

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No.595-2020**

Dr. Salman Akbar Malik

Versus

Federal Government Employees Housing Authority through its  
Chairman, Islamabad and others.

Petitioner by: Mr. Anique Salman Malik, Advocate.

Respondents by: Mr. Ali Nawaz Kharal, Mr. Tauqeer Aslam & Ms. Saman Shahid Ansari, Advocates for FGEHA.  
Ms. Kashifa Niaz Awan, Advocate for CDA.  
Mr. Usman Rasool Ghumman, AAG.  
Mr. Haseeb Hassan, Malik Abdul Rehman, Advocates for MCI.  
Faiz Umer Sial, D.D (Law), FGEHA.  
M. Mohsin Pasha, A.D (Law), FGEHA.

Date of Hearing: 21.12.2022

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**MOHSIN AKHTAR KAYANI J.** Through the instant writ petition, the petitioner has prayed for the following relief:-

- (i) Declare that MCI is responsible for provision of all municipal functions in the Sector as contained in Schedule III of ICT LG Act and issue a writ of continuing mandamus directing MCI to take immediate steps to discharge all such statutory obligations in the Sector on the same footing as the other developed sectors of Islamabad in Zone I;
- (ii) Issue a writ of continuing mandamus directing the Respondents to take immediate steps for the supply and provision of water in the Sector by connecting the water distribution network laid in the Sector to the main trunk

water supply lines operated by MCI within a period of 6 months;

- (iii) Issue a writ of continuing mandamus directing the Respondents to undertake all necessary actions in relation to the completion of the sewerage disposal network laid in the Sector, if so required, as to connect the sewerage network of the Sector to the main trunk sewerage lines within a period of 6 months;
- (iv) Direct the Respondents to ensure prevention of further contamination of the water channel near G-14/1 by, inter alia, ensuring that no untreated sewerage or other environmentally hazardous materials are dumped therein;
- (v) Direct MCI to directly provide solid waste disposal and sanitation services to the Sector forthwith on the same footing as to the other sectors of Islamabad.
- (vi) Issue a writ of continuing mandamus to CDA and FGEHA directing them to take effective steps to ensure the expeditious completion of all works in the Sector in accordance with the approved scheme and Layout Plan within a period of 1 year; and
- (vii) Grant any other relief that this Honorable Court may deem fit in the facts and circumstances of the instant case.

2. Brief facts referred in the instant writ petition are that petitioner is a retired Professor of Quaid-e-Azam University, Islamabad and is resident of Sector G-14/4, Islamabad; that plot was allotted to him by the Federal Government Employees Housing Foundation (FGEHF) through allotment letter dated 26.01.2001; that as per the initial agreement between Federal Government Employees Housing

Foundation (FGEHF) and Capital Development Authority (CDA), municipal services in the Sector were not provided by the CDA being Master Regulator for development works in Islamabad, which are as under:-

- (i) The failure of the Respondents to connect the internal water supply network laid within the Sector to the CDA/MCI trunk water supply infrastructure;
- (ii) The failure of the Respondents to connect the sewerage system laid in the Sector to the CDA/MCI trunk sewerage network;
- (iii) The dumping of raw untreated sewerage by Respondent No.1 into a water channel flowing through the site of the proposed Sector G-14/1, Islamabad;
- (iv) The failure of the Respondents to provide adequate municipal services for the collection and disposal of garbage in the Sector;
- (v) The failure of the Respondents to develop and maintain parks, playgrounds and educational facilities as per the approved Layout Plan for the Sector; and
- (vi) The refusal of the Respondents to allow burial facilities/services to the residents of the Sector in the graveyard development in H-11, Islamabad.

The above mentioned failures reflect that the FGEHA erstwhile FGEHF has no legal Authority to settle these issues nor CDA is capable to resolve the issues and in the meanwhile FGEHA Act, 2020 was enacted after the repeal of FGEHA Ordinance, 2019. However, during this period, Islamabad Capital Territory Local Government Act, 2015 was also enacted by the parliament and all the municipal functions were transmitted to the Local Government in the Islamabad Capital Territory, but till date the issue of utility services has not been resolved in a

proper manner, which persuaded the petitioner to file instant writ petition.

3. Learned counsel for the petitioner contends that respondent/MCI has to perform all municipal functions in the Sectors being their statutory obligations under ICT Local Government Act, 2015 including but not limited to the water supply, sewerage treatment plant, sewerage/waste disposal and completion of all roads and network, under construction areas expeditiously.

4. Conversely, learned counsel for the FGEHA contends that after the enactment of the FGEHA Act, 2020 all functions have to be performed by the Executive Board of the FGEHA, including but not limited to impose development charges, transfer fee, service charges, toll, tax or other charges in respect of any land or buildings within any scheme in the specified area, similarly all municipal functions have also been delegated to FGEHA, and Metropolitan Corporation Islamabad has no jurisdiction to interfere into their domain.

5. Learned counsel for the Metropolitan Corporation Islamabad (MCI) contends that after the enactment of ICT Local Government Act, 2015, the role of CDA in terms of CDA Ordinance, 1960 stands excluded qua the municipal functions and services within the Islamabad Capital Territory. However, any property tax in the specified area also falls within the purview of Local Government system through MCI. Moreover, the recent enactment of FGEHA Act, 2020 has been given overriding effect, where the municipal functions have been delegated to the FGEHA, but this does not mean that the Local Government system in terms of Article 140 of the Constitution of Islamic Republic of Pakistan, 1973 stand excluded from the specified sectors. He further contends that the MCI is also empowered to impose tax within the specified area in terms of law.

6. Learned counsel for the CDA contends that their role has been curtailed after the enactment of ICT Local Government Act, 2015 and subsequently under the FGEHA Act, 2020, as such they are only confined to the extent of Sections 11 and 12 of the CDA Ordinance, 1960 for preparation of any scheme and implementation of master phase program within the Islamabad Capital Territory.

7. Learned AAG on behalf of the Federation of Pakistan, Ministry of Interior as well as Ministry of Climate Change contends that certain functions have been transmitted to the MCI after enactment of Islamabad Capital Territory Local Government Act, 2015 as an interim measure, as such the complete Authority has been vested to the Local Government system, whereas specified functions after enactment of FGEHA Act, 2020 is within their domain to the extent of specified sectors. He further contends that FGEHA is responsible agency/Authority to provide all the necessary services to the residents of the area accordingly.

8. Arguments heard and record perused.

9. Perusal of record reveals that petitioner is resident of Sector G-14/4 and is Ex-Professor of Quaid-i-Azam University who claims the provision of utility services within the sector by the MCI under the law. In order to understand the provision, it is necessary to go through the background of the development in the Sector.

**Background of Development of the Sector:**

10. 300 acres of land of QAU were originally earmarked for the development of a housing scheme under the name of QAU SHS in the year 1995 with the approval of the Prime Minister. Subsequently, with the approval of the Prime Minister dated 28.07.1997, QAU SHS was relocated to the Sector, 754 plots were reserved in the Sector for QAU SHS and plots in excess of the requirements of QAU SHS were allowed

to be utilized by the erstwhile FGEHF to accommodate the excess demand in Sector G-13, which was also being developed by FGEHF.

