

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

W.P.No.2739 of 2016  
Park View Enclave (Private) Limited  
**Versus.**  
Capital Development Authority and others

**Date of Hearing:** 21.12.2017  
**Petitioner by:** Mr. Mujeeb-ur-Rehman Kiani, and Syed Qamar Hussain Sabzwari, Advocates.  
**Respondents by:** M/s G. Shabbir Akbar, and Kashif Ali Malik, Advocates for the CDA.  
Ms. Sitwat Jehangir, learned Assistant Attorney-General.

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**MIANGUL HASSAN AURANGZEB, J:-** The relief prayed for by the petitioner, Park View Enclave (Private) Limited, in the instant writ petition, is as follows:-

*“It is, therefore, respectfully prayed that while exercising writ jurisdiction conferred upon this Honourable Court under Article 199 of the Constitution of Islamic Republic of Pakistan, this Honourable Court may graciously be called upon to declare the impugned notification dated 07.11.2014, whereby, the respondents cancelled/withdrawn the NOC issued dated 02.05.2014, as illegal, without jurisdiction and having no legal effect upon the rights of the petitioner and it may graciously be restored.*

*It is further prayed that decision taken by the CDA Board whereby the NOC cancelled by the CDA was approved is, be declared to have no legal affects upon the rights of the petitioner and is against the Cabinet decision dated 21.04.2010.”*

2. The petitioner is a developer of commercial and residential projects. The petitioner purchased land measuring 1067.90 Kanals in Revenue Estate Malot, situated in Zone-IV of the Islamabad Capital Territory (“I.C.T.”) for the purpose of launching a housing scheme by the name of “Park View City Housing Scheme”. On 14.02.2013, the Planning Wing of the Capital Development Authority (“C.D.A.”) approved the layout plan for the said housing scheme subject to several conditions. One such condition was that the petitioner was to provide a 100-foot wide access/approach road to the said housing scheme. Furthermore, the petitioner could not carry out any

developmental work unless a No Objection Certificate ("N.O.C.") for development was obtained from C.D.A.

3. The Board of C.D.A., in its meeting held on 17.04.2014, approved the issuance of an N.O.C. in the petitioner's favour for the development of the said housing scheme. Vide letter dated 02.05.2014, the C.D.A. conveyed the said approval to the petitioner. The issuance of the N.O.C. was also subject to several conditions. In developing the said housing scheme, the petitioner was required to strictly follow the layout plan approved by the C.D.A. on 14.02.2013.

4. It is an admitted position that under the provisions of the I.C.T. Zoning Regulations, 1992, the petitioner was required to transfer to the C.D.A., free of charge, the land reserved in the said housing scheme for roads, parks, graveyards, public buildings, etc. Vide registered transfer deed dated 25.04.2013, the petitioner transferred to the C.D.A., 500 Kanals, 11 Marlas of land reserved for roads, parks, and graveyards etc., in the said housing scheme. The C.D.A. was of the view that the land so transferred by the petitioner was deficient by 79.43 Kanals. Vide letters dated 20.08.2014, and 15.09.2014, the C.D.A. called upon the petitioner to transfer land measuring 79.43 Kanals in the said housing scheme, to the C.D.A. Since the said land was not transferred in C.D.A.'s favour, the C.D.A. vide letter dated 07.11.2014, cancelled/withdrew the N.O.C. dated 02.05.2014. Perusal of the said letter dated 07.11.2014, shows that the N.O.C. was cancelled only because the petitioner had not transferred land measuring 79.43 Kanals in C.D.A.'s favour.

5. Vide letter dated 11.11.2014, the petitioner sent a draft transfer deed for the transfer of 79.43 Kanals to the C.D.A., for its approval. In the said letter, the petitioner requested the C.D.A. to withdraw the cancellation of the N.O.C. after execution of the transfer deed. Vide letter dated 12.12.2014, the C.D.A. sent to the petitioner the approved transfer deed for the transfer of the said land. Furthermore, the C.D.A. requested the petitioner to furnish the registered deed along with the *fard jamabandi* to the C.D.A. "for taking further necessary action". On

12.12.2014, a registered transfer deed was executed whereby land measuring 79 Kanals, 09 Marlas of and in the said housing scheme reserved for club house, hospital, school, society office, mosque, and disposal station, was transferred in C.D.A.'s favour. The petitioner along with its letter dated 31.12.2014, sent the registered transfer deed and the *fard jamabandi* with respect to the 79 Kanals, 09 Marlas, to the C.D.A., and requested the C.D.A. to restore the N.O.C.

