

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Intra Court Appeal No.364/2017

Federal Government Employees Housing Foundation & another.
versus
Malik Ghulam Mustafa & others.

Appellants by: Mr. Mansoor Ahmad, Mr. Saad M. Hashmi,
Khurram M. Hashmi, & Mr. Makhdoom Ali
Khan, Advocates.

Waqas Ali Mehmood, DG (FGEHF),
Zafar Abbas, AD (FGEHF) &

Malik Javid Iqbal Wains, Advocate in C.M.
No.168/2018 & C.M. No.169/2018

Respondents By: Syed Wajid Ali Gillani, Advocate for
Respondent Nos. 1 to 9.
Dr. Hassan Cheema, Land Acquisition Collector
Respondent No. 10

Intra Court Appeal No.365/2017

Federal Government Employees Housing Foundation & another.
versus
Malik Bashir Ahmed & others.

Appellants by: M/s Khurram M. Hashmi, Saad M. Hashmi,
Mansoor Ahmad, Makhdoom Ali Khan,
Advocates for appellants.

Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.
M/s Sajid Aurangzeb Khan and Sibah Farooq,
Advocates for applicants in CM No.42/2018,
CM No.44/2018, CM No.83/2018, CM
No.85/2018, CM No.278/2018
Sohail Ahmad Mian, Applicant in-person in
C.M. No.3053/2018.
Ms. Najma Siddiqi, Applicant in-person in C.M.
No.3055/2018.

Respondents By: Syed Wajid Ali Gillani, Mr. Sajeel Sheryar Swati,
and Ch. Hasan Murtaza Mann, Advocate for
Respondents No. 1 to 5.
Mr. Kashif Ali Malik and Mr. Nazir Jawwad,
Advocates for CDA.

Intra Court Appeal No.366/2017

Federal Government Employees Housing Foundation & another.
versus
Zulfiqar Hussain & others.

Appellants by: M/s Khurram M. Hashmi, Saad M. Hashmi,
Makhdoom Ali Khan, and Mansoor Ahmad,
Advocates for appellants.
Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza
Mann, Advocate for Respondents No. 1 to 3.
Mr. Kashif Ali Malik and Mr. Muhammad
Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.367/2017

Federal Government Employees Housing Foundation & another.
versus
Zulfiqar Hussain & others.

Appellants by: M/s Khurram M. Hashmi, Saad M. Hashmi,
Makhdoom Ali Khan, and Mansoor Ahmad,
Advocates for appellants.
Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza
Mann, Advocate for Respondents No. 1 to 5.
Mr. Kashif Ali Malik and Mr. Muhammad
Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.368/2017

Federal Government Employees Housing Foundation & another.
versus
Muhammad Sabir & others.

Appellants by: M/s Khurram M. Hashmi, Saad M. Hashmi,
Makhdoom Ali Khan, and Mansoor Ahmad,
Advocates for appellants.
Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza
Mann, Advocate for Respondents No. 1 & 3.
Dr. Hassan Cheema, Land Acquisition
Collector/Respondent No. 4

Intra Court Appeal No.411/2017

Land Acquisition Collector
versus
Muhammad Sabir & others.

Appellant by: Mr. Naseem Ahmad Shah, Advocate.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza Mann, Advocate for Respondents No. 1 & 3.
Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.

Intra Court Appeal No.412/2017

Land Acquisition Collector
versus
Malik Ghulam Mustafa & others.

Appellant by: Mr. Naseem Ahmad Shah, Advocate.

Respondents By: Syed Wajid Ali Gillani, Advocate for Respondent Nos. 1 to 9.
Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.

Intra Court Appeal No.413/2017

Chief Commissioner & others
versus
Malik Dad & others.

Appellants by: Mr. Naseem Ahmad Shah, Advocate.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza Mann, Advocate for Respondents No. 1 & 5.
Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.414/2017

Chief Commissioner & others
versus
Malik Bashir Ahmad & others.

Appellants by: Mr. Naseem Ahmad Shah, Advocate.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza Mann, Advocate for Respondents No. 1 & 5.
Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.415/2017

Chief Commissioner & others
versus
Zulfiqar Hussain & others.

Appellants by: Mr. Naseem Ahmad Shah, Advocate.

Respondents By: Mr. Sajeel Sheryar Swati and Ch. Hasan Murtaza Mann, Advocate for Respondents No. 1 & 3.
Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.417/2017

Raja Ahsan Mehmood Satti
versus
Malik Basher Ahmad & others.

Appellant by: In-person.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.22/2018

Manzar Hafeez Mian & others
versus
Federation of Pakistan & others.

Appellants by: Mr. Waqar A. Sheikh and Mr. Babur Suhail, Advocates for appellants.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.23/2018

Khizar Hayat Khan & others
versus
Federation of Pakistan & others.

Appellants by: Mr. Waqar A. Sheikh and Mr. Babur Suhail, Advocates for appellants.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas, A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.24/2018

Ms. Sameera Yasin & others
versus
Federation of Pakistan & others.

Appellants by: Mr. Waqar A. Sheikh and Mr. Babur Suhail,
Advocates for appellants.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad
Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.306/2018

Sikandar Ismail
versus
Federation of Pakistan & others.

Appellant by: Syed Hasnain Ibrahim Kazmi, Ch. Shafiq-ur-
Rehman, and Mr. Muhammad Akram Shaheen,
Advocates for appellant.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad
Mohsin Nazir, Advocates for CDA.

Intra Court Appeal No.307/2018

Fazal-e-Rasul
versus
Federation of Pakistan & others.

Appellant by: Syed Hasnain Ibrahim Kazmi, Ch. Shafiq-ur-
Rehman, and Mr. Muhammad Akram Shaheen,
Advocates for appellant.

Respondents By: Waqas Ali Mehmood, D.G. and Zafar Abbas,
A.D. on behalf of FGEHF.
Mr. Kashif Ali Malik and Mr. Muhammad
Mohsin Nazir, Advocates for CDA.

Date of Hearing: 04.07.2018.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, we intend to decide the captioned intra court appeals as common questions of law and facts are involved in all these intra court appeals.

2. Brief facts as referred in the captioned intra court appeals are that respondents No.1 to 9, who are natives of village Thallah Syedan, called in question the acquisition proceedings in Sectors F-14 and F-15, which were initiated by the Land Acquisition Collector for 'Public Purpose' at the request and for the appellants (Federal Government Employees Housing Foundation). Feeling aggrieved by the acquisition proceedings, the said respondents filed W.P. No. 3496/2015, which was allowed by the learned Single Judge in Chambers vide consolidated judgment dated 15.08.2017 whereby the acquisition proceedings, all actions and orders relating to acquiring land for the appellant/FGEHF in sectors F-14 and F-15 were declared illegal, void and without jurisdiction, and it has been held that the CDA is the competent authority to initiate proceedings for the acquisition of land in accordance with the provisions of the CDA Ordinance, 1960 and the regulations made there under for planning and development of sectors F-14 and F-15 for general public. Hence, the captioned intra court appeals.

3. Learned counsel for appellants/FGEHF in ICA No.364/2017 to ICA No.368/2017 contended that;

- the CDA Ordinance, 1960 is neither exclusive nor overrides the Land Acquisition Act, 1894 as the object of the CDA is to arrange planning and development of Islamabad and no overriding clause or a barring provision is available in the CDA Ordinance, 1960, whereas the acquisition provision in the CDA Ordinance, 1960 is only for the CDA and subject to framing of schemes, even otherwise, acquisitions for public purpose has not been provided expressly in the said Ordinance;