11. The Minutes of the 72<sup>nd</sup> Meeting of Executive Committee, FGEHF dated 20.08.2003 reveals that FGEHF approved the proposal to have the Sector developed through CDA as deposit work on the same terms and conditions on which the works for Sector G-13 were undertaken and as per Minutes of the 73<sup>rd</sup> Meeting of Executive Committee, FGEHF dated 11.11.2003, the FGEHF approved the PC-I for the development of the Sector as recommended by its Technical Committee at an overall cost of Rs.703.54 million. Due to certain delays, in 75<sup>th</sup> Meeting of the Executive Committee, FGEHF dated 30.04.2004, it was unanimously decided that development of Sector G-14/4, Islamabad shall be undertaken by the Foundation through agency other than CDA and according to the Minutes of the aforesaid meeting, the Executive Committee, FGEHF also approved the induction of M/s NESPAK as a Consultant, whereafter the sector has been developed.

12. The primary issues in Sectors are of water supply and sewerage disposal which has not been managed by the CDA and at present water is being supplied on subsidized rates to the residents of Sector G-13 and G-14/4 through water tankers from available resources i.e. Tube well. The residents are also complaining about non-collection of garbage, lack of transportation and non-disposal of solid waste. In this regard numerous complaints have been filed on Pakistan Citizen Portal, but MCI is not ready to take responsibility to cater to the utilities and other municipal functions in the sector.

13. In addition to above, it has been observed that development work has not been completed in accordance with the approved plans/scheme, various necessary amenities/facilities, such as parks and schools etc., which were referred in the Layout Plan for the Sector,

exists only on paper. The area reserved for the park in the Layout Plan is presently being used as a graveyard by the local inhabitants.

14. While considering the above background, it is necessary to discuss the legal angle and jurisdiction of the FGEHA *viz-a-viz* Local Government (MCI).

### **FGEHA Act, 2020**

15. This Act has been approved by the Parliament to establish the Federal Government Employees Housing Authority for the purpose of planning and development of housing schemes for serving and retired Federal Government employees and other specified groups and matters connected therewith and ancillary thereto, whereas, Authority has been established under Section 3 of the Act, which is a body corporate having perpetual succession and common seal with power to purchase, procure through acquisition or otherwise, land as well movable and immovable properties and assets with the object to hold, possess, sell lease, transfer, exchange any property including landed property and to regulate the schemes undertaken by it in the specified area. In terms of Sub Section 4 of Section 3, the Authority shall also be the local authority in the specified area and shall be responsible for all public services and facilities, whereas sub section (n) of Section 2 of FGEHA Act, 2020, explains the specified area means all lands owned, purchased, acquired or procured by or vested or leased to the Foundation under any law before the commencement of this Act and such other land as may be purchased or procured or acquired or vested in or leased to the Authority in Islamabad Capital Territory or other parts of Pakistan, therefore, it has clearly been established from the legislative intent that those specified areas notified earlier fall within the purview of FGEHA Act, 2020 and the Authority is to be known as Local Authority, who is responsible to provide all public services and facilities to the respective residents. The Authority has been driven and

controlled by Executive Board in terms of Section 4 of the Act, which supervises and controls the affairs of Authority. The said Authority comprises of 11 members including but not limited to Minister for the Division concerned, Secretary of the Division concerned, Draftsman Law and Justice Division, Additional Secretary of the Division concerned, Managing Director, Pakistan Housing Authority Foundation, Director General, Pakistan Public Works Department, Chief Commissioner, Islamabad Capital Territory, Chairman, Capital Development Authority, Islamabad, Joint Secretary, Expenditure Wing, Ministry of Finance, Chief (Physical Planning and Housing), Planning Commission, Islamabad, Chief Engineer of the Authority, who all are ex-officio members and public servants, whereas no public representation is available in the Executive Board. The powers and functions have been explained in Section 5 of the Act, which includes the review progress, approval of budget and audit reports, grants approval to purchase or procure through acquisition or any other prevailing law, approval to enter into contract, arrangement, joint venture agreement with any person or firm for preparation, planning, development, execution, implementation and maintenance of schemes in the specified area, for carrying out the purposes of this Act, especially, sub clause (e) of sub section 2 of section 5, impose and vary development charges, transfer fee, service charges, toll, tax or other charges in respect of any land or buildings within any scheme in the specified area.

16. The Executive Board can pass any decision relating to its affairs and functions discussed above by simple majority of its total members by casting their votes. Director General of the Authority appointed by the Federal Government is an Officer of BS-20 or BS-21 of regularly constituted occupational Group or services, preferably a civil servant having a degree in engineering or town planning or architecture or project management; who has been notified by the Federal Government

as Director General of the Authority on deputation basis to perform its function for a fixed period of three years or till attaining the age of sixty years, whichever is earlier. The powers and functions of the Director General have separately been explained in Section 7 of the Act. The Director General shall exercise all executive powers of the Authority, delegated to him or otherwise, in accordance with the directions, decisions and policies made by the Executive Board. The functions of the Director General shall be the following:-

- (a) *prepare plans and carry out development, execution, implementation, maintenance, management and regulation of any scheme in the specified area approved by Executive Board;*
- (b) *accord approval for the layout plans, building plans of the schemes in conformity with the local municipal regulations;*
- (c) *accord approval for collection of revenues for maintenance of the schemes and enforcement of regulations made under this Act;*
- (d) *carry out maintenance arrangement, management and provision of all facilities, services and utilities including water, electricity, gas and sewerage for schemes in the specified area;*
- (e) *do all such acts and deeds that may be necessary for the purpose of proper preparation, planning, development, execution, implementation, management and maintenance of residential and commercial property in the schemes in the specified area;*
- (f) *recover development charges, transfer fees, services charges, toll or other charges in respect of any land or buildings within any scheme in the specified area as imposed by the Executive Board.*

#### **Islamabad Capital Territory Local Government Act, 2015**

17. In terms of this Act, new Local Government has been established to devolve political, administrative and financial responsibility and authority is given to the elected representatives of the local governments, to promote good governance, effective delivery of services and transparent decision making through institutionalized participation

of the people at local level; and, to deal with ancillary matters. By virtue of Section 3 of the Local Government Act, working within the existing framework has been planned and a particular restriction has been imposed upon the Local Government. Section 3(3) of the ICT Local Government Act is hereby reproduced in this regard for ready reference:-

*(3) The development, planning and overall maintenance of the Master plan within the specified area of Islamabad Capital Territory will continue to vest with Capital Development Authority and thus the overall Master Plan shall apply and no action by any authority, body or corporation shall be initiated in violation of the Capital Development Authority Ordinance, 1960 and the Zoning regulations duly approved by the Government. All powers to be exercised and rules to be enforced shall be subject to the planning framework already set in the aforementioned laws, rules and regulations.*

18. While considering the above provision as a legal jurisdiction of ICT Local Government, it has clearly been envisaged that development, planning and overall maintenance of Master Plan within the specified area shall remain within CDA. This aspect demonstrates that the specified area referred in FGEHA Act, 2020 is different from ICT Local Government Act, 2015.