6. After a long period of silence, the petitioner vide letter dated 08.06.2016, again requested the C.D.A. to restore the N.O.C. Having received no response from the C.D.A., the petitioner on 04.07.2016 instituted the instant writ petition. By the time the said writ petition was filed, the petitioner had transferred more than 579 Kanals, in Revenue Estate Malot, in C.D.A.'s favour.

7. On 07.12.2016, the learned counsel for the C.D.A. submitted that the petitioner's case for the revival of the N.O.C. was under consideration by the C.D.A. Vide order dated 07.12.2016, this Court directed the C.D.A. to afford an opportunity of hearing to the petitioner and to resolve the issue within a period of two weeks. The outcome of the said process was required to be intimated to this Court. On 23.01.2017, learned counsel for the C.D.A. informed the Court that the petitioner had been afforded an opportunity of hearing, but no decision could be taken due to an injunctive order passed by the Court of the learned Civil Judge, Islamabad. As per the learned counsel for the petitioner, the learned civil Court had, vide order dated 16.11.2016, passed in civil suit titled "Muhammad Shabbir Khan Abbasi Vs. Abdul Aleem Khan etc", declined to grant an interim injunction. The said suit was said to have been withdrawn on 08.12.2016. Learned counsel for the petitioner submitted that on account of the said withdrawal, there was no impediment before the C.D.A. to take a decision strictly in accordance with the law on the matter regarding the withdrawal of the N.O.C. The learned counsel for the C.D.A. sought some time to go through

the records in order to determine whether or not there was an injunctive order in the field.

8. On 09.02.2017, the learned counsel for the C.D.A. submitted that one of the conditions on which the N.O.C. was granted to the petitioner was that a 100-foot wide access road to the housing scheme had to be provided; and that the C.D.A. was not satisfied with the petitioner's ownership of the land whereon the access road had been constructed. Vide order dated 09.02.2017, this Court observed that a meeting should take place between the petitioner and the C.D.A. so as to satisfy the latter about the petitioner's undisputed ownership of the land on which the access road had been constructed. This Court directed the petitioner to provide proof of its ownership of the said land duly verified by the Tehsildar, I.C.T. The C.D.A. was required to scrutinize the petitioner's case for the revival of the N.O.C. in accordance with the law, and to inform the petitioner about the deficiencies or impediments in the revival of the N.O.C.

9. On 27.02.2017, the learned counsel for the petitioner placed on record an attested copy of the Tehsildar's report, which showed that the petitioner was the owner of the 100-foot wide access road from Malot Road to the housing scheme. The stance taken by the learned counsel for the C.D.A. was that the 100-foot wide access road which the petitioner was supposed to provide in terms of clause-j of the conditions on which the petitioner's layout plan was approved was to be from Kurri Road, which was at a distance of almost 03 kilometers from the said housing scheme. The petitioner had provided the access road to the housing scheme from the pre-existing Malot Road. Since the conditions of the layout plan had not required the petitioner to provide the access road from any particular road, this Court, vide order dated 27.02.2017, required the C.D.A. Board to consider the matter and take a decision in the light of the applicable Regulations.

10. The C.D.A. Board in its meeting held on 09.06.2017, decided *inter-alia* that for housing schemes spreading over 1001 Kanals and above, the width of the access road was to be 100

feet (dual carriageway) from the nearest “arterial road”. This condition was said to be a pre-requisite for the issuance of an N.O.C. For the housing schemes falling in Zone-IV of the I.C.T., Kurri Road was one of the roads declared as an “arterial road” for the purpose of providing an access to a private housing scheme. While taking the said decision, the C.D.A Board was aware of the fact that in the past the C.D.A. had approved the layout plan and issued N.O.C. to some private housing schemes in Zone-IV and V having an approach from revenue roads which were normally 18 to 22 feet wide. This the C.D.A. did not find desirable from a planning point of view as it was apprehended that it would lead to congestion of traffic.

