in the State, the lower in order of hierarchy only followed with 'ifs' and 'buts' ending finally with resolution of BDA which was more or less a formality. In less than ninety days, the machinery in BDA and Government moved so swiftly that the initiation of the proposal, by the appellant, a rich trust with foreign deposits, query on it by the Chief Minister of the State, guidance of way out by the Chairman, direction on it by the Chief Minister, orders of Govt., resolution by the BDA and allotment were all completed and the site for public park stood converted into site for private nursing home without any intimation direct or indirect to those who were being deprived of it.

“Speedy or quick action in public institutions calls for appreciation but our democratic system shuns exercise of individualised discretion in public matters requiring participatory decision by rules and regulations. No one howsoever high can arrogate to himself or assume without any authorisation express or implied in law a discretion to ignore the rules and deviate from rationality by adopting a strained or distorted interpretation as it renders the action ultra vires and bad in law.

“An illegality cannot be cured only because it was undertaken by the Government, or because it is done

at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power.

"The executive or the administrative authority must not be oblivious that in a democratic set up the people or community being sovereign, the exercise of discretion must be guided by the inherent philosophy that the exerciser of discretion is accountable for his action, it is to be tested on anvil of rule of law and fairness or justice particularly if competing interests of members of society are involved."

30. Learned counsel for the CDA placed on record copy of PC-I for construction of Citizens' Club. According to estimate worked out for its completion, an amount of Rs.1.28 billion has been allocated. This huge amount belongs to no one else except the taxpayers/citizens. Such amount, therefore, could have been spent appropriately for their welfare instead of providing luxurious type of Citizens' Club only for its members. There is no dispute that facility of membership can only be availed by the persons who have resources, and not by the general public who have no financial means to avail such facilities; therefore, besides violation of the CDA laws, a huge segment of the society belonging to downtrodden class have been deprived. Incumbent Chairman CDA informed that physical work progress was 69% and an amount of Rs.575 million had been spent so far. He was of the opinion that construction of Citizens' Club shall be providing additional facility not only to members, but also to

those who would visit Islamabad, including diplomats; therefore, from this point of view, the Club was being constructed. We are not opposing establishment/construction of such like clubs in the Capital, but definitely on a suitable place and by not curtailing rights of the general public. History as it has been traced hereinbefore suggests that the Club was proposed in different sectors, such as H-11 and F-12, but the construction work could not commence for want of acquisition of land in those sectors. This explanation does not seem to be impressive. CDA can undertake such projects not in the park, but in any other area, ensuring at the same time that the money of taxpayers shall not be used for such purposes. However, as now a huge amount has already been spent; therefore, CDA with the approval of the Federal Government, instead of abandoning the project, may utilize the building and other facilities for any public welfare project, like women university, medical/engineering college, science, technology or IT institution, etc.

31. On the issue of Megazone (formerly named as Hot Shots), Mr. Afnan Karim Kundi submitted that the Master Plan of F-9 Park envisaged setting up of a bowling alley/centre. In pursuance of advertisement published in the press in the year 1994 to which in all seven firms responded. M/S S&S Enterprizes, a Pvt. Ltd. Co., one of the seven parties to the bid, having offered the highest bid of Rs.752,000/- was selected. The CDA Board, in its meeting held on 27.11.1994 approved grant of licence to M/S S&S Enterprizes. The management of the centre

had changed hands. As no notice was issued to them, they were not before the Court.

32. Mr. Qamar Afzal, ASC appeared on behalf of M/S S&S Enterprizes Pvt. Ltd., occupants of the bowling alley/centre, first operated in the name of 'Hot Shots', and now named as 'Megazone'. He submitted that presently the concern was being managed and operated by Brig. (R) Iftikhar Ahmed (Chief Executive) along with Mr. Shi Hua Ping a Chinese national (Director). He submitted that there was litigation between his clients and the CDA on account of unauthorized construction of basement, mezzanine floor, etc., and non-conforming use of the premises, e.g. swimming pool, shops, etc., and ultimately, certain portions of the constructed area were demolished while the rest was compounded by the CDA on payment of fine/rent. He was asked to explain under what provisions of law the CDA had so compounded the unauthorized construction. He referred to different Regulations of the CDA, e.g., the CDA Ordinance, 1960, Islamabad Building Regulations, 1963, Islamabad Residential Sectors Zoning (Building Control) Regulation, 1993, etc., but failed to show how the aforesaid Ordinance/Regulations were applicable to the building in question, which was not of residential nature. He then submitted that the answer to the proposition was found in the record of the CDA (pp. 108-110 of the CDA P/B Part IV), which we have perused with his assistance. The issue was considered by the CDA Board in its meeting dated 20.11.2002 and made the following decisions: -

- (1) Compoundable violations of excess area of basement and ground floor may be regularized by imposing compounding charges of Rs.10,000/- (lump sum) & fine @ Rs.1500/- per sq ft or to demolish the area constructed over and above the approved plan and beyond the terms and conditions of bid.
- (2) The non-compoundable violations of additional facilities i.e. construction of mezzanine floor, stair tower, swimming pool, toilets, etc., provided in the basement against its lawful use may be demolished after giving the licensee proper/mandatory notice.