19. This Court has already observed that the Local Government Taxation in terms of Section 88 of the Local Government Act, 2015 is within the domain of the MCI and same was to be collected in terms of Section 89 of the Act by the MCI in a prescribed manner.

20. The detailed discussion has already been made by this Court in case law reported as PLD 2021 Islamabad 144 (Metropolitan Corporation, Islamabad Vs. Chairman, Capital Development Authority, Islamabad), whereby the following directions were issued:-

1. *The notification dated 17.12.2018 is illegal and void as no taxes proposals were issued nor even any objection were invited in terms of Section 88(4) of the ICT Local Government Act, 2015 neither public hearings were given before the imposition of levy of the property tax in Islamabad.*
2. *CDA has no jurisdiction or authority to impose the property tax or recover the property tax in any manner as it is the sole prerogative of the MCI under ICT Local Government Act, 2015, hence any tax demand by CDA is illegal.*
3. *The tax proposal be prepared by MCI and objections be invited from the public through publication of notice in newspapers, whereafter a notification in terms of Section 88 of ICT Local Government Act, 2015 be issued in accordance with law within period of six (06) months positively.*
4. *All the areas of Islamabad Sectors, Societies, Rural Villages, Model Villages, the properties situated on the land of CDA be included in the notification by imposing the property tax in the Islamabad Capital Territory under the law after considering the concept of rating area, plot area, covered area and the services, which are required to be provided in those area.*
5. *The MCI after promulgation of the notice of the property tax shall provide the utility services within the Union Councils under the law, which includes the water, gas, electricity, roads, sanitation etc. after preparation of different schemes.*
6. *The Federal Government shall establish the Local Government Fund for settlement of all the issues including the financial autonomy to the MCI, which have not been dependent upon the Federal Government or the CDA.*
7. *The property tax which has already been imposed under the previous regime within the urban areas of Islamabad Capital Territory shall be charged from all the residents till the new notification is issued under the law after adopting due procedure and the citizens of Islamabad shall pay the property tax in a manner prescribed under the previous law within the next six (06) months, failing which, the surcharge be imposed*

*accordingly, except those areas which were included in the impugned notification for the first time.*

8. *The tax/funds collected by CDA under the property tax from any of the allottee within Islamabad Capital Territory, shall stand transferred to Metropolitan Corporation, CDA has no authority to use property tax in any manner, nor they are permitted to disburse the same to any other entity or the Government in any manner.*
9. *The property tax collected by CDA after promulgation of ICT, Local Government Act, 2015 exclusively falls within the jurisdiction of MCI, therefore, special audit be conducted by the Auditor General of Pakistan for the calculation of the tax received by the CDA till date, the same would be transmitted to MCI, in case the amount has been used by the CDA, the CDA authorities shall be liable to return the amount within period of one year from the passing of this judgment.*
10. *The Federal Government shall provide necessary funds for the establishment of Union Councils offices within the respective union councils alongwith its infrastructure, budget and necessary material to exercise all respective municipal functions by the Union Councils within the respective area.*
21. The issue relating to jurisdiction pertaining to municipal services in terms of FGEHA Act, 2020 *viz-a-viz* ICT Local Government Act, 2015, can be resolved by putting in juxtaposition the provisions of ICT Local Government Act, 2015 with FGEHA Act, 2020 in the following manner:-

<b>ICT Local Government Act, 2015</b>	<b>Federal Government Employees Housing Authority Act, 2020</b>
<b>Preamble:</b> Whereas it is expedient to establish an elected local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments; to promote good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at local level; and, to deal with ancillary matters;	<b>Preamble:</b> Whereas it is expedient to establish the Federal Government Employees Housing Authority for the purposes of planning and development of housing schemes for serving and retired Federal Government employees and other specified groups and matters connected therewith and ancillary thereto;
<b>2(b):</b> Authority means the Capital Development Authority;	<b>2(a):</b> Authority means the Authority established under section 3;
<b>2(x)</b> local government means a Union Council or the Metropolitan Corporation established under this Act;	<b>2(n)</b> specified area means all lands owned, purchased, acquired or procured by or vested in or leased to the Foundation under any law

	before the commencement of this Act and such other land as may be purchased or procured or acquired or vested in or leased to the Authority in Islamabad Capital Territory or other parts of Pakistan; and
<b>2(aa)</b> Mayor means the mayor of the Metropolitan Corporation notified as such under Section 12;	
<b>2(ww):</b> tax includes any cess, rate, fee, toll or other charge levied under this Act.	
<b>S3: Local governments to work within the existing framework:</b> ---(1) The local governments established under this Act shall faithfully observe all laws applicable in Islamabad Capital Territory. (2) In the performance of their functions, the local governments shall not impede or prejudice the exercise of the executive authority of the Government or any office performing functions of the Provincial Government in the Islamabad Capital Territory. (3) The development, planning and overall maintenance of the Master plan within the specified area of Islamabad Capital Territory will continue to vest with Capital Development Authority and thus the overall Master Plan shall apply and no action by any authority, body or corporation shall be initiated in violation of the Capital Development Authority Ordinance, 1960 and the Zoning regulations duly approved by the Government. All powers to be exercised and rules to be enforced shall be subject to the planning framework already set in the aforementioned laws, rules and regulations. (4) This legal framework shall without derogation to the existing laws and regulations of the Islamabad Capital Territory and Capital Development Authority and segments not covered by the prevalent law shall be covered by the respective local Government, as determined by the Government. Wherever there is a clash between the existing law and provisions of this Act, the existing law shall prevail unless clearly specified or repealed.	<b>S3: Authority:</b> --(1) The Division, concerned with the subject, through Chairman of the Authority shall, by notification in the official Gazette, establish the Federal Government Employees Housing Authority, within thirty days of the commencement of this Act. (2) The Authority shall be a body corporate having perpetual succession and common seal with power to purchase, procure through acquisition or otherwise, land as well movable and immovable properties and assets with the object to hold, possess, sell, lease, transfer, exchange any property" including landed property and to regulate the schemes undertaken by it in the specified area. (3) The head office of the Authority shall be at Islamabad. The Authority may establish regional offices in other parts of Pakistan with the approval of Executive Board. (4) The Authority <u>shall also be the local authority</u> in the specified area and shall be responsible for all public services and facilities. (5) while making or arranging, planning, designing and executing a scheme in specified area, adherence to local municipal regulations and master plan of the concerned district shall be ensured.
<b>S.12: Metropolitan Corporation:--</b> Corporation.— (1) The Metropolitan Corporation shall consist of the following members elected under Chapter V: (i) Mayor and Deputy Mayor, as joint candidates; (ii) Chairmen of all Union Councils; (iii) women; (iv) peasants/workers; (v) technocrats; (vi) youth members; and (vii) non-Muslims.  (2) The number of women should not be less than 33 per cent, peasants/workers not less than 5 per	4. <b>Executive Board.</b> (I) The general administration, supervision and control of the affairs of the Authority shall vest in the Executive Board, which shall consist of--- (a) Minister for the Division, concerned with affairs of the Authority (Chairman) (b) Secretary of the Division concerned (Member). (c) Draftsman Law and Justice Division (Member). (d) Additional Secretary of the Division, concerned with the affairs of the Authority (Member). (e) Managing Director, Pakistan Housing Authority (Member). (f) Director General, Pakistan Public Works Department (Member).