- the CDA itself allowed for acquisition by third parties according to the ICT Zoning Regulations, 1992 in Zone-II and Zone-V specifically;
- the learned Single Judge in Chambers while passing the impugned judgment has not considered the basic principle of interpretation of statute where law should not be destroyed, rather it should be interpreted to save the law;
- the role of the CDA is of regulator and facilitator under the master plan and the CDA has to arrange planning and development by itself or through an agency whereas Section 3(2) of the CDA Ordinance, 1960 defines “agency”, Section 12 is the enabling provision, and Section 17 deals with the functions of an agency for implementation of schemes, whereas all such provisions exclude the exclusive control of the CDA;
- the Sectors F-14 and F-15 were allowed to be acquired by the CDA and the Layout Plan (LOP) was approved by the Board of CDA, who has framed all regulations including the ICT Zoning Regulations, 1992, whereas it is settled principle of law that the authority who can make regulations, can by order impliedly amend the regulation. Reliance is placed upon PLD 1971 SC 846 (Mukhtar Ahmad vs. Government of West Pakistan). If the Board has approved the LOP, it tantamounts to amend the Zoning Regulations in respect of Zone-I;
- the learned Single Judge in Chambers in holding exclusive jurisdiction of the CDA, relied upon Section 22 of the CDA Ordinance, 1960, Master Plan, and Martial Law Regulation No.82, whereas Section 22 of the CDA Ordinance, 1960 is not independent but it

contemplates reliance on chapter and other provisions of the Ordinance and it has been held by the superior Courts that acquisition is subject to scheme. Reliance is placed upon 1999 YLR 247 (Abdul Qadeer Khan vs. Chairman CDA) and 1999 SCMR 2636 (CDA through Chairman etc. vs. Dr. Abdul Qadeer Khan and others); Section 22 of the Ordinance has to be judged on the touchstone of Article 23 as envisaged under Article 268(6) of the Constitution of the Islamic Republic of Pakistan, 1973. Similarly, MLR-82 being violative of Article 33 and Article 286(6) of the Constitution and all these legal aspects have not been considered by the learned Single Judge in Chambers;

- the master plan has not extended exclusive authority to the CDA, rather it determines the status of CDA being a regulator and there is no barring provision or overriding provisions in the CDA Ordinance, 1960, therefore, application of the Land Acquisition Act, 1894 in acquiring the land of Sectors F-14 and F-15 is illegal under the Act;
- the learned Single Judge in Chambers also held that the acquired land would be Government property and relied upon Section 16 of the Land Acquisition Act, 1894, whereas the said provision has not been appreciated in its true perspective as if the land is acquired by the Government, it shall vest in the Government and if it is acquired for the public authority or company, it shall be transferred to them. The purpose behind Section 16 of the Act is to completely disassociate the previous owners and save the beneficiary from undue litigation on account of any encumbrances;
- the learned Single Judge in Chambers has also relied upon Article 173 of the Constitution of the Islamic Republic of Pakistan, 1973, the said Article is applicable where property is acquired for the purpose of the Federal Government and it is not attractive when the property is acquired by the company for public purpose, whereas funds provided in this case are contributed by the prospective allottees;

- the impugned judgment is based upon concluded inference that it is the Government property, whereas the funds for acquisition were not paid out from the public revenue, rather contributed by the allottees, details of which are as under:

a) Amount received from allottees	-	11.7 billion
b) Amount paid to LAC	-	10.0 billion
c) Other payments for BUPs and CDA	-	797 million
d) Funds disbursed by LAC to owners	-	389 million

The above referred factual position of the funds clearly reflects that not a single penny from a public revenue has been utilized and the inference of State largesse is not tenable, similarly vesting of property in the Government under Section 16 of the Act does not mean that it become the Government property, rather it is to safeguard the interest of the beneficiary company from any claim by the previous owners, and even otherwise, if the land was vested to the Government in terms of Section 16, it has to be transferred later on in the name of beneficiary company or local authority for which the property was acquired;

- the learned Single Judge in Chambers has not appreciated the concept of public purpose in its true perspective and it has been observed in the impugned judgment that property was being acquired for financial benefit of the Federal Government employees, serving or retired, as well as for other allied groups, whereas the concept of public purpose, as defined by the apex Court in the case of Fouji Foundation reported as PLD 1983 SC 457, has to be considered as for a fraction of society;
- the learned Single Judge in Chambers without examining the public purpose, merely held that State largesse could not be used for Federal Government employees, thus there was no public purpose and any

such observations without any evidence could not be proper conclusion;

- the learned Single Judge in Chambers has not appreciated the acquisition concept under the Land Acquisition Act, 1894 and the impugned judgment has been passed against the appellant/FGEHF while interpreting the provisions of the Act, where deposit of amount has to be applied prior to acquisition. There is no provision in the Land Acquisition Act, 1894 to deposit the amount and the proviso of Section 6 was required that the amount was to be paid by the company or local authority. Similarly, Section 17(1) contemplates that before taking the possession, the company or the local authority must deposit the amount. The appellant had already deposited the amount before award on 17.11.2016 and direction for possession was never issued by the commissioner prior to that;
- the other important factor considered by the learned Single Judge in Chamber that no NOC was issued by the CDA for the said scheme, whereas NOC is contained under modalities and procedures framed under the ICT Zoning Regulations, 1992. It is only applicable to Zone-II and Zone-V of the ICT Zoning Plan, which is meant for private housing schemes by companies or cooperative societies, it is not applicable in Zone-I to a public limited company owned or controlled by the Federal Government;
- the CDA has given their approval and the Board has also approved the LOP while recognizing the appellant/FGEHF as agency of the Government, hence, if the regulation making authority passed an order by which the regulation stand amended impliedly, therefore, there is no need to develop Zone-I by the CDA itself as argued by the respondent side;

- the learned Single Judge in Chambers has also compared the Land Acquisition Act, 1894 with the CDA Ordinance, 1960 and the arguments of implied repeal given by the respondent side in these appeals are without substance as the CDA Ordinance, 1960 as well as the Land Acquisition Act, 1894 can harmoniously be interpreted and both the laws have their own sphere of operations and are not in conflict with each other.
- the learned Single Judge in Chambers has also not considered the concept of public money as while acquiring the land in question no public money has been utilized and such kind of finances are relevant and the Government by itself requires property and in case when the property is being acquired by a company or local authority, the same can only be acquired by fund of a company or local authority.
- the learned Single Judge in Chambers has observed in the impugned judgment about the conflict of interest of the CDA and the agency of the Government, whereas the CDA itself provides category of scheme U/S 12 & 13 of the CDA Ordinance, 1960 and any scheme by Government agency, which is approved by the CDA, would not be in conflict, rather it would be supplementing functions of planning and development in the ICT. The learned counsel for the appellant (FGEHF) has relied upon PLD 1981 SC 81 (Islamabad Club vs. Punjab Labour Court No.2), PLD 1972 SC 279 (The Murree Brewery Co. Ltd. vs. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others), PLD 1982 Quetta 63 (Abdul Ghani and another vs. Province of Baluchistan and 2 others), 1999 YLR 247 (Abdul Qadeer Khan and others vs. Chairman, CDA through its Chairman and others), PLD 1947 SC 151 (The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi vs. Saeed Ahmed Khan and others), PLD 2011 SC 619 (Suo Motu Case No.13 of 2009), PLD 2002 SC 1079

(Federal Government Employees Housing Foundation through Director General, Islamabad and another vs. Muhammad Akram Alizai, Deputy Controller, PBC, Islamabad), 2004 SCMR 1247 (Faisalabad Development Authority vs. Raja Jahangir Nasir and others), 1997 SCMR 296 (Muhammad Afzal Bhatti and 17 others vs. Province of Punjab through Collector, Rawalpindi and 4 others), 1997 CLC 812 [Peshawar] (Sardar and 149 others vs. Government of N.W.F.P. through Collector, Haripur and 3 others), 2012 CLC 101 [Sindh] (Muhammad Khan vs. Federation of Pakistan through Secretary, Communication, Islamabad and 4 others), 2004 CLC 145 [Lahore] (Mst. Razia Begum vs. Jangbaz and 3 others), 2000 YLR 1711 (Ghulshan Hussain and another vs. Commissioner (Revenue), Islamabad/Deputy Commissioner District Collector I.C.T./Assistant Commissioner, Saddar, Islamabad and another), PLD 1983 Lahore 552 (Dr. Muhammad Nasim Javed vs. Lahore Cantonment Housing Society Ltd, through the Secretary Fortress Stadium Lahore Cantt. And 2 others), PLD 2009 SC 217 (Suo Motu Case No.13 of 2007), PLD 1997 Lahore 499 (Allah Ditta and others vs. Province of Punjab), 2002 SCMR 1652 (Muhammad Ishaq and others vs. Government of Punjab and others), AIR 1959 Punjab 478 (Tej Ram Jag Ram vs. Union of India, Ministry of Works, Housing and Supply New Delhi and others), AIR 1963 SC 151, AIR 1977 SC 594 , AIR 1978 SC 515 (Bai Malimabu etc. vs. State of Gujrat and others), AIR 1966 SC 1788, AIR 1970 SC 984, AIR 1914 Privy Council 1914 (Hamabai Framjee Petit vs. Secretary of State for India), AIR 1972 SC 2290 (Ram Swarup vs. The District Land Acquisition Officer, Aligarh and others), 1999 SCMR 2636 (Capital Development Authority through Chairman and others vs. Dr. Abdul Qadeer Khan and others), AIR 1947 NAG 254, AIR 1976 Andhra Pradesh 134 (The Andhra Pradesh Agricultural University Rajendranagar vs. Mahmoodunnisa Begum and another), PLJ 1975 Lahore 359 (Commr. I.T., Pindi vs. Noon Sugar Mills), 1989 MLD 2416 Supreme Court (India) (Om Prakash and another vs. Union of India and others), 2017

SCMR 1218 (Syed Mushahid Shah vs. Federal Investment Agency and others) & PLD 1973 SC 451 (Mehtab Khan vs. Rahabiliation Authority).