11. Since a resolution of the dispute between the petitioner and the C.D.A. was not in sight, the learned counsel for the contesting parties advanced their arguments on the main case.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-**

12. Learned counsel for the petitioner after narrating the facts leading to the filing of the instant petition submitted that the petitioner had invested a huge amount by purchasing 1,067 Kanals in Revenue Estate Malot, Islamabad for the purpose of launching a housing scheme; that on 14.02.2013, the C.D.A. approved the layout plan for the petitioner’s housing scheme; that in the said layout plan, a provision for a 100-foot wide access road from Malot road was made; that on 02.05.2014, an N.O.C. for the petitioner’s housing scheme was issued by the C.D.A.; that as per the terms of the said N.O.C., the petitioner was supposed to carry out development works in accordance with the layout plan already approved by the C.D.A.; that the petitioner had transferred 500 Kanals and 11 Marlas of land reserved for public purposes in C.D.A.’s favour through a registered transferred deed dated 25.04.2013; that on 07.11.2014, the C.D.A. cancelled the N.O.C. for the petitioner’s housing scheme only on the ground that land measuring 79.43 Kanals had not been transferred in C.D.A.’s favour; that after the C.D.A. approved the draft transfer deed for the transfer of 79.43

Kanals, the petitioner vide registered transfer deed dated 12.12.2014 transferred 79 Kanals 9 Marlas in C.D.A.'s favour; that the C.D.A. accepted the transfer of this land without any demur or reservation; that vide letters dated 31.12.2014 and 08.06.2016, the petitioner requested the C.D.A. to restore the N.O.C.; that since the C.D.A. did not restore the N.O.C., the petitioner instituted the instant writ petition before this Court; that after the transfer of 79 Kanals 9 Marlas of land in C.D.A.'s favour, there was no reason for not restoring the N.O.C.; that the C.D.A. was avoiding the restoration of the N.O.C. on one false pretext or the other; that sometimes the C.D.A. would raise an objection about the petitioner's ownership of the land on which the access road was to be constructed, and sometimes it would take the position that the civil Court had issued an injunctive order; that the petitioner has satisfied the C.D.A. about the petitioner's undisputed ownership of the land on which the access road is to be constructed; and that there is no stay order issued by a civil Court restraining the C.D.A. from restoring the N.O.C.

13. Learned counsel for the petitioner further submitted that during the pendency of this petition, the C.D.A. tried to impose new conditions on the petitioner's housing scheme; that the position taken by the C.D.A. was that the petitioner was required to make the access road to the housing scheme from the nearest arterial road i.e. Kurri Road, which is almost three kilometers away from the petitioner's housing scheme; that in the N.O.C. dated 02.05.2014, there was no requirement of providing an access road to the petitioner's housing scheme from Kurri Road; that the layout plan approved by the C.D.A. on 14.02.2013 provided for an access road to the petitioner's housing scheme from Malot Road, and not from Kurri Road; that the requirement of a 100-foot wide access road to the petitioner's housing scheme from Kurri Road is a highly unreasonable and onerous condition, which was imposed on the petitioner by the C.D.A. during the pendency of this writ petition; that the imposition of the said condition necessitated an amendment in this writ

petition so as to throw a challenge the said condition; that the petitioner has a legitimate expectation for its N.O.C. to be restored without the condition of the provision of a 100-foot wide access road to the petitioner's housing scheme from Kurri Road which is at a distance of almost three kilometers from the petitioner's housing scheme.

14. Learned counsel for the petitioner further submitted that the C.D.A. cancelled the petitioner's N.O.C. on the ground that land measuring 79.43 Kanals had not been transferred to the C.D.A., and not on the ground that a 100-foot wide access road to the petitioner's housing scheme from Kurri Road had not been provided; that the condition of a 100-foot wide access road from the nearest arterial road/Kurri Road was not a requirement prior to the C.D.A. Board's decision dated 09.06.2017; that had the provision of a 100-foot wide access road to the petitioner's housing scheme from the nearest arterial road/Kurri Road been a legal requirement prior to the C.D.A. Board's decision dated 09.06.2017, the C.D.A. would not have approved the petitioner's layout plan which provided for a 100-foot wide access road from Malot Road, which is almost adjacent to the petitioner's housing scheme; that the said fresh condition has been imposed by the C.D.A. with the intention to frustrate the success of the petitioner's housing scheme; that the petitioner had already sold 421 out of 579 plots in the petitioner's housing scheme to third parties; that till date, the petitioner had incurred Rs.1,80,283,958/- as administrative expenses and Rs.8,17,162,003.74 as development related expenses; that it is virtually impossible for the petitioner to acquire land over a stretch of about three kilometers (from the petitioner's housing scheme to the nearest point on Kurri Road) and road thereon, since there are several graveyards, mosques and schools on such land. Learned counsel prayed for the writ petition to be allowed and a direction to be issued to the C.D.A. to restore the N.O.C. for the petitioner's housing scheme without the condition of providing a 100-foot wide access road from the nearest arterial road/Kurri Road.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE C.D.A:-**