<p>cent, non-Muslims not less than 5 per cent, youth not less 5 per cent each and technocrat not less than 2 per cent. The numbers shall be computed by the government accordingly through a notification issued from time to time.</p> <p>(3) The Mayor and the Deputy Mayor shall be elected as joint candidates, in the first session of the Metropolitan Corporation, from amongst the members mentioned at serial number (ii) to (vii) of sub-section (1), by majority of the members mentioned at serial number (ii) to (vii) of sub-section (1) present and voting.</p>	<p>(g) Chief Commissioner, Islamabad Capital Territory (Member).</p> <p>(h) Chairman, Capital Development Authority Islamabad (Member).</p> <p>(i) Joint Secretary Expenditure Ministry of Finance (Member).</p> <p>(j) Chief (Physical Planning and Housing) Planning Commission, Islamabad.</p> <p>(k) Chief Engineer of the Authority.</p> <p>(2) The Director General, Federal Government Employees Authority shall act as a Secretary of the Executive Board.</p>
<p><b>73. Functions of Metropolitan Corporation.</b>--- (1) The Metropolitan Corporation shall, subject to the provisions of Capital Development Authority Ordinance 1960 and Islamabad Capital Territory Zoning Regulations 1992 perform functions mentioned in Third Schedule.</p> <p>(2) The Metropolitan Corporation may entrust any of its functions to a person, an authority, agency or company through a contractual arrangement, on such terms and conditions as may be prescribed.</p>	<p><b>S5. Powers, functions and meeting of the Executive Board.</b>{l} Subject to the provisions of this Act, (he Executive Board may take such decisions and exercise such powers, as may be necessary for preparation, planning, approval and development of schemes in the specified area or carrying out purposes of this Act.</p> <p>(2) Without prejudice to the generality of forgoing powers and subject to the provisions of this Act, the Executive Board may-</p> <p>(a) review progress and activities of the Authority;</p> <p>(b) consider and approve budget and audit report of the Authority;</p> <p>(c) grant approval to purchase or procure through acquisition under the: [and Acquisition Act, 1894 (I of 1894) or any other prevailing law for the said purpose, or as per approved policy of the Federal Government for the time being in vogue or regulations made by Executive Board, as applicable at the site of the scheme, or otherwise, any land or property in Islamabad or any part of Pakistan and hold, manage, reclaim and take possession of such land or property, in accordance with law;</p> <p>(d) grant approval to enter into contracts, arrangements, joint venture agreements with any person or firm for preparation, planning; development, execution, implementation and maintenance of schemes in the specified area, for carrying out purposes of this Act;</p> <p>(e) impose and vary development charges, transfer fee, service charges, toll, tax or other charges in respect of any land or buildings within any scheme in the specified area;</p> <p>(f) grant approval to lease, purchase, procure, sell, exchange, mortgage, rent out or otherwise dispose of any property vested in the Authority;</p> <p>(g) grant approval to modify, re-plan or cancel any scheme or a part thereof in the</p>

	<p>specified area;</p> <p>(h) grant approval to plan and execute mergers and amalgamation with other housing schemes or cooperative housing societies; (i) grant approval to obtain loan for the purpose of generating capital for its schemes or seek contributions from members of the schemes or drives, announced and floated by the Authority;</p> <p>(j) give approval to receive grants from the Federal Government for the purpose of generating capital for its schemes or seek contributions from members of schemes or drives, announced and floated by the Authority; and</p> <p>(k) accord approval of launching of schemes for the Federal Government employees and other specified groups to be determined by the Executive Board.</p> <p>(3) The decision of the Executive Board shall be through simple majority of the members present. Simple majority" of its total membership shall constitute quorum of the Executive Board and the Chairman shall have the casting vote.</p> <p>(4) The Chairman shall preside over the meetings and in his absence any senior member chosen by the members present, shall preside the meeting.</p> <p>(5) The Executive Board shall meet as and when required or considered necessary by the Chairman or on the request of Director General of the Authority.</p>
<b>130. Removal of difficulty.—</b> (1)The Government may, within two years of the commencement of this Act, by order consistent with this Act, provide for the removal of any difficulty which may arise in giving effect to the provisions of this Act. (2) Any question or doubt as to the interpretation of any provision of this Act or of any order made thereunder shall be resolved by a decision of the President and such decision shall be final.	<b>31. Removal of difficulty.-</b> If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may give such directions, consistent with the provisions of this Act, as it may consider necessary for removal of such difficulty.
	<b>32. Relation of this Act with other laws.{l}</b> The provisions of this Act shall have effect not in derogation of the Pakistan Penal Code 1860, Code of Criminal Procedure 1898 (Act V of 1898), Code of Civil Procedure 1908 (Act V of 1908), Qanun-e-Shahadat 1984 (P.O. 10 of 1984) and Land Acquisition Act 1894(l of 1894). (2) Subject to sub-section (l), the provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.
<b>89. Property tax.—</b> (1) The property tax, under this Act, shall be collected by Metropolitan Corporation. (2) In matters for which no provision or no adequate provision relating to	

<p>the property tax has been made under this Act, the provisions of the Urban Immovable Property Tax Act (West Pakistan Act V of 1958), as adapted in Islamabad Capital Territory, shall apply.</p> <p>(3) The Tax collected under this section shall be distributed amongst the Metropolitan and Union Councils in such a ratio, the Government may, by notification specify.</p>	
<p><b>90. Collection of taxes.—</b> (1) A tax or fee levied under this Act shall be collected in the prescribed manner.</p> <p>(2) The Government may prescribe the mode of collection of a tax or a fee levied under this Act.</p> <p>(3) If a person fails to pay any tax or fee or any other money payable to a local government, the local government and, if so requested by the local government, the Government shall recover the tax, fee or other money as arrears of land revenue.</p> <p>(4) The recovery of tax, fee or other money under sub-section (3) shall not absolve the person from prosecution of any offence under this Act or any other law.</p>	
<p><b>129. Repeal and saving.—</b> (1) The Capital Territory Local Government Ordinance, 1979 (XXXIX of 1979), the Islamabad Capital Territory Local Government Ordinance, 2002 (CXVII of 2002), the Islamabad Capital Territory Local Government Elections Ordinance, 2002 (LVII of 2002) and Section 15-A of the Capital Development Authority Ordinance, 1960 (XXIII of 1960) are hereby repealed.</p> <p>(2) Save as otherwise specifically provided in this Act, nothing in this Act shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, bye-laws appointment, conveyance, mortgage, deed, document or agreement made, tax or fee levied, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of the Capital Territory Local Government Ordinance, 1979 and Section 15-A of the Capital Development Authority Ordinance, 1960 and any such thing, action, investigation, proceedings, order, rule, regulation, bye-laws, appointment, conveyance, mortgage, deed, document, agreement, tax, fee,</p>	