4. The learned counsel for the appellants in ICAs No.411/2017 and 412/2017 has contended that the impugned judgment is against the law and facts of the case and the learned Single Judge has failed to consider the Land Acquisition Act, 1894, which is applicable in the ICT like any other law as per clause 19 of the President Order No.1 of 1970, Province of West Pakistan (Dissolution) Order 1970, Continuation and Adoption of Existing Laws; that the powers for acquisition under the CDA Ordinance, 1960 were limited in nature and the Apex Court has held that the CDA has exclusive powers to acquire land in ICT is a view not supported under the law and in this regard, the learned counsel has relied upon PLD 1972 SC 279 (Murree Brewery Co. Ltd. vs. Pakistan) & 1999 SCMR 2636 (Capital Development Authority through Chairman and others vs. Dr. Abdul Qadeer Khan and others); that the learned Single Judge has also not considered the earlier proceedings and awards in respect of various authorities like OPF and DHA, etc. by the Land Acquisition Collector in terms of Land Acquisition Act, 1894; that Section 22 of the CDA Ordinance, 1960 has enabling provision, which simply states that land in specific territory (territorial limits of Haripur, Kahuta and Kohala, ICT) as per Schedule-II of the CDA Ordinance, 1960 is liable for acquisition subject to other provisions and Section 22 of the CDA Ordinance, 1960 could not in any manner be comparable with Section 64 of the Land Acquisition Act, 1894; that the CDA has limited jurisdiction and lack of capacity, therefore, a large number of acquisitions were made under the Land Acquisition Act, 1894 by the Land Acquisition Collector, even the learned Single Judge in Chambers has misinterpreted the meaning of public purpose, whereas question of public purpose defined in the impugned judgment is contrary to the settled principles of law.

5. The learned counsel for the appellants in I.C.As No.413/2017, No.414/2017 & No.415/2017 has adopted the arguments advanced by the learned counsel for the appellants in I.C.As No.411/2017 & No.412/2017.

6. The learned counsel for the appellants in I.C.As No.417/2017, No.22/2018, No.23/2018, No.24/2018, No.306/2018 & No.307/2018, who are private individuals, have also adopted the arguments advanced by the learned counsel for the appellants in I.C.As No.411/2017 & No.412/2017.

7. Conversely, the learned counsel for the private respondents, i.e. Malik Ghulam Mustafa and others, has contended that the CDA Ordinance, 1960 and the regulations framed there-under provide comprehensive procedure for land acquisition within territorial limits of the ICT and the Land Acquisition Act, 1894 does not apply to the same and as such the notification dated 02.12.2015 is illegal. In this regard, the learned counsel for the private respondents has relied upon 2004 CLC 145 [Lahore] (Mst. Razia Begum vs. Jangbaz and 3 others). The learned counsel for the private respondents has further contended that Section 22 of the CDA Ordinance, 1960 provides that “all lands within specified area shall be liable to acquisition at any time in accordance with the provisions of this Chapter”, therefore, compulsory acquisition of land in ICT can only be effected under the special law, which is the CDA Ordinance, 1960; that the CDA Ordinance, 1960 and the Land Acquisition Regulations, 1961 provide its own procedure for acquisition of land in the Federal Capital without any reference to the Land Acquisition Act, 1894; that the impugned notifications are discriminatory and have been issued in violation of constitutional rights of the respondents guaranteed under Articles 4, 9, 23 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973; that Sections 12 & 13 of CDA Ordinance, 1960 read with the Islamabad Capital Territory (Zoning) Regulations, 1992 provide that the land situated in Zone-I as prescribed by master plan shall be acquired under a phased programme and developed by the CDA in accordance with the land use pattern spelled out in the master plan, meaning thereby that in

Zone-I, it is only the CDA, which can acquire the land and develop the same in terms of the CDA Ordinance, 1960; that the CDA Ordinance, 1960 is a special law for the purpose of acquisition as compared to the Land Acquisition Act, 1894, which is a general law; that the CDA is letting the housing foundation to take over its statutory functions in derogation of express provisions of law and as such the land specified for any purpose in the master plan cannot be acquired otherwise as it is settled rule of interpretation of a statute that when the power is given under a statute to do a certain thing in a way, the thing must be done in that way and not otherwise; that it is established principle of law that private property cannot be acquired for the benefit of the individuals or the class of persons either by the Government or a private company except for public purpose and there-after acquisition of land for housing scheme by a company in the Federal Capital except in the specified zone for such schemes cannot be acquired for the benefit of a limited class of persons by excluding general public; that it is trite law that no one can be deprived of his land except in accordance with law, whereas no right of hearing was given before the process of acquisition and the object of hearing objections by the Collector under Section 5-A of the Land Acquisition Act, 1894 is to decide whether the acquisition is for public purpose and to ascertain whether other lands in the locality may not be better suited to the purpose; that the acquisition of land for a company should have been drawn in accordance with provisions of Part-VII "Acquisition of land through companies"; that the learned Single Judge in Chambers has given the decision after considering the special law and general law, and declared that the CDA is master regulator and holds full authority to deal with the land, whereas the powers envisaged under the CDA Ordinance, 1960 do not provide any other mechanism and procedure for acquisition of land beyond the scope of the CDA Ordinance, 1960.

8. Arguments heard, record perused.

9. Respondents Malik Ghulam Mustafa and others private individuals, being residents and natives of Mehra Sumbal Akku and Mehra Sumbal Jaffar, Thallah Syedan, Tehsil and District Islamabad, have filed different writ petitions i.e. W.P. No.309/2016, W.P. No.2128/2015, W.P. No.310/2016, and W.P. No.3496/2015, wherein they have challenged the acquisition proceedings of their land, which were initiated by Ms. Rabia Aurangzeb, Additional Deputy Commissioner Revenue under Section 4 of the Land Acquisition Act, 1894 on 20.05.2015, which was later on converted into amended notification dated 02.12.2015, the relevant portion of which is reproduced as under:

“WHEREAS, it appears to the Land Acquisition Collector, Islamabad, District Islamabad that the land is likely to be taken for Federal Government Employees Housing Foundation, under the administrative control of Ministry of Housing and Works, Government of Pakistan for its expense for public purpose namely for launching housing scheme in Sector F-14 as well as contiguous area of F-15 prior to G.T. Road falling in Zone-I for the Federal Government Employees in villages Tarnol, Mara Sumbal Akku, Mara Sumbal Jaffar, Thalla Syedan and Jhangi Syeda, Tehsil and District Islamabad. It is hereby notified that the land in the locality described below is likely to be acquired for the above purpose. (emphasis supplied).”

The above referred notification is the basis of filing of all these proceedings. The learned Single Judge in Chambers while hearing the writ petitions accepted the same vide impugned judgment announced on 23.10.2017, whereafter different individuals as well as appellant/FGEHF and Chief Commissioner, Islamabad have challenged the same through the captioned intra court appeals.

10. In order to understand the entire controversy it is necessary to dilate upon all issues separately.

BACKGROUND OF FGEHF

11. The Federal Government Employees Housing Foundation was set up in March 1990, and registered as a company limited by guarantee under the Companies Ordinance, 1984. It was entrusted with the task of implementing the self-financing housing schemes on ownership basis for Federal Government

employees. Within a span of five years, about 16000 houses were constructed under the said scheme in Islamabad and about 4000 plots were allotted to the successful applicants with an option to undertake construction under their own arrangements.