The CDA vide letter dated 10.07.2003 worked out amount of fine, etc. and directed M/S S&S Enterprizes to deposit compounding charges in the sum of Rs.73,87,000/- failing which the Authority would remove the same. In the same letter, the CDA gave the detail of non-compoundable violations area, e.g. mezzanine floor, stair tower, swimming pool, etc., but did not propose to take any consequential penal action. The Deputy Commissioner, CDA, in pursuance of the report by the CDA, *vide* order dated 15.01.2004 directed the CDA to take action against M/S S&S Enterprizes, i.e. to stop the non-conforming use of the premises. Pursuant to an application submitted by M/S S&S Enterprizes, the CDA Board in its meeting dated 12.05.2004 decided to regularize the basement and swimming pool without charges, and to regularize extended portion of ground floor, mezzanine floor on payment of charges/fine @ Rs.1500/- sq. ft. along with charges for non-conforming use/activities and asked the licensee to pay Rs.1,99,72,742/-. The CDA Board, then in its

meeting dated 19.10.2004 decided that existing halls, which were used for marriage parties, would be utilized for sports and recreational activities and asked the Cost Accountant and Planning Wing to examine the rates while keeping in mind the rules and regulations to work out excess rates, compound and other charges. The Deputy Director BCS-II, having re-measured the area, calculated/worked out a sum of Rs. 66,39,507/- to be paid by M/S S&S Enterprizes in terms of the Islamabad Residential Sectors Zoning (Building Control) Regulation, 1993, which was approved by the Member (Planning) and the Chairman CDA. It was pointed out during the 2005 Audit that the compoundable charges came to Rs.2,24,70,000/- against the demanded amount of Rs.66,39,507/-, which caused a loss of Rs.1,99,72,000/- to the Authority. The above amount having been paid by the licensee, the CDA Board, in its meeting dated 07.06.2007 regularized the compoundable violations.

33. The above narration in no way provides an answer to the question under what law the CDA had regularized the compoundable as well as non-compoundable constructions. The learned counsel agreed that the premises in question were not governed by any of the aforesaid laws/regulations. Mr. Afnan Karim Kundi, too, was unable to refer to any legal instrument in support of the decisions/actions of the CDA authorities. In absence of any legal instrument empowering the CDA to take the kind of actions that it did, the entire transaction from the beginning to the end was illegal and unsustainable in law.

34. The CDA Board, in its meeting dated 27.11.1994 decided, inter alia, that the bidder himself would construct the bowling centre on international standards and that the land would be licensed out for 20 years, renewable on mutual consent of both parties for another term of 20 years on new/re-negotiated terms. Thus, there was no provision for transfer of the licence. Surprisingly, in the licence deed dated 07.05.1995 issued by the CDA in favour of M/S S&S Enterprizes, a clause was added providing for transfer of the bowling centre to a Pakistan based company registered under the Companies Ordinance, 1984 after completion of construction, issuance of completion certificate and execution of the lease deed in favour of the licensee. Later, though the construction was completed with certain alterations and additional constructed area in violation of the approved building plan, but no completion certificate was obtained nor any lease deed was executed. Later on, the company created a collaboration with a Chinese Company, namely, M/S North Industrial Corporation of Peoples Republic of China (NORINCO), which got itself incorporated in Islamabad as M/S Islamabad NORIN Co. (Pvt.) Ltd., with Chinese Directors and Brig. (R) Iftikhar Ahmed as Chief Executive. M/S S&S Enterprizes entered into construction agreement dated 09.08.1995 with M/S Islamabad NORIN Co. After construction of the centre, the project in the name and style of M/S Hot Shots Bowling Centre became operational. Later on, M/S S&S Enterprizes surrendered all its rights in favour of M/S International NORIN Co., and the

possession was formally handed over to Brig. (R) Iftikhar Ahmed who was presently running the centre, later called as Megazone. All the above actions were done in violation of the decision of the CDA Board on the issue, as also the relevant rules and regulations of the CDA.

35. The revised Master Plan prepared in 1995 was not approved by the competent authority. On that view of the matter, spaces reserved for cuisine area, bowling alley, etc., in the un-approved Master Plan did not have the proper legal sanction at their backing and the CDA authorities thus rendered bereft of the power to go ahead with the preparation of schemes in relation thereto, as envisaged by section 13 of the CDA Ordinance, 1960. As such, the issuance of licence to M/S S&S Enterprizes was illegal and unsustainable. Having held so, the reference to the terms of the licence governing non-conforming use of the premises by the licensee, or in case of breach of anyone or more of the conditions of licence, the licence was liable to be withdrawn/cancelled and the structure, if any, would be confiscated without any payment, was of no consequence. Even otherwise, regulation 12(3) of the Islamabad Land Disposal Regulation, 1993 obligates the CDA to itself develop and maintain public parks, playing fields and graveyards, which the CDA violated by awarding lease/licence in favour of M/S S&S Enterprizes and M/S Siza Foods. This aspect was highlighted by

this Court in the case of Iqbal Haider (*supra*) in the following words: -

"15. What we have understood from above documents is that in the Capital territory, a master plan was prepared at the time of its inception and subsequently under different schemes, different sectors were set up. In this behalf, reference to the preamble and sections 11 and 12 of the Ordinance, 1960 may be made. In the scheme of a sector, some of the areas have been earmarked as a Public Park to attract general public. According to Article 12(3) of the Regulation, the public parks, playing fields and graveyards are to be developed and maintained by the CDA. Thus the conclusion is that during the classification of the plots, under Article 3 of the Regulation, if a piece of land has been earmarked for purpose of Public Park, same cannot be leased out and CDA itself is bound to develop the same."