resolution, direction, proceedings or instrument shall, if in force at the commencement of this Act, continue to be in force, and have effect as if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Act.	
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22. While considering all the municipal functions of FGEHA *viz-a-viz* ICT Local Government Act, it appears that a detail elaborated mechanism has been provided to the public representative under ICT Local Government Act, 2015 to exercise all the powers relating to municipal functions, though similar powers in very precise manner have also been extended to FGEHA, where Executive Board can perform such functions, however, at present neither the ICT Local Government, nor the FGEHA were able to notify their rules for all these functions. However, FGEHA within specified Sectors of G-13 and G-14 have issued occupancy charges notification in lieu of property tax, whereas previously the CDA was issuing such notices of property tax, which has been assailed before this Court and as a result whereof the judgment reported as PLD 2021 Islamabad 144 (Metropolitan Corporation, Islamabad Vs. Chairman, Capital Development Authority, Islamabad) was passed in which jurisdiction of CDA has already been ceased to impose any property tax including the collection and its recovery, which exclusively falls within the domain of MCI, however, at this stage the rules are in progress to be notified.

23. Now question arises as to whether when two enactments are special subject with special jurisdiction having been enacted regarding similar areas, then how the same could be defined and considered to be applied? The primary concern has to be seen within the context of constitutional mandate to the extent of ICT Local Government Act, 2015, which provides to establish a Local Government system in accordance with Article 140A of the Constitution of Islamic Republic of Pakistan, 1973 to devolve the political, administrative and

financial responsibility for effective delivery of service, which is not the intent provided in the FGEHA Act, 2020 and as such constitutional mandate has to be implemented in letter and spirit, however, at this point of time, FGEHA as well as Local Government system are in field and for the purposes of municipal functions, the FGEHA has also been declared as Local Authority under FGEHA Act, 2020 in the specified area.

24. There is no cavil to the proposition that Local Authority has to be considered within their respective jurisdiction, whereas MCI is a Local Authority in the entire Islamabad Capital Territory excluding the specified area in terms of FGEHA Act, 2020, where local authority means Executive Board of the FGEHA, even otherwise, the local Authority in terms of Section 3(28) of General Clauses Act, 1997 means *a municipal committee, district board, body of Port Commissioner or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund*, this aspect has also been appreciated in 2011 SCMR 1856 (Province of Punjab through District Coordination Officer, Okara Vs. Market Committee, Okara through Chairman/Secretary), PLD 1977 Karachi 152 (Karachi Development Authority Vs. Province of Sind), 2010 PTD 2552 (Defence Housing Authority through Secretary Vs. Deputy Commissioner Income Tax) and the local Authority in the respective jurisdiction is in control or management of the municipal or local fund, which is necessary factor to be considered for exercise of jurisdiction, as such the local authority in FGEHA has been given complete command and control of the local fund and same is the position with the Local Government system derived from the ICT Local Government Act, 2015, hence there is no cavil that both the local Authorities i.e. MCI and FGEHA Executive Board hold their legal authority in order to control the local fund for their municipal services in the respective areas, and their autonomy has not been compromised nor overlapping to each other, whereas, they have been directed to provide amenities to the inhabitants of the locality including but not limited

to health, education services, water and sewerage, town planning and development, roads, markets, transportation and social welfare services, etc. as held in 1977 PLC 251 (Karachi Development Authority Vs. Province of Sind Through THB Secretary, Excise & Taxation Department, Karachi And 4 Others). On the other hand, ICT Local Government Act, 2015 caters each and every aspect of Local Government system in the entire Islamabad Capital Territory, however, when specified area has been transferred within the domain of FGEHA Act, 2020, the special subject jurisdiction comes on record and so far ICT Local Government has not promulgated its financial rules, despite clear directions of this Court, which creates a difficult situation qua the expenditures and other financial issues, therefore, it is high time to issue direction in this regard to notify all kind of rules under ICT Local Government Act, 2015 to enable the Local Government system fully functional as per the mandate highlighted in the preamble.

25. This Court has also been apprised with the historical background of the creation of specified Sectors G-14/1, G-14/2 and G-14/3 in Islamabad as well as other Sectors, whereby CDA Board in its meeting held on 28.03.2000, approved the NOC in favour of Federal Government Employees Foundation for establishment of the scheme, which has been given due protection, whereas other decisions of the CDA Board for NOC in Sector G-13 and Sub-Sectors of the G-13 was given approval on 16.12.1997, which is also part of the record, therefore, those decisions of the CDA Board have taken a binding effect. The record further reflects that the FGEHF on the direction of Wafaqi Mohtasib (Ombudsman), has started maintaining the sectors and same was reflected in the minutes of the meeting held on 11.03.2015.

26. This Court has also been apprised that the issue relating to commercial area of Sector G-14, where terms have been settled among FGEHF and CDA including but not limited to the allied infrastructure, sewerage treatment plan and other auxiliary services as per the CDA by-laws/guidelines for the sectors

were given the responsibility to the FGEHF, even the water supply and infrastructure was entrusted to FGEHF but FGEHF have to share proportionate cost of the future projects.

27. At last most important and crucial decision dated 25.04.2022 under the chairmanship of CDA with the FGEHA Authorities confers the following decision after deliberation:-

- i. *FGEHA will resolve land possession issues in the areas falling under its jurisdiction and will lay the missing pipeline links. The expenditures will be on proportionate share basis by CDA and FGEHA; as CDA has already incurred sizeable expenditure for laying of main conduction pipeline.*
- ii. *Though CDA is already facing water shortage from the Khanpur Dam source but all efforts shall be made for supplying water to Sector G-13 and G-14, Islamabad from the surplus supplies received from the Khanpur Dam source in excess of CDA's requirements.*
- iii. *The supply to Sector G-13 and G-14, Islamabad will be a metered water supply and shall be billed to FGEHA by CDA, accordingly.*
- iv. *CDA will continue to allow filling of water tankers of FGEHA from CDA filling station in order to meet the emergency requirements.*
- v. *FGEHA will undertake measures regarding Rainwater Harvesting for ground water recharge in the areas under their jurisdiction.*

28. All these aspects disclose the confidence building measures for the protection of the residents of the specified areas including the petitioners and as such CDA as well as FGEHA and Islamabad Capital Territory Local Government are cognizant of their responsibilities, even their commitment demonstrate the resolution of basic issues of the local residents of specified sectors.