12. The Federal Government Employees Housing Foundation while incorporating its Articles of Association referred the concept of membership which is only opened to the Federal Government employees, approved by the executive committee, whereas the management system referred in the said Articles is based upon the Executive Committee, comprising of Secretary (Housing & Works) as Chairman and Joint Secretary (Housing & Works) as a Vice Chairman, along with five members who are Financial Advisor (Ministry of Finance), Joint Secretary (Cabinet Division), D.G. Public Works Department, Deputy Secretary Admin (Works Division), and OSD (P&EC). The FGEHF has its Board of Governors comprising of Chairman, who is Minister for Housing & Works with four members including Secretary Interior, Secretary Establishment Division, Secretary Finance and Secretary Housing & Works. The Board and its Executive Committee are the decision maker in the FGEHF.

13. The Memorandum of Association of the FGEHF provides a complete objective concept, wherein the primary object is provided in Clause III(a), which is reproduced as under:

III (a). To eradicate shelterlessness in the Federal Government employees and to make and assess as far as possible each of them have a house at the time of his retirement or earlier and his dependents in case of death before retirement, on such terms and the Board of Governors may determine.

(b) To initiate, launch, sponsor and implement housing schemes for Federal Government employees on ownership basis in Islamabad, the provincial capital and other major cities of Pakistan.

SCHEME OF SECTOR F-14 AND F-15

14. The appellant/FGEHF planned a scheme for development of Sectors F-14 and F-15, Islamabad on the contributions made by the prospective allottees (Federal Government servants) to the tune of Rs.7 billion, the said amount was

deposited by the appellant with the land acquisition authorities and the Land Acquisition Collector announced the award under Section 11 of the Land Acquisition Act, 1894 on 15.11.2016. Thereupon, land measuring 7003 Kanals and 10 Marlas falling in Moza Tarnol, Jhangi Syedan, Thallah Syedan, Mehra Sumbal Akku, and Mehra Sumbal Jaffar situated in Sector F-14, Tehsil and District Islamabad was mutated in the name of the appellant/FGEHF. Rs.775.749 million was contributed by the prospective allottees for 231 Built-up Properties (BUPs), the same was also deposited with the Land Acquisition Collector for award of build up properties in Sector F-17 and separate award was announced by the Land Acquisition Collector on 15.06.2017. Whereas, Rs.3 billion was contributed by prospective allottees of FGEHF with the Land Acquisition Collector, as a result whereof, second award for land measuring 300 Kanals falling in Moza Tarnol and Jhangi Syeda situated in F-15/3 & 4 was also announced on 28.09.2017.

15. The CDA has approved the layout plan of F-14 on 06.07.2017 under the CDA by-laws and the ICT Zoning Regulations, 1992 after receiving the amount of Rs.21 million. The appellant/FGEHF has engaged the services of contractor i.e. Frontier Works Organization (FWO) on 29.09.2016 for development work of Sectors F-14 and F-15 under PPRA Rules and mobilization advance to the tune of Rs.750 million was paid to the FWO.

16. The appellant/FGEHF has announced the scheme of Phase-IV for Federal Government employees and the total amount assessed for the purpose of acquisition is Rs.14,497,200,000/-, whereas appellant/FGEHF deposited an amount of Rs.7 billion (Rs.7,00,00,00,000/-) in this process and amount of Rs.310,000,000/- has been distributed to the affectees till date. The LOP (Layout Plan) was approved by the CDA on 06.07.2017 and after the acquisition of land through award mutation was sanctioned in favour of the appellant/FGEHF. On 22.05.2017, however the complete payment has not been made to the affectees.

LAND ACQUISITION ACT, 1894 VS. CDA ORDINANCE, 1960

17. We have gone through the provisions of Land Acquisition Act, 1894 which have been provided for acquisition of land needed for public purposes and companies and for determining the amount of compensation to be made on account of such acquisition, however the emphasis has been given on the term “public purpose”. The Act contains 8 parts based upon acquisition procedure, by way of preliminary investigation and issuance/publication of preliminary notification under Section 4 of the Act, whereafter public objections are invited in terms of Section 5-A of the Act and after making such inquiry the Commissioner shall decide each objection, whereafter declaration that land is required for public purpose is announced while considering the report of the Commissioner, however such declaration is coupled with compensation and after declaration, the Collector has to make order for acquisition in terms of Section 7 of the Act of the land which was acquired has to be marked, measured and planned, whereafter the notices are issued to the interested persons and the said notice shall state the particulars of the land so needed, whereafter the interested persons appear personally or through agent before the Collector and state their nature of respective interest in the land, their objections regarding measurements are satisfied by the Collector and notices are also issued to the occupiers. However the Collector after thorough inquiry and probe on the objections, decide the respective interest of the persons claiming the compensation and shall make an award in terms of Section 11 of the Act. Whereafter, the process of taking over the possession starts. The Act also provides special powers in case of urgency in terms of Section 17 of the Act, especially when possession of any land needed for public purpose or for a company, however there are certain parameters to be followed but it is mandatory that the Commissioner shall not issue any directions to the Collector under the said section unless the department of the Government, local authority or company, as the case may be, for which the land has been acquired, first

deposited the estimated cost of the acquisition of such land as determined by the Collector. Similarly, the land absolutely vests in the Government after acquisition. The urgency provision can be applied in case of sudden change in the channel of navigable or other unforeseen emergency or it becomes necessary for any railway administration to acquire immediate possession of the land for maintenance of their traffic or for the purpose of making their own river side ad-hoc stations which also covers the concept of public road.

18. Part-III of the Act provides reference to the Court wherein any person interested, who has not accepted the award, may, by written application to the Collector, require that matter be referred by Collector for determination of the Court, whether the objections were regarding measurement of land, amount of the compensation, or apportionment of the compensation among the person interested. Similarly, the Act also provides the concept of determination of compensation in terms of Section 23, wherein the potential value of the land, market value, change of place of resident of business, and profits of land, have to be determined. In addition to the determination of compensation, the affectees have been given compulsory acquisition charges of 15% of the award on such market value in consideration of compulsory nature of acquisition and in case of a company, the compulsory acquisition charges is @ 25% on such market value.

19. On the other hand, the CDA Ordinance, 1960 has been promulgated to establish the CDA for making all arrangements for the planning and development of capital (Islamabad) within the framework of original development plan on 27.06.1960. The main objectives are regarding the planning and development of capital and compelling or authorizing the CDA to perform its functions of municipal committee and to provide for cleanliness, health, education of inhabitants, supply of goods, articles of foods and milk, and to promote interest of different sections of public. Reliance is placed upon PLD 1985 FSC 221 (In re: Islamization of laws) and PLD 2011 SC 619 (Suo Motu Case No.13 of 2009). The CDA

Ordinance, 1960 is based upon 8 chapters, wherein Section 3 provides the declaration of capital site, which was notified in the official gazette by the Federal Government wherein any part or parts of specified area referred in the schedule have been declared the site of capital of Pakistan. Section 4 deals with the constitution of authority known as CDA for carrying out the purpose of this Ordinance, the authority is a corporate body, having perpetual succession and a common seal, with power to acquire and hold property subject to provisions of the Ordinance, whereas Section 5 deals with the management, general directions and administration of authority and its affairs vest in the Board which may exercise all powers and do all acts and things which may exercise or done by the authority. It is pertinent to mention here that the Board has to discharge its functions and act on sound principles of development, town planning and housing, and shall be guided on question of policy by such directions as the Federal Government may from time to time issues. Similarly, in case any question arises as to whether any matter is a matter of policy or not, the decision of the Federal Government shall be final as referred in Section 5 (3) of the CDA Ordinance, 1960.

20. Section 6 provides constitution of the Board, wherein three members i.e. Chairman and Vice Chairman and Financial Adviser have to be appointed by the Federal Government. Chapter 3 of the Ordinance deals with the powers and duties of the authorities in which Section 11 provides master plan and master program, wherein the authority prepare a master plan and phase master program for the development of capital site. Section 12 deals with preparation of schemes by local bodies or agencies in pursuant to master plan which includes land use, zoning, land reservation, building, industry, transportation, communication, highways, roads, railways, utilization of water, natural resources, community facilities, and preservations of objects and places of historical and scientific research. Even in the said law, no one is permitted to develop scheme without the concurrence of the CDA authority. The CDA

Ordinance, 1960 authorizes the CDA to prepare a scheme in the public interest in terms of Section 13 and all such schemes shall be prepared in such manner as the Federal Government may specify. Section 15 deals with the powers of the authority for carrying on the purpose of the Ordinance which includes acquisition of land in specified area in accordance with the procedure laid down in Chapter 4, which especially deals with the concept of acquisition of land and it has been held that acquisition of land within specified areas shall be made in accordance with the said chapter which provides the entry upon the land for the purpose of survey, determination of compensation for damages and power to acquire the land. The other provisions deals with the measurement, notices to interested persons, inquiry and award by the Deputy Commissioner and compensation as well as matters for consideration to determine the compensation as elaborated in the said Ordinance in detail.