36. Thus, for the foregoing reasons, it is declared and held as under: –

- (1) Establishment/construction of McDonald's restaurant in Fatima Jinnah Park, Sector F-9, Islamabad was contrary to Article 18 of the Constitution read with CDA Ordinance, 1960. Consequently, CDA is directed to cancel the lease of M/S Siza Foods forthwith, put up the matter before the CDA Board for converting cuisine pavilion area with dense vegetation into restaurant area, and then re-auction a site for setting up a food outlet therein, and seek approval from the Federal Government to the Master Plan as also the schemes prepared thereunder, in accordance with the provisions of the CDA Ordinance, 1960 and the other relevant rules and regulations. If the CDA Board or the

Federal Government declined to grant conversion of the cuisine pavilions into a site for construction of food restaurant, the existing superstructure raised by the McDonald's shall be demolished by defunct lease holder at its cost within three months. Fresh applications shall be invited from the local as well as international food chains by inviting expression of interest, indicating the area, facilities, etc., and whosoever succeeds shall be entitled to set up a food outlet accordingly. However, if M/S Siza Foods participated and succeeded in the auction, it shall continue with the business subject to fresh terms and conditions, without introducing in the business any third party, like Lakson Group/group company, etc. However, if any other food chain succeeded, then the parties with the intervention of the CDA shall negotiate the cost of the existing structure of McDonald's restaurant;

- (2) The CDA shall forthwith cancel the allotment of land to NPC, take over the premises along with facilities and place the matter before the Federal Government in the light of the MoU signed between the Ministry of Education and the NPC so as to run affairs of Aiwan-e-Quaid smoothly and achieve the objects for which it was established. However, it would be for the Federal Government to allow representation to NPC in the management committee, but complete administration of the premises shall rest with the Government;
- (3) As far as Megazone is concerned, its transfer in the name of Brig. (R) Iftikhar Ahmed and others was made contrary to the terms of the licence; therefore, the occupants subject to the rights of the original licence holder shall be given opportunity to get the same transferred in their name in accordance with law/guidelines issued by the Securities and Exchange

Commission of Pakistan within a period of three months, failing which the licence shall be cancelled, the land shall be taken over by the CDA and the occupants shall be directed to restore it to the position as it was prevailing before issuing the licence in favour of M/S S&S Enterprises;

- (4) As far as Citizens Club is concerned, its construction shall be completed as a huge amount of public money has been spent over it unauthorisedly and the building with other facilities shall be used for a project of public welfare;
- (5) A perusal of the documents made available to the Court abundantly makes it clear that Mr. Kamran Lashari, the former Chairman CDA, in violation of the constitutional provisions, CDA Ordinance, 1960 as well as other rules and regulations on the subject granted lease for 33 years of government land at a very nominal lease money to M/S Siza Foods in a non-transparent manner, undoubtedly, with the connivance of the other officials of the CDA; therefore, they all deserve to be dealt with strictly for misconduct, departmentally as well as by instituting both civil and criminal action against them, so that it may serve as a deterrent for like-minded persons, who discharge their duties/functions without adhering to the relevant provisions of the Constitution and the law. Such an action has become necessary with a view to avoiding in future violation of any provision of the Constitution and the law. In the case of Iqbal Haider (*supra*), it was observed that action against the responsible officer/official of the CDA was called for in view of the judgment of this Court in Pervaiz Oliver (*supra*), but it seems that no action against anyone was taken so far. The CDA through Establishment Division, Government of Pakistan is directed to take

action against Mr. Kamran Lashari, former Chairman CDA for violation of the Constitution, the CDA Ordinance, 1960, rules and regulations, reference whereof has already been given in the case of Iqbal Haider (supra);

- (6) The Chairman CDA shall ensure implementation of directions in the above Paragraph through concerned functionaries of the Federal Government within a period of three months from the date of this judgment. He is also directed to ensure transparency in other projects of the CDA and at the same time office files of Master Plan and preparation of schemes shall be maintained properly instead of showing helplessness to produce the record before the Court;
- (7) Unconditional apology tendered by Amin Muhammad Lakhani, proprietor of M/S Siza Foods is accepted because he himself volunteered for the same. However, he is warned to be careful in future and avoid scandalizing the courts.
- (8) As these petitions have been considered involving public interest/general masses/citizens, thus no order as to costs.

The listed HR cases are disposed of in the above terms.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad

Announced in Court on _____.

C.J.

APPROVED FOR REPORTING