#### **Effect of Two Special Laws:**

29. Now coming to the second feature, where two special laws in a similar category has to be construed within their respective scope and sphere of application, which need to be examined and determined with regard to relationship between the two, however, in other words, which law is more

special, has to be evaluated. The overriding effect has been given in FGEHA Act, 2020 and when we place in juxtaposition, Section 31 and 32 of the FGEHA Act, 2020 *viz-a-viz* Section 129 and 130 of the ICT Local Government Act, 2015, but in FGEHA Act, phrase "*the provision of this Act shall have effect not in derogation and this Act shall effect notwithstanding anything contained in any other law for the time being enforced*" has been observed. Such phrase is wide enough to relate even to a future Act, with overriding effect. It is clear that both these Acts are special acts and legislature has intentionally used this phrase in FGEHA Act, 2020. It is also an act later in time, which must prevail.

30. It is also settled rule of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the later must be adopted. Similarly, the Act, which contained a non obstante clause, shall have to be given prevalence and if both acts contained one non-obstante clause, then later shall prevail as held in 2017 SCMR 1218 (Syed Mushahid Shah Vs. Federal Investigation Agency). It is also settled law that while determining the true nature and legislative intent of two cross jurisdictional nature of statutes, the statute, which is complete in nature, is to be construed according to its own terms and not with reference to another statute to whittle down the beneficial provision of the former. Similarly, the rights, which were already given by one statute could not be taken away by another statute, but the simple principle of interpretation is that a statute later in date shall prevail as held in 1992 SCMR 227 (Matloob Hassan Vs. Brooke Bond Pakistan Limited, Lahore), 1990 SCMR 183 (Abdul Razzaq Khokhar Vs. Province of Punjab through Secretary to Government of Punjab and others), PLD 2021 Islamabad 378 (Sui Southern Gas Company Limited Vs. Oil And Gas Regulatory Authority).

31. In such eventuality, when two special laws deal with a similar situation, then question of jurisdiction had to be seen in the light of its nature, object, scope and remedial portion provided therein, in ordinary meaning to

understand its true legislative intent as held in *PLD 2018 Islamabad 51 (Sui Northern Gas Pipeline Limited, (SNGPL) Vs Director (Legal), President Secretariat (Public), Aiwan-E-Sadar Islamabad), 2021 SCMR 201 (federal government employees housing foundation (FGEHF), Islamabad Vs. Malik Ghulam Mustafa)*, where scope of FGEHA Act, 2020 has already been discussed and settled. The principle of harmonious construction of two special statutes of interpretation has to be settled on the basis of principles set out in *2021 PTD 1203 (Federal Bank For Cooperatives, Islamabad Versus Commissioner of Income Tax, Companies Zone, Islamabad)* in the following manner:-

- i. *While applying seemingly conflicting provisions of two statutes a court must seek to interpret them in a manner that affords harmonious construction and prevents the emergence of a conflict between their provisions. It is to be assumed that in the event the legislature wished to override an existing law it would do so explicitly and thus the doctrine of implied repeal is not to be readily or mechanically invoked.*
- ii. *Special law prevails over general law. And in a conflict between two special laws the one later in time will ordinarily prevail for being an embodiment of the latest expression of the legislature intent. But, as aforesaid, this principle is not to be mechanically applied as being aware of an earlier special law, the legislature could override the same through explicit language in a subsequent special law if it is so wished.*
- iii. *In the event that there is contradiction between the provisions of two statutes it is to be presumed that the statute within the provision of which the legislature has included a non-obstante clause is to be given overriding effect over provisions of the other statute that it is in conflict with, in order to give effect to expressed legislative intent. (In the event that both statutes contain non-obstante clauses, the special law will prevail over general law, and the law later in time will ordinarily prevail in case of conflict between two special laws). However, a non-obstante clause is also not to be given overriding effect in a mechanical fashion as the underlying object of the interpretive project undertaken by the court is to discover the meaning of words used by the legislature: a non-obstante clause is usually employed to suggest that the provision referred to in the non-obstante clause is to prevail over other provisions of the statute, but repugnancy between non-obstante clause and other clauses is not to be presumed and overriding effect is to be accorded only in case of irreconcilable conflict.*
- iv. *In the event that harmonious construction cannot be accorded to the provisions of two special statutes without giving tortured meaning to the words used in the text, the object, purpose and policy of the statutes is to be borne in mind in order to discover the legislative*

*intent regarding which statute is to be given overriding effect and to be treated as the special law with overriding effect over another special law. It is possible that a law is to be treated as a special law vis-a-vis one enactment and general law vis-a-vis another enactment.*

**Two taxing statute:**

32. The comparative analysis referred above of the Islamabad Capital Territory Local Government Act, 2015 *viz-a-viz* FGEHA Act, 2020 stipulate the taxing regime in the respective provisions and as such in terms of Article 140A of the Constitution of Islamic Republic of Pakistan, 1973, the Local Government system has to be applied by the State within the Pakistan as a constitutional mandate, whereby this law of local government in Islamabad provides a complete mechanism for imposing and enforcing the provisions of the Local Government taxing system in terms of Sections 88, 89 and 90 of the Islamabad Capital Territory Local Government Act, 2015, whereas in case of FGEHA Act, 2020, Executive Board has been extended with the Authority to impose tax in the specified area in terms of clause (e) of Sub Section (2) of Section 5 of the Act, in this scenario, the settled principles of interpretation of a fiscal statute are that the provisions are required to be interpreted literally and equity or presumption are alien thereto; if a provision of a taxing statute can have two reasonable explanations, then one which is favourable to the taxpayer has to be accepted; any ambiguity is required to be resolved in favour of the taxpayer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. The statute has to be read as a whole and the intention of the legislature has to be discovered by paying attention to what has been said. It is settled law that while interpreting fiscal statutes, the Court looks at what is clearly said; there is no room for any intendment; nor is there any equity about a tax; there is no presumption as to tax; nothing was to be read in or implied and one could only look fairly at the language use as held in 2020 PTD 1097 (Telenor Pakistan

(Pvt.) Ltd. Vs Federation of Pakistan through Ministry of Finance). Similar view has already been highlighted in case law reported as PLD 2020 SC 641 (Khurshid Soap and Chemical Industries (Pvt.) Ltd. Vs. Federation of Pakistan through Ministry of Petroleum and Natural Resources). The fiscal legislation required that any law that levied a fee must first unambiguously and clearly spell out the nature of the service to be rendered in return (quid pro quo) and then provide for a reasonable and definite timeline for the delivery of such service.

33. No doubt, FGEHA Act, 2020 envisages the tax giving authority to the Executive Board, but if the specific subject of FGEHA is considered in juxtaposition with the ICT Local Government Act, 2020, it appears that Local Government provides a complete mechanism and taxation regime, the mode and manner of recovery and imposition through public representation, which is the key factor for imposing tax, but the same is not available under FGEHA Act, 2020. The composition of Executive Board provided in section 4 of the FGEHA ACT, 2020, describes full control and authority of supervision vests in the public servants who are controlling different ministries / divisions on behalf of the Federal Government with the particular designations on Ex. Officio basis, whereas , the inhabitants / residents of the specified sectors were not given any representation. In such scenario, any tax imposed by the FGEHA, especially, with reference to property tax, the objections of the public and their concerns could not be addressed like in case of property tax explained in sections 89 and 90 of the Islamabad Capital Territory Local Government Act, 2015, which explains the application of the process defined in Urban Immovable Property Tax Act, 1958, which ensures the notification / assessment of rating of area after inviting objections from general public in a detailed manner for imposition of a particular tax regime with reference to the properties in Islamabad Capital Territory.