21. While dealing with the above referred comparison, learned counsel for appellants contended that the CDA Ordinance, 1960 does not provide the detailed mechanism of acquisition, rather the concept of acquisition has fully been explained in detail in the Land Acquisition Act, 1894, whereas the learned Single Judge in Chambers has placed reliance upon the CDA Ordinance, 1960 which is applicable in the acquisition of Sectors F-14 and F-15. While answering the objections raised by the appellants, we have gone through the entire scheme of both the laws and this Bench has to follow different principles enunciated in the judgments of the apex Court where concept of general law and special law has been discussed in details which is as under:

- i. General law is one which is unrestricted in terms of its applicability to all issues covered by its subject matter, whereas special law may be restricted to certain localities, persons, or types of cases --- whether a law was general or special depends on the particular features of the statute in issue and was ultimately a question of relativity between

two or more statues on the common subject matter. (2017 SCMR 1218 (Syed Mushahid Shah, etc. vs. FIA, etc.).

- ii. Where there was a conflict between the general law or special law the later would prevail in matter. (2013 SCMR 85 (Muhammad Mohsin Ghumman vs. Government of Punjab).
- iii. Special law- conflict between two special laws containing overriding clauses – when there were two special laws both of which contain overriding clauses and there are conflicts between them, generally the statute later in time would prevail over the statute prior in time – said presumption, however, was not automatic, instead a host of other factors including the object, purpose and policy of both statutes and legislature’s intention, as expressed by the language employed therein, need to be considered in order to determine which of the two special laws was to prevail. (2004 SCMR 1397 (I.G. HQ Frontier Corps, etc. vs. Ghulam Hussain, etc.).

22. In view of above, we have compared both the Land Acquisition Act, 1894 and CDA Ordinance, 1960 and marked out the following principal differences:

Land Acquisition Act, 1894	CDA Ordinance, 1960
It is a general law for all kinds of acquisitions for public purposes and companies.	To establish a Capital Development Authority for making all arrangements for planning and development of the capital (Islamabad) within the framework of a regional development plan.
It extends to whole of Pakistan and came into force on 01.03.1894.	It extends to specified areas which were defined in Section 2(p) of the Ordinance, which were notified in the official gazette by the Federal Government and promulgated on 27.06.1960.

No authority has been established in this Act.	CDA has been established for the development of capital of Pakistan.
It provides the procedure of acquisition only for public purpose, award, and compensation as well as determination factor of compensation.	It provides the duties of CDA Board, preparation of master plan, master program, for capital site and specified areas, preparation of schemes for land use, public buildings industries, transportation, highways, roads, streets, telecommunication, utilization of water, other natural resources, community planning, housing slums, community facilities, reservations of objects/places of scientific and historical interest.
Collector can acquire the land.	The CDA can acquire the land in the specified area in accordance with the procedure laid down in Chapter-4.
No scheme is required for the purpose of acquisition.	A scheme is required for the purpose of acquisition approved by the Federal Government.
The amount has to be deposited by the local authority or company prior to issuance of direction by the Collector in case of urgency provisions.	Under Section 13 of the CDA Ordinance, 1960, acquisition in cases of urgency is provided, however prior submission of entire amount is not necessary.
Acquisition of land is meant for public purpose and for the companies.	Acquisition can only be made within specified areas only for master phase plan and master program after preparation of scheme.

23. The above referred comparison and principles laid down by the apex Court clearly demonstrates that the CDA Ordinance, 1960 is promulgated to establish the Islamabad as capital of Pakistan within specified areas as notified by the Federal Government and the authority established under the said Ordinance is empowered to prepare a scheme with the approval of the Federal Government under a master phase program for the planning and development of the capital and in pursuance to said program, a scheme has to be implemented which requires acquisition of land, therefore, the chronological sequence in the CDA Ordinance, 1960 provides a complete mechanism from the master plan till the complete constructions, planning and development of the capital (Islamabad), whereas the Land Acquisition Act, 1894 is of general nature, which has been applied all over the Pakistan for acquisition purpose, however it is trite law that a special law has to be applied in case of two similar subjects in field, even otherwise, when there is any inconsistency, the special law has to prevail or if there is any gap, then provisions of general law has to be applied for understanding by reference. We are also of the view that the CDA Ordinance, 1960 is purpose specific law to cater the requirements of the new capital of Pakistan and such kind of enactment provides a complete mechanism in itself which has no nexus with the Land Acquisition Act, 1894. In present case, the appellant/FGEHF being beneficiary company has taken benefit under the Land Acquisition Act, 1894 through the Collector, whereas the applicable law in strict sense is the CDA Ordinance, 1960 and it is trite law that where law required an act to be done in a particular manner it has to be done in that manner alone and such dictate of law could not be termed as technicality. Similarly, the Court could not pass an order of its liking, solely on the basis of its vision and wisdom, rather it was bound and obligated to render decisions in accordance with law and the law alone. Reliance is placed upon PLD 2013 SC 255 (Muhammad Anwar, etc. vs. Mst. Ilyas Begum, etc.).

24. While dealing with the question of applicability of particular law, the literal rule has to be applied at the first instance, where words of the statute were to be first understood in their natural, ordinary, or popular sense. The phrases and sentences were construed according to their grammatical meaning unless that lead to absurdity or unless there was something in the context or an object of the statute to suggest the contrary by necessary application. The Court has to discover the true legislative intent while interpreting the statute and intention of legislature was primarily to be gathered from the language used, which means that attention had to be paid to what had been said and also to what had not been said. The Courts always presumed that the legislature has inserted meaning to every part of a statute, thereof for a purpose and legislative intention was that every part of statute should have affect, therefore, while construing the provisions of statutes, no provision should be rendered meaningless and there was no scope of placing unnatural interpretation on the meaning of language used by the legislators, especially when the language of legislative provision was clear, it was not the duty of the Court to either enlarge the scope of legislation or the intention of the legislators. Reliance is placed upon PLD 2012 SC 1089 (Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan). It is also settled that in case of conflict, preference is to be given to the new law and the implied repeal of earlier law could be inferred only when there was enactment of a later law which had the power to override the earlier law, and was totally in consistent with the earlier law and when there are two laws, the earlier and the later law, could not stand together, therefore, later laws abrogate the earlier contrary laws. Reliance is placed upon 2013 PTD 2125 Lahore (Inland Revenue RTO vs. M/s Almakdi International, etc.) and PLD 2006 Supreme Court 249 (Tanveer Hussain vs. division superintendent Pakistan railways).

PUBLIC PURPOSE

25. In this case, the matter revolves around the acquisition proceedings which are based upon the very concept of public purpose. We have gone through the CDA Ordinance, 1960 wherein the intent of acquisition drawn in the CDA Ordinance, 1960 is only envisaged in Section 11 and Section 12 of the Ordinance where the master plan and master program has been referred for specified areas as notified by the Government, where a scheme has to be prepared to achieve the objective of the CDA Ordinance, 1960. The schemes are usually based upon the parameters and requirements referred in Clause "A" to "I" of Section 12(2) of the Ordinance, hence, it could easily be understood by the sequence referred in the CDA Ordinance, 1960 as to what is the intention of the legislature while making this specific law and in this regard, when master phase program has been implemented in the specified areas. The legislature has provided the concept of Section 22 in the following manner:

"Section 22. Liability to Acquisition:

All land within specified areas shall be liable to acquisition at any time in accordance with the provisions of this Chapter."

The above referred statutory provision clearly establishes that every inch of specified areas have to be utilized in development and preparation of master plan in the Islamabad Capital Territory in terms of Sections 11 and 12 of the Ordinance. The requirements of Section 4 of the Land Acquisition Act, 1894 have been applied by implication in the provisions of Section 22 of the CDA Ordinance, 1960. The concept of public purpose has not been defined in the CDA Ordinance, 1960 as the larger purpose has already been explained by the legislature in the previous provisions, and therefore, the utilization of land beyond the master phase program for development of specified areas is not acceptable. Though, the concept of public purpose has to be seen in the light of general interest of community as opposed to particular interest of the individual and the purpose behind has to fall within the concept of "public purpose" i.e. for the use of public in general. Even, it is not permissible to take the land of one

to give it to another in private interest. Reliance is placed upon 2000 YLR 1711 Lahore (Ghulshan Hussain, etc. vs. Commissioner (Revenue), Islamabad, etc.) and AIR 1963 SC 151 (Smt. Somavanti & others vs. The State of Punjab & others).

