

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mian Saqib Nisar
Mr. Justice Mushir Alam
Mr. Justice Umar Ata Bandial

CIVIL APPEALS NO.545 TO 550 OF 2015

(Against the judgment/order dated 17.4.2015 of the Lahore High Court,
Lahore passed in W.Ps. No.7955, 5323 and 8008 of 2015)

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| 1. | LDA through its D.G. | (in C.As.545, 547 & 548/2015) |
| 2. | Province of Punjab through Chief Secretary, Punjab & another | (in C.A.546/2015) |
| 3. | Province of Punjab through Secretary Housing Urban Development, Lahore | (in C.As.549 & 550/2015) |

...Appellant(s)

VERSUS

- | | | |
|----|-----------------------------------|--------------------------|
| 1. | Ms. Imrana Tiwana and others | (in C.As.545 & 546/2015) |
| 2. | Fahad Malik etc. | (in C.As.547 & 549/2015) |
| 3. | Lahore Conversation Society, etc. | (in C.As.548 & 550/2015) |

...Respondent(s)

For the appellant(s) :

Kh. Haris Ahmed, Sr. ASC
Mr. Mustafa Ramday, ASC
Ch. Akhtar Ali, AOR
Mr. Asrar Saeed, Chief Engineer, LDA
Mr. Nawaz Manik, Director Law EPA, Punjab
(in C.As.545, 547 & 548/2015)

Mr. Makhdoom Ali Khan, Sr. ASC
Mr. Khurram Mumtaz Hashmi, ASC
Mr. Tariq Aziz, AOR
(in C.As.546, 549 & 550/2015)

For the respondent(s):

Mr. Salman Akram Raja, ASC
Respondent No.1 in person
(in C.As.545 & 546/2015)

Mirza Mahmood Ahmed, ASC
(for respondent No.1 in C.As.547/2015)
Respondent No.1 in person

Mr. Raza Kazim, Sr. ASC
(for respondent No.1 in C.As.548 & 550/2015)
Respondent No.1 in person

On Court's notice:

Mr. Salman Aslam Butt,
Attorney General for Pakistan
Mr. Razzak A. Mirza, Addl. AG Punjab.
Mr. Mudassir Khalid Abbasi, Asst. AG, Punjab

Date of hearing:

22.06.2015 to 25.06.2015, 29.06.2015 to 03.07.2015,
06.07.2015 to 08.07.2015

ORDER

MIAN SAQIB NISAR, J. – For the reasons provided herein and for the detailed reasons to be recorded later and subject to such reasons assigned in the detailed judgment, the observation made and the opinion expressed therein and the guidelines subscribed/provided in the said judgment, these appeals are partly allowed in the following terms:

- i) Elected Local Governments are presently not in existence in the Province of Punjab. Their duties and functions are being performed by the Provincial Government through its agencies. The disputed Signal Free Corridor Project was conceived by an agency of the Provincial Government, LDA, in the year 2014 and included in its budget allocation for 2014-15. Construction of the project was awarded to the Contractor on 19.02.2015, who had already undertaken construction in the value of Rs.60 million before the interim restraint order was issued by the learned High Court on 06.03.2015. In the vacuum resulting from the absence of an elected Lahore Metropolitan Corporation, the initiation, approval and execution of the disputed Signal Free Corridor project by the Provincial Government through its agency, LDA, is held to be valid. The said project may accordingly be completed subject to provision of additional facilities for pedestrians, *inter alia*, including road crossing and passes at intervals of one-kilometer or less along the project road distance.
- ii) Subject, *inter alia*, to the criteria of spillover, economies of scale, effectiveness as shall be determined in the detailed reasons by the Court, any new project falling within the domain of Lahore Metropolitan Corporation for approval or execution shall not be undertaken by the Provincial Government or its agency without prior consultation and consent, unless withheld without justified reasons, as the case may be, of the elected Lahore Metropolitan Corporation in respect of such project.

- iii) Article 140A of the Constitution of Islamic Republic of Pakistan casts a mandatory obligation on the Provinces to establish Local Governments possessing meaningful authority and responsibility in the political arena, administrative and financial matters. It is the duty of a Province through the Provincial Government and the Provincial Assembly to purposefully empower Local Governments in the Province so as to comply with their mandatory obligation under Article 140A of the Constitution.
- iv) In the present case, the powers in relation to master plan and spatial planning historically belonging to Lahore Metropolitan Corporation have been superimposed with similar functions vesting in LDA under Provincial law. To the extent of conflict in the exercise of their respective powers and functions by the two bodies or on account of legal provisions having overriding effect, Article 140A of the Constitution confers primacy upon the authority vesting in an elected Local Government over the powers conferred by law on the Provincial Government or an agency thereof. Notwithstanding the above, the Provincial Government is in any case under a duty to establish a harmonious working relationship with an elected Local Government wherein respect is accorded to the views and decisions of the latter. Accordingly, Section 46 of the Lahore Development Authority Act, 1975, purporting to override conflicting action taken by an elected Local Government, is held to be against the scheme of the Constitution and should either be read down or declared *ultra vires* as determined in the detailed judgment.
- v) Section 5(6) of the Punjab Environmental Protection Act, 1997 imposes a mandatory duty on the Provincial Government to constitute Advisory Committee under the said Act. This Committee is meant to assist the Environmental Protection Agency in evaluating the environmental impact of projects under consideration. The failure by the Provincial Government to constitute the said

Committee violates its statutory duty. However, in the present case the impugned judgment has not attended any objection to the EIA on its merits, nor have the respondents highlighted any objection that has remained unattended and yet is fatal to the EIA. Moreover, the right of appeal and further remedies on the merits of the EIA approval available under the Pakistan Environmental Protection Act, 1997, have not been availed by the objecting respondents. The EIA cannot be struck down upon presumption or mere apprehension.

- vi) It is improper that disparaging references are made in the impugned judgment to a learned senior counsel, who had objected to the composition of the Bench. Contents of paragraphs 10(d), 21 & 22 in the impugned judgment containing such remarks are accordingly expunged. Equally, the academic expositions on the concepts of subsidiarity and federalism within the federating units, in the present case a Province, cannot be made grounds by the impugned judgment for striking down statutory law. The only touchstone for this purpose is conflict of statutory law with the provisions of the Constitution. Consequently, the said grounds adopted by the impugned judgment are rejected.
- vii) The action proposed in the impugned judgment to be taken against the officials of the LDA or any other person as envisaged by paragraph 100A thereof is also set aside.

JUDGE

JUDGE

JUDGE

Islamabad,
08.07.2015
*Irshad Hussain/**