**Enforcement Mechanism in Two Laws:**

34. Beside this major difference in two laws, the recovery mechanism provided in FGEHA Act, 2020, is not provided anywhere nor any powers have been vested to the Executive Board or Director General FGEHA to enforce its orders directly under their own authority neither they have been extended with any authority to decide the objections of the residents qua applicability, assessment of any building with reference to property tax and its rates in judicial concepts, whereas, a simple provision of section 23 was provided in the Act to deals with the violation of building regulations in the specified area where the authority may in the prescribed manner direct such person to remove the structure or part of the structure or pay fine to the Authority which may be fixed in the regulations for each category of violation, but in case of non-compliance, section 27 of the Act, comes into play where the due amount against any person could be recovered through arrears of land revenue, where Authority shall request in writing to the Collector for recovery of the said amount. This aspect clearly establishes that the legislative intent is clear and no authority has been vested to FGEHA Executive Board or Director General to proceed directly under the law against an individual or a defaulter by themselves who if needs such judicial function to be exercised under Land Revenue Act, 1967, could be exercised by the District Collector. This aspect if compared to the ICT Local Government Act, 2015, chapter XIII, deals with offence and enforcement in which section 105 deals with the offences, punishment and their cognizance specified in fifth and sixth schedule, where person liable shall be punished by way of imprisonment, fine, seizure, forfeiture, confiscation, impounding and such other penalties as are provided in the Act. In fifth schedule part II, at serial No.10 "*Evasion of payment of tax or other impost lawfully levied by a local government*" is a specified offence punishable even the continuity and repetition of offence like nonpayment of tax or persistent violation may increase the fine for every day for the period the accused

persisted the offence from the date of its commission as explained in sub section 2 of section 105 of the Act. Even such offences were declared cognizable, where criminal case could be registered and in other cases a complaint in writing of the Inspector after prior approval of the Chief Officer in accordance with the provision of section 200 of the code may also be entertained and all such offences would be tried in summary manner. Similarly, in section 107 of the Islamabad Capital Territory Local Government Act, 2015, imposition of fine through ticketing has also been provided and the Inspector concerned is extended with authority to issue such ticket. Section 108 deals with the court proceeding for default in deposit of fine. The general powers of Inspectors have been envisaged in section 111 of the ICT Local Government Act, 2015, where any violation of a rule or bye-law falls within the exclusive jurisdiction of Inspector in his area and in addition to imposition of fine or initiating prosecution under this Act; *(a) he may suspended any work; (b) seize the goods; (c) seal the premises; (d) demolish or remove the work; (e). issue directions for taking corrective measures within the specified time,* and the Inspector has been authorized to initiate proceedings in relation to the offences specified in fifth schedule i.e. *issue notices in writing on behalf of the local government or initiate legal proceedings in the court.* The Criminal Procedure Code, 1898, is applicable under Islamabad Capital Territory Local Government Act, 2015, which is not available in the FGEHA Act, 2020, and no criminal prospection could be initiated except to deal with the cases of encroachment under section 22 of the FGEHA Act, 2022, where matter should be referred to the Magistrate of first class in terms of Criminal Procedure Code, 1898, on a complaint filed by the officer of the Authority, authorized under the regulations. This detail comparison, left nothing in favor of FGEHA to impose, collect, or levy a property tax in particular in comparison to the Islamabad Capital Territory Local Government Act, 2015, in specified area.

**Scope of two laws:**

35. While considering the scope of FGEHA Act, 2020, and ICT Local Government Act, 2015, it has been clearly established that FGEHA Act, 2020, was enacted for the purpose of planning and development of a housing scheme for serving and retired government employees and other specified groups in the specified area, and the entire law explains the powers and functions of acquisition, its disputes, assessment, determination, of market value of the land, enquiry and award by the Deputy Commissioner, as well as powers of Deputy Commissioner to deal with the determination of any compensation, even appeal and review has been provided to the extent of acquisition of land and award issue. Whereas, Islamabad Capital Territory Local Government Act, 2015, was enacted to establish an elected local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments, to promote good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at local level, which is a missing element in FGEHA Act, 2020.

36. While considering the above discussion, if the specified areas of FGEHA sectors are excluded from enforcement of local government system, which is not the mandate of the law, even not permissible under the constitutional framework, the people representation in those specified sectors shall stand negated, resultantly the Executive Board of FGEHA if imposes any tax without consultation and deliberation of the local inhabitants, whose representation has not been appreciated in the FGEHA Act, 2020, the same would amount to violation of rights of the local inhabitant / citizens which have otherwise been protected in section 112, Islamabad Capital Territory Local Government Act, 2015, in which the citizens or residents of the local area have every right to bring any suit or other legal proceedings against any local government, its officers or other functionaries violating their rights provided by any law. The

constitutional mandate provided in Article 140-A of the Constitution of Islamic Republic of Pakistan, 1973, requires an application of local government system under the law in the entire Islamabad Capital territory. At this stage, this Court is under legal obligation to discuss the spirit of constitution based upon the principle evolved for interpreting the Constitution which is a living document and should be considered as an organic law of the State, which recognizes the people representation at all levels. While interpreting any provision of the Constitution or for that matter even the law, it is imperative that the recent provision be contextualized in its proper perspective keeping in view its genesis and more importantly, the purpose sought to be achieved by its enactment as held in PLD 2018 [SC] 538 (Justice Shaukat Aziz Siddiqui Vs Federation of Pakistan through Secretary Law and Justice, Islamabad), The Constitution must be interpreted as a whole because it is an organic document that is meant to apply to the changing circumstances of time and space. Each provision of the Constitution or part thereof has a purpose, meaning and integral place that must be understood, acknowledged and applied harmoniously, as held in PLD 2018 [SC] 405 (Sami Ullah Baloch Vs Abdul Karim Nousherwani). It is also, known principle of constitutional law that constitutional provision could not be overridden, diluted, or bypassed through sub-constitutional or sub-ordinate legislation, nor sub-ordinate legislation could be run contrary to the constitutional provisions which have to be harmoniously construed and interpreted in order to give the fullest effect to words, meaning, scope, philosophy and underlying spirit of the constitution as held in PLD 2018 [SC] 370 (Zulfiqar Ahmed Bhutta Vs Federation of Pakistan through Secretary Minister of Law, Justice and Parliamentary Affairs). Therefore, the spirit of Article-140-A of the Constriction of Islamic Republic of Pakistan, 1973, for establishment of local government system has to be given the highest preference in all manners.