26. The concept of public purpose in this case has to be seen from the angle of legislature, who has promulgated the CDA Ordinance, 1960, where public purpose is available in each and every provision and legislature is the best judge alone to determine as to how the public may better be served through agency of private enterprises or through the department of the Government, and when the intention is clear under literal rule of interpretation, no other meaning could be followed.

27. The Sectors F-14 and F-15 are only meant for Federal Government servants who are members of the appellant/FGEHF, who have made the request of acquisition of land which was needed for development of housing scheme, however the concept of “useful to the public” in this case does not have the meaning as assigned to the expression “public purpose”, as per concept of the appellant/FGEHF, it is useful for public in their considered view, it means beneficial for the public, and the housing scheme is only meant for purpose of providing plots only to its members, therefore, purpose of acquisition was limited and was not general public. Reliance is placed upon PLD 2009 SC 217 (Suo Motu Case No.13 of 2007).

28. Public purpose is an object in which general interest of the community as opposed particular interest of the individual is directly and widely concerned as laid down in case reported as PLD 1976 Lahore 747 (Muhammad Akbar vs. Commissioner, Rawalpindi). But the principle of English saying that “you cannot rob Paul to pay Peter” applies in this case as the benefit has to be drawn for a community of Federal Government servants as per terms of the objectives of the appellant/FGEHF, whereas the term “public purpose” will has to be a purpose which in furtherance of general interest of community at large as opposed to

particular interest of the individual as held in PLD 1983 Lahore 552 (Dr. M. Nasim Javed vs. Lahore Cantt. Cooperative Housing Society Ltd.).

29. The appellant/FGEHF is a company established with a specific objective and its objective does not cover private individuals and any scheme prepared by the appellant/FGEHF for providing housing facility to its members has to be seen as a private interest for those members only and their status is of a society for the purposes of housing scheme and they are allowed to purchase any piece of land from the market or land holdings for development of their schemes, however when they use the state machinery with their limited objective under the Companies law, their entire working has to be seen in the light of their objective only and the purpose for which the land was acquired was too limited to hold that the same would be used for public purpose as held in 2002 SCMR 1652 (Muhammad Ishaq etc. vs. Government of Punjab, etc.). It is also settled by the superior Courts that no property can compulsorily be acquired and taken possession of except for a public purpose and without authority of law which provides for compensation and either fixes the amount of compensation or specifies the principles and the manner in which compensation is to be determined. Certain exceptions are mentioned in Clause 3 of Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973 but it is also clear that for acquisition of any property under any one of such exceptions, a law has to be enacted. It follows, therefore, that in any case, without specific law, no person can be deprived of from his property or the possession taken by Government. Reliance is placed upon PLD 1993 Karachi 79 (Nazim F. Haji, Chief Citizen, Police Liaison Committee, Karachi vs. Commissioner, Karachi, etc.).

30. It is within exclusive domain of the Government to adjudicate upon the issues of public purpose and scrutinize the request of acquisition of land required by the company and the Government has to evaluate the public purpose objectively on the basis of reasonable material as the sacred fundamental rights of individual duly safeguarded under the provisions of

Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973 are likely to be affected, furthermore, such determination of public purpose would also be justifiable and amenable to judicial review by the Courts. Reliance is placed upon PLD 2017 Lahore 442 (Messrs Eden Developers (Pvt.) Limited vs. Government of the Punjab, etc.). However, in order to understand the concept of protection of property rights, Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973 has been reproduced as under:

24. Protection of property rights.

1. No person shall be compulsorily deprived of his property save in accordance with law.
2. No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.
3. Nothing in this Article shall affect the validity of :-
 - (a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or
 - (b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or
 - (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or
 - (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
 - (e) any law providing for the acquisition of any class of property for the purpose of:
 - (i) providing education and medical aid to all or any specified class of citizens or
 - (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or
 - (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves ; or
 - (f) any existing law or any law made in pursuance of Article 253.

4. *The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.*

The above referred constitutional provisions provide complete protection to all individuals and citizens and the emphasis has been placed on the term “in accordance with law”, whereas in this case the law referred is the CDA Ordinance, 1960, but if we go through with the entire scheme and record of acquisition proceedings from the submission of request by the appellant/FGEHF to the Prime Minister of Pakistan till its approval and subsequently its stage wise proceedings, it has been observed with great concern that all public officials representing the Federal Government are the members of the scheme launched by the appellant/FGEHF, who themselves allowed the scheme being public office holders at one end and at the same time they are members of the appellant/FGEHF and got the benefit while holding their official positions, rather they, in conflict of interest, have taken certain decisions without observing the law, even the conduct of the CDA officials, who are available at the helm of affairs at the relevant point of time have failed to observe the requirements of regulations i.e. the ICT Zoning Regulations, 1992, ILDR, 2005, and CDA Ordinance, 1960 and they themselves violated the law and have ignored the zoning regulations in particular, whereas the intention of the law maker while creating the Capital Development Authority has to be seen in the light of reported judgment **PLD 2011 SC 619 (Suo Motu Case No.13 of 2009):**

(c) Capital Development Authority Ordinance (XXIII of 1960)---

S. 12---Islamabad Capital Territory (Zoning) Regulations, 1992, Regln. 4(1)A(iv)---Preparation of schemes---Capital Development Authority could not have extended the scope of section 12 by framing regulation and allowed preparation of schemes by the private organizations even with prior approval of the Federal Government---Such was something not envisaged by the Ordinance and something, not permitted by the statute and could not be allowed to be done by the subordinate legislation.

(d) Islamabad Capital Territory (Zoning) Regulations, 1992---

Regln. 4(1)A(iv)---Capital Development Authority Ordinance (XXIII of 1960), Ss.12, 2(a)(j) & 13---Preparation of schemes---Exception to clause (iv) of Regulation 4(1)A, Islamabad Capital Territory (Zoning) Regulations, 1992

providing for development of a private scheme falling in the Zone, which was to be developed by the Capital Development Authority, either itself or through an agency of the Federal or a Provincial Government or a local body, in terms of section 12 read with section 2(a) & (j) of the Capital Development Authority Ordinance, 1960 is inconsistent with the Ordinance, and hence inoperative--- Such an arrangement was against the primary aim and object of the Ordinance as reflected in its Preamble, viz., "the Capital Development Authority was established for making all arrangements for the planning and development of Islamabad within the framework of a regional development plan", which was further reinforced by section 13 of the Ordinance, which provided that the Authority may, pursuant to the master programme, itself prepare schemes relating to matters enumerated in subsection (2) of section 12 of the Ordinance--Joint Venture Agreement by Capital Development Authority with a private organization for developing scheme was not sustainable.

31. The apex Court while interpreting the provisions of the ICT Zoning Regulations, 1992 has placed an embargo upon the CDA for granting permission for preparation of a scheme by any private organization, even with the prior approval of the Government as Section 12 of the CDA does not permit such kind of concepts due to the very intent of the law as the CDA is only allowed and permitted to work in terms of Section 11, which is only for the establishment of master phase program and completion of said program, therefore, in our humble view the entire working of the appellant/FGEHF and the CDA authorities in combination of other public officials made a *regulatory capture* which occurred when a regulatory agency, created to act in the public interest instead advance the commercial or special concern of interest group that dominated the industry or sector it was charged with regulating. Regulatory capture was a form of Government failure and it occurred when special interest, typically an industrial group, persuaded Government actors to exercise the coercive powers of the state in ways that were not in the *public interest* i.e. the interest of the industry group diverged from the public interest, the Government choose the former over the later. Reliance is placed upon PLD 2013 Lahore 343 (Barrister Sardar Muhammad vs. Federation of Pakistan), 2015 SCMR 1739 (Lahore Development Authority vs. Mrs. Imrana Tiwana), 2013 SCMR 1159 (Muhammad Ashraf Tiwana vs. Pakistan), and PLD 2015 Lahore 522 (Mrs. Imrana Tiwana vs. Province of Punjab).