37. In the latest judgment reported as 2015 SCMR 1739 (Lahore Development Authority through D.-G. and others Vs. Ms. Imrana Tiwana and others, wherein the concept of Executive Authority of the Province, mandate of Article 37 of the Constitution viz-a-viz the mandate of Article 140A of the Constitution was discussed at length, therefore, the Local Government system is to be construed on a higher pedestal within the Authority envisaged to Executive Board of the FGEHA as the people representation is missing element being the deciding factor. There is no concept in the constitutional mandate which could be compromised or superseded by way of sub legislation within the specified area in shape of FGEHA Act, 2020. No doubt FGEHA Act is later in time, but does not reflect the true meaning and power of autonomous representation manifestly nor it is for a separate territory which excludes the ICT Local Government Act, 2015.

38. This Court is of the view that harmonious interpretation is to be made and law of FGEHA Act, 2020, has not been negated nor ICT Local Government system has been excluded from its jurisdiction and application. In case of any conflict among the provisions of FGEHA Act, 2020 viz-a-viz, ICT Local Government Act, 2015, the solution has been provided under sub section 4 of section 3 of ICT, Local Government Act, 2015, which is as under:

*"(4) This legal framework shall without derogation to the existing laws and regulations of the Islamabad Capital Territory and Capital Development Authority and segments not covered by the prevalent law shall be covered by the respective Government, as determined by the Government. Wherever there is a clash between the existing law and provisions of this Act, the existing law shall prevail unless clearly specified or repealed."*

39. On the other hand, Section 31 of the FGEHA Act provide the removal of difficulty mechanism, whereby any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may give such directions,

consistent with the provisions of this Act, as it may, consider necessary for removal of such difficulty, hence the constitutional spirit has to be read alongwith Islamabad Capital Territory Local Government Act, 2015, which places local government system on higher pedestal in comparison with FGEHA Act, 2020.

40. Keeping in view the above discussion, the issues would be resolved in the following manner:-

- i. The FGEHA Authority shall not impose any property tax within the specified sectors at their own as they lack people representation and political authority on behalf of the residents of the specified area, which has already been extended in terms of the constitutional mandate under Article 140A of the Constitution to the Local Government system under Islamabad Capital Territory Local Government Act 2015.
- ii. The Federal Government by exercising its authority under FGEHA Act, 2020, as well as under ICT Local Government Act, 2015 by issuing a notification should exclude the Authority of FGEHA to enforce property tax within specified area and the mechanism of property tax in terms of Sections 88, 89 and 90 of the Islamabad Capital Territory Local Government Act, 2015 read with its rules in prescribed manner has to be applied strictly, even in specified sectors of FGEHA.
- iii. The utility services within specified area of FGEHA have to be provided by the FGEHA at their own end and they can charge necessary expenditures approved by the Executive Board in terms of Section 5 of the FGEHA Act, 2020, whereby the Metropolitan Corporation Islamabad

- (MCI) shall not claim any amount or charges for utility services within the specified area from the residents.
- iv. On the principle of quid pro quo if property tax has been enforced, applied and recovered under Islamabad Capital Territory Local Government system under the law and within the specified area of FGEHA, MCI have to provide the services at the door steps of the specified sectors including, but not limited to main water supply line, reservoirs, collection of garbage, maintenance of sewerage system etc. externally to those specified sectors of the FGEHA through joint arrangement with FGEHA in a meeting with the Executive Board of FGEHA or any other mechanism could be devised accordingly.
  - v. The collection/recovery of the property tax if made by MCI from the specified area/sector of FGEHA, the said amount is only meant for the use, development of the specified sectors, and same could not be spent anywhere else in Islamabad Capital Territory, even the property tax so collected by MCI, shall be maintained in separate account.
  - vi. The local government representative under Islamabad Capital Territory Local Government Act, 2015 from the specified area of the FGEHA has to represent those residents within the local government assembly for their issues and any resolution to that extent is to be adopted by FGEHA in their Executive Board meeting and to be given preference subject to their own limitation under the law and rules envisaged therein.
  - vii. The FGEHA has to provide complete infrastructure within the specified sector at their own end and may

- charge the services provided by them to the inhabitants in the specified areas under the notified rules accordingly.
- viii. The FGEHA has to provide the graveyard, parks and other amenities within the specified sectors at their own end as they have already charged the respective amounts from the allottees/residents at the time of their allotments and undertook to provide the facilities/amenities according to their layout plan in terms of their agreements, commitments with the CDA (Master Regulator), hence they cannot resile or rescind any of the agreed terms of their agreements with the CDA, which has been given protection by the FGEHA Act 2020.
- ix. The FGEHA shall notify their rules and regulations in terms of Section 26 of the FGEHA Act, 2020 in all subjects including but not limited to the powers and functions defined in Section 5 of the Act as well as the powers available to the Director General in terms of Section 7 of the Act within period of next Six (06) months positively.
- x. The Islamabad Capital Territory Local Government shall also notify the bylaws in terms of Section 118 of the Islamabad Capital Territory Local Government Act, 2015 if required by the Government, however, in terms of Section 117 of the Act, the Government shall notify all the rules necessary for carrying out the purpose of this Act including financial rules to deal with the Local Government fund for its maintenance and development within the Metropolitan Corporation Islamabad (MCI) jurisdiction within period of Six (06) months if already

not notified in terms of judgment dated 26.12.2022, passed in W.P No.2196-2018 (Sardar Mehtab Ahmed Khan Vs. Federation of Pakistan and others).

- xi. The compliance report may also be submitted by the Metropolitan Corporation Islamabad (MCI) as well as Chairman, CDA for the actions taken in the light of judgment reported as PLD 2021 144 (Metropolitan Corporation, Islamabad Vs. Chairman C.D.A. (Capital Development Authority), Islamabad).
- xii. CDA has no jurisdiction to apply and enforce their authority in the specified sector of FEGHA except in terms of section 11, 12 and 13 of CDA Ordinance, 1960, subject to approval of Executive Board of FGEHA.
- xiii. All building regulations, bye-laws of the CDA or MCI shall be applicable in specified sectors of FGEHA in terms of sub-section 5 of section 3 of FGEHA Act, 2020.
- xiv. FGHEA shall also be the local authority in specified area and shall be responsible for all public services and facilities in terms of sub-section 4 of section 3 of FGEHA Act, 2020.
- xv. FGEHA can issue notice of violation or encroachments to any person within specified sector but cannot proceed against delinquent individual for violation by themselves directly rather dependent upon District Collector or the Magistrate 1<sup>st</sup> Class for any punishment under the law, hence, the enforcement authority for all violation generally vests with MCI under Islamabad Capital Territory Local government Act, 2015, who in collaboration can initiate joint action in specified sectors with FGEHA in coordinated manner.

41. In view of above, instant writ petition is **ALLOWED** as per prayer.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Announced in open Court on: 20.03.2023

**JUDGE**

**Approved for reporting**

RAMZAN