32. It is the duty of the Government to protect the rights of the individual and when the statutory duty has not been performed in acquiring the land in violation of article 24 of the Constitution of the Islamic Republic of Pakistan, 1973, the Courts restricted to exercise their powers of judicial review, and even in one of the celebrated case reported as PLD 1972 SC 279 (The Murree Brewery Co. Ltd. vs. Pakistan through the Secretary to Government of Pakistan, Works Division):

(b) *Capital Development Authority Ordinance (XXIII of 1960), Ss. 25 & 22-Acquisition, not for any of the purposes mentioned in Ordinance and made in flagrant violation of provisions of Ordinance-Without lawful authority and of no legal effect-Different reasons given at different times for acquisition of property; Master Plan not showing property to be earmarked for purpose for which it was acquired ; no scheme framed under Ordinance applicable to acquisition of property In question ; unnecessary hurry in the process of acquisition; acquisition purely for fiscal reason rather than immediate necessity-Acquisition, in circumstances, held, mala fide in law.*

Where the contention was that section 22 of the Capital Development Authority Ordinance, 1960 gives the Authority untrammelled power of acquisition in respect of all lands within the Specified Area.

Held : The contention that the C. D. A. has unlimited and undefined power to acquire all land within the Specified Areas was not acceptable. Any acquisition within these areas must have a reasonable reference to the purpose of the Ordinance, and must be carried out strictly in accordance with its provisions.

Where, therefore, in the Master Plan the site where the disputed property stood had been shown as earmarked for 'Open Space', acquiring the disputed property "for providing suitable accommodation" for the more efficient functioning of the President's Secretariat" was held not only to be outside the purpose of the Ordinance and the function of the C. D. A. but also not covered by any scheme framed under the Ordinance. Merely putting a label on the acquisition that this is "for the construction of the Capital, Islamabad" will not automatically make it an acquisition for the purpose of the Ordinance. Nor does it shut out a Court of law from inquiring into the real purpose of the acquisition.

The very scheme and purpose of the Ordinance make it clear that the planning and development must proceed in accordance with some scheme approved by the Central Government.

Section 22 of the Ordinance provides that all land within the Specified Areas shall be liable to acquisition at any time in accordance with the provisions of this Chapter.

Section 25 of the Ordinance gives the powers to acquire land. Section 25 has categorically provided that the land can be acquired for the purposes of the Ordinance subject to the other provisions of this Ordinance, the rules made thereunder, and the directions of the Authority. This naturally takes back, inter alia, to the provisions of sections 11, 12, 13 and 14 of the Ordinance. Apart from the purpose of the Ordinance, however, the acquisition under the Ordinance has to be made in pursuance of a scheme framed under the Ordinance.

The acquisition was held to be mala fide in the following circumstances

(i) *Different reasons were given at different times for the acquisition of the property;*

- (ii) *The Master Plan did not show that the land occupied by the property in dispute was earmarked for setting up the Presidential Secretariat; on the contrary the Plan showed quite a different place, at a considerable distance from the property in dispute, as earmarked for setting up the Presidential Secretariat;*
- (iii) *No scheme appear to have been framed under the Ordinance which is applicable to the acquisition of the property in question;*
- (iv) *The scheme was pro used at a very belated stage of the writ petition.*
- (v) *The acquisition of the property when it was already under requisition and in use for the same purpose;*
- (vi) *The unseemly hurry in the process of the acquisition.*

33. ILLEGALITIES, IRREGULARITIES, & IMPORTANT FACTS OBSERVED BY THIS COURT

- i.) On 04.11.2013, the Prime Minister of Pakistan has turned down the summary for acquiring land for Federal Government Employees Housing Foundation in Sectors F-14 and F-15 under the Land Acquisition Act, 1894 on the objection of CDA.
- ii.) Summary of acquisition was again submitted before the Prime Minister without recording any reasons for review of earlier order.
- iii.) The CDA authorities have raised the objection against the acquisition and development of scheme by the appellant/FGEHF on the following reasons:
 - any private housing scheme is not allowed in Zone-I of the ICT.
 - Sector F-14 cannot be planned to provide 7000 small category plots by the appellant/FGEHF as per its requirements.
 - In “F” sectors the number of plots is much less than 7000.
 - Allocation of sectors to another organization would deprive CDA from funds recovered through sale of commercial plots to meet the expenditure of trunk infrastructure.
 - Allocation of Sector F-14 to the FGEHF for allotment to Federal Government employees and Supreme Court Bar Members would be in violation of the ILDR, 2005.

- Inclusion of quota for lawyers in the ILDR, 2005 will establish a precedent for other professions, increase litigation and erosion of space for CDA to develop sectors for general public.
- iv.) The approval of housing scheme proposed in Sectors F-14 and F-15 was accorded by the Prime Minister of Pakistan without placing the proposal before the federal cabinet as required in Mustafa Impex case (PLD 2016 SC 808).
- v.) No public purpose has been defined in the summary and request for acquisition is only made for the Federal Government employees.
- vi.) The compensation offered to affectees of the acquisition has not been determined under the rehabilitation regulations and CDA Ordinance, 1960.
- vii.) The acquired land has not been vested in the Government as required under the Land Acquisition Act, 1894.
- viii.) The acquired land was transferred in the name of appellant/FGEHF.
- ix.) The classification of categories and quota referred in the brochure/scheme of FGEHF excludes a large number of people which is discriminatory.
- x.) No reason has been established to justify the quota of constitutional bodies and journalists.
- xi.) The specified areas are only meant for preparation of scheme by the CDA authorities only for the purpose referred in the CDA Ordinance, 1960, all other concepts stand excluded.
- xii.) The master plan has divided the specified areas into 5 Zones and described in Regulation 3, whereas Regulation 4(1)(A) relates to un-acquired land falling in Zone-1, which is restrictive in its concept.

- xiii.) Zone-I shall be acquired under phase program and developed by the CDA authorities in accordance with the land use as given in the Master Plan.
- xiv.) The CDA Ordinance, 1960 is a special law, whereas the Land Acquisition Act, 1894 is a general law and not applicable in the acquisition of any land in specified areas (ICT).
- xv.) The CDA Ordinance, 1960 is a special law, and thus overrides the provisions of the Land Acquisition Act, 1894.
- xvi.) The land could not be acquired for a private company for the benefit of specific subject/members of the appellant/FGEHF in specified areas.
- xvii.) The public funds can only be utilized for public purpose and in acquisition of Sectors F-14 and F-15, the funds were collected through Federal Government servants by the appellant/FGEHF for their benefit only, hence, the purpose is personalized and not for public.
- xviii.) Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973, right to life, has been violated in the process of acquisition of land in Sectors F-14 and F-15.
- xix.) Article 173 of the Constitution of the Islamic Republic of Pakistan, 1973, power to acquire property, has been violated as the land has been vested to the appellant/FGEHF instead of the Federal Government which shows that the purpose behind the acquisition is not the public purpose.
- xx.) The Federal Government, directly or indirectly, is not empowered to deal with or engage in matters relating to development, town planning or housing, otherwise than as expressively provided under Section 5 of the CDA Ordinance, 1960.

xxi.) The Layout Plan was approved by the CDA on 06.07.2017 in its Board meeting for Sector F-14, Islamabad with certain terms and conditions whereas following illegalities have been observed in the said LOP.

3. *The approval of the Layout Plan is subject to the following Terms and Conditions, which shall be strictly adhered to by the FGEHF:*

- i. *In compliance with the approval of the Prime Minister of Pakistan, CDA shall enter into a Joint Venture with FGEHF on the basis of sharing Commercial Plots, through mutual collaboration and on mutually beneficial terms and conditions.*
- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix. *FGEHF shall arrange, at their own cost, the entire development of Approved Area without any obligation on the part of the CDA.*
- x.
- xi.
- xii. *The Approved Area shall have independent Water Supply and Primary Sewage Treatment System will be arranged by the FGEHF at their own cost.*
- xiii. *The provision of Water Supply will be sole responsibility of FGEHF and cda would assume no responsibility for the supply of water to the residents of the Sector.*
- xiv. *The disposal of sewage shall be made through the trunk sewer which will terminate at a Sewerage Treatment Plant for Primary Treatment, which shall be constructed by FGEHF, in Sector F-15.*
- xv. *The provision of standardized Solid Waste Management/Disposal in the Approved Area shall be the responsibility of the FGEHF.*
- xvi.
- xvii.
- xviii.
- xix.
- xx.

- xxi. *After completion and allotment, the Approved Area shall be maintained by the FGEHF.*
- xxii. *.....*
- xxiii. *.....*
- xxiv. *.....*
- xxv. *All un-acquired pockets of land within the Approved Area (if any) will be acquired by the FGEHF. However, by no means any hurdle/obstacle, change will be created, on the un-acquired/un-purchased land. Any un-acquired land falling within the boundary of the Sector, would never be used for any purpose & by any means, until and unless a settlement is reached between the landlords and the FGEHF. The un-acquired pockets of land should be retained as it is and these shall not be land locked. Once such land is acquired/purchased by the FGEHF, its use shall be got approved from CDA.*

xxii.) As per Regulation 4 of the Islamabad Land Disposal Regulations, 2005, the plots shall be sold or leased out by the authority according to provisions given for each category of plots and allotment shall be subject to the terms and conditions contained in the respective allotment letter, however the CDA authorities/Board may decide to join venture with any private sector or agency for a specific project. Whereas, Regulation 5 provides the concept of residential plots and developed sectors, wherein 75% of the plots shall be marketed through open balloting, 10% to the Federal Government servants, employees of autonomous and semi-autonomous, 5% to the defence service personnel, 5% to the deprived groups including widows, orphans, etc., and 5% to the CDA employees. Both the said regulations have been violated by the CDA themselves by issuance of LOP to the appellant/FGEHF which resulted into conversion of quota beyond the scheme of the Islamabad Land Disposal Regulations, 2005.

- xxiii.) The Islamabad Residential Sector Zoning (Buildings Control), 2005, provides complete mechanism for construction parameters, approval of plans, utilities, including water supply, connection to sewerage and storm water sewerage lines as well as safety standards which were provided by the CDA authorities, and no other agency falls within that mandate to enter into such municipal functions.
- xxiv.) The CDA authorities while issuance of the LOP dated 06.07.2017, violated their own regulations and provisions of the CDA Ordinance, 1960 while sub delegating the municipal functions which are not permissible.
- xxv.) In terms of modalities and procedure framed under ICT (Zoning) Regulations, 1992, a housing scheme can be sponsored by registered company or cooperative society within Zone-II and Zone-V only subject to other terms and conditions, whereas the Layout Plan approved by the CDA Board is in violation of the said Zoning Regulations.
- xxvi.) In terms of the ICT Zoning Regulations, 1992, the ICT has been divided into 5 Zones, whereas the appellant/FGEHF has given the LOP for Zone-I, whereas the said zone is comprised of un-acquired sectoral area with the following terms:
- A. *Unacquired Sectoral Areas. In these areas of Zone-1,*
- (i) *Land shall be acquired under a phased programme and developed by the Authority in accordance with the land use pattern spelled out in the Master Plan;*
 - (ii) *No sale/purchase of land which entails change in land use shall be allowed;*
 - (iii) *No construction of houses or buildings shall be allowed. However, repair of old houses and expansion of existing houses may be allowed by the Authority to the native residents subject to the conditions that the site is located within the main body of the village. The covered area of such construction shall not exceed 1000 Square feet including expansion and such permission shall not*

- in any way impede the right of the Authority to acquire the property whenever needed; and*
- (iv) *No private scheme of any kind whatsoever shall be allowed, except in Sector E-11, Schemes in E-11 will be regulated according to the provisions applicable to schemes in Zone 2.*

34. The above referred observations persuaded this Court to hold that the acquisition proceedings are contrary to law from day one as the very purpose behind the acquisition proceedings of the areas situated in Sectors F-14 and F-15 are against the scope of Section 11 and 12 of the CDA Ordinance, 1960. The officials of CDA, Ministry of Housing and Works, and other officials, who are involved in the process to achieve the acquisition of Sectors F-14 and F-15 for Federal Government employees/members of the appellant/FGEHF, have no authority to deviate from the law and create an interest. This entire exercise has been done with malafide and in complete disregard to Article 24 of the Constitution of the Islamic Republic of Pakistan, 1973 as well as in violation of Article 9, right to life, of the individual citizens, who are owners of the land in the said areas. The state functionaries have failed to perform their lawful duties on a required standard after due care and caution which amounts to a regulatory capture and the learned Single Judge in Chambers has rightly observed the concept of state largesse as the public purpose has been defeated, although the said purpose has been seen in the light of the Land Acquisition Act, 1894, whereas the intention of the legislature in the CDA Ordinance, 1960 is the development of master phase program of the Islamabad Capital Territory in the specified areas, which is entirely different with the said public purpose rather the public purpose is dependent upon Section 11 and 12 of the CDA Ordinance, 1960 and unless such purpose has to be routed through the said provisions of the CDA Ordinance, 1960, every step taken towards the acquisition of Sectors F-14 and F-15 is illegal and void. The public functionaries involved in this case have also not considered the true intent of Article 173 of

the Constitution of the Islamic Republic of Pakistan, 1973, where properties can only be acquired for the purpose of the Federation or of a Province and shall vest in the Federal Government or in the Provincial Government as the case may be, whereas in this case the land was directly transferred to the appellant/FGEHF, which is a clear cut violation of the constitutional provisions. The acquisition proceedings of Sectors F-14 and F-15 are the classic example of deviation from law, violation of constitutional guarantees, compromise on the state assets, and failure on the part of state authorities for their personal gain and interest.

35. The appellant/FGEHF is a company, registered with SECP, under its own objectives and could not take benefit of state machinery to create an interest of civil servants or some other classes which were later on included by them in conflict of their own objectives, the appellant/FGEHF is a company having no difference with any other land developer, society, who can purchase the land from the market to establish their own housing scheme, therefore, the appellant/FGEHF is not permitted to initiate any acquisition proceedings in future in any part of the specified areas of the Islamabad Capital Territory in any manner as it will amount to personalized benefits for a particular class which is a violation of fundamental guarantees and rights of other citizens envisaged in the Constitution of the Islamic Republic of Pakistan, 1973. Even otherwise, if the appellant/FGEHF includes all categories of citizens in their objectives while preparing a scheme of any sector, even then it is not their function under the CDA Ordinance, 1960 rather it is the function of the State, which has ascribed to the CDA under their own law to establish the Islamabad Capital Territory, therefore, any permission or NOC by the CDA Board or CDA authorities through which any other organization, agency, and society, which overrides the functions of the CDA, is also illegal and void. The core law which

prevails in the Islamabad Capital Territory for the acquisition purpose is the CDA Ordinance, 1960 in terms of Article 24 read with Article 173 of the Constitution of the Islamic Republic of Pakistan, 1973 and application of any other law, procedure stand excluded as specified areas is only to be utilized in accordance with Section 11 and 12 of the CDA Ordinance, 1960. Similarly, if the FGEHF intended to include any other class of people e.g. doctors, engineers, teachers, businessmen, etc. in any scheme of foundation, they can do so after amending their objectives in accordance with law.

36. In view of above reasons, we are agreed to the findings given by the learned Single Judge in Chambers in the impugned judgment, therefore, all the captioned ICAs are hereby dismissed having no merits.

37. Before parting with this judgment, we have extended the right of hearing to all individuals who have filed their civil miscellaneous applications for impleadment in these appeals, and their arguments have been heard along with the main case. Since the issue in hand has been resolved, all the CMs stand dismissed.

38. During the course of hearing, we observed that the appellant/FGEHF has made huge payments to different individuals for the purpose of acquiring land and even the Federal Government servants, who have deposited their amounts for the purpose of their allotment, therefore, we hereby direct that the appellant/FGEHF should take a decision for the payments received from the Federal Government servants/members for the purpose of allotment within the period of 30 days as to whether they wanted to return the amount or otherwise. Whereas, the individuals/owners/affectees, who have received the payments through the Land Acquisition Collector, are directed to return the amount within period of three (03) months to the Land Acquisition Collector in shape of

pay orders and unless the payment has not been returned, their land holdings shall not be discharged from the encumbrance and remain under the control of the Collector, Islamabad. Similarly, the individuals/affectees, who have received the payments against the built-up properties claims, are also directed to return the amount within the period of three (03) months, otherwise they will be burdened with the costs for delayed payments as recommended by the Collector, Islamabad. Any other kind of payments made by the appellant/FGEHF to any private party/contractor for their own purposes has to be claimed by them through their independent mechanism or they can seek the legal remedies under the law for recovery of the said amounts. Lastly, the CDA authorities are well within their rights under the CDA Ordinance, 1960 to implement the master phase program as provided in Section 11 and 12 of the CDA Ordinance, 1960 and develop Sectors F-14 and F-15 as per their own decision in consultation with the Federal Government, if so required.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: September, 2018.

JUDGE

JUDGE

Khalid Z.

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