15. On the other hand, learned counsel for respondent No.1/C.D.A. submitted that clause-a of C.D.A.'s letter dated 14.02.2013, whereby the layout plan for the petitioner's housing scheme was approved, provided that no development work can take place at the petitioner's housing scheme until an N.O.C. for development was issued by the C.D.A.; that an N.O.C. was issued to the petitioner on 02.05.2014, but the same was cancelled on 07.11.2014 because the petitioner had not transferred 79.43 Kanals of land in the said housing scheme to the C.D.A.; that prior to the cancellation of the N.O.C., the C.D.A. vide letters dated 20.08.2014, 15.09.2014 and 30.09.2014 had required the petitioner to transfer 79.43 Kanals of land in the said housing scheme to the C.D.A.; that after the cancellation of the N.O.C., the development work carried out by the petitioner was unauthorized and unlawful; that the N.O.C. issued to the petitioner remained valid from 02.05.2014 to 07.11.2014 (i.e. for a period of six months only); that the petitioner could not have incurred administrative expenses of Rs.180,213,958/- and development related expenses of Rs.817,162,003.74 in a short period of six months only; that the petitioner could not have sold plots in the housing scheme without a valid N.O.C.; that vide letter dated 02.06.2017, the C.D.A. informed the petitioner that during the site visit, it had been observed that development work on the housing scheme was under progress even though the N.O.C. had not been restored, and that such development work was in violation of the terms and conditions of the approval of the layout plan; that even though the petitioner was advised by the C.D.A. vide letter dated 02.06.2017 to stop the development work, the petitioner continued with the development by flouting the conditions on which the layout plan was approved; that vide letter dated 23.01.2017, the petitioner was advised by the C.D.A. to stop development work at the site till the N.O.C. was restored; that the petitioner also ignored C.D.A.'s direction to demobilize on the site within a period of seven days; that since the petitioner had carried out development works during the period when the



N.O.C. had been cancelled, it has approached this Court with unclean hands and cannot be granted any equitable relief.

16. Learned counsel for respondent No.1/C.D.A. further submitted that the petitioner was well aware at all material times that a 100-foot wide access road to the petitioner's housing scheme had to be provided from the nearest arterial road; that clause-j of C.D.A.'s letter dated 14.02.2013, whereby the layout plan for the petitioner's housing scheme was approved, required the petitioner to provide a 100-foot wide access/approach road to the housing scheme; that the C.D.A. Board in its meeting dated 03.08.2010 had decided that the access road to a housing scheme in Zone-IV had to have a minimum width of 100 feet (for the scheme fronting on existing narrow roads), and that the sponsors of the housing scheme had to arrange for the access road with width of 100 feet to the extent of the scheme front on the road; that vide letter dated 23.01.2017, the C.D.A. called upon the petitioner to furnish documents verified by the Tehsildar, I.C.T., showing that the petitioner has ownership and possession of the 100-foot wide access road to the housing scheme from the "nearest arterial road"; that again vide letter dated 17.02.2017, the petitioner was called upon by the C.D.A. to provide proof of the petitioner's ownership and possession over the 100-foot wide access road to the housing scheme.

17. Furthermore, learned counsel for the C.D.A. submitted that the C.D.A. had the discretion to modify, alter or relax any of the provision contained in the C.D.A. Regulations; that as a step in the positive direction, the C.D.A. Board in its meeting held on 09.06.2017 decided that in future housing schemes with an area of 1001 Kanals and above had to have a 100-foot wide access road from the nearest "arterial road"; that in the petitioner's case, the nearest arterial road is Kuri Road; that the said decision was made applicable to all housing schemes in Zone-IV; that since the petitioner's N.O.C. had been cancelled when the said decision was taken by the C.D.A. Board, it is also applicable on the petitioner; that the petitioner's N.O.C. cannot be restored unless and until the petitioner makes provision for a 100-foot

wide access road to the housing scheme from Kuri Road; and that since the petitioner had carried out development work despite the fact that its N.O.C. had been cancelled, it does not deserve any relief in the discretionary jurisdiction of this Court. Learned counsel for the C.D.A. prayed for the writ petition to be dismissed.

18. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs No.2 to 10 above, and need not be recapitulated.

19. Since the petitioner's housing scheme is situated in Zone-IV of I.C.T, where housing schemes were not initially permissible, some recital is necessary of the events that led to permission being granted for housing schemes in the said Zone.

20. The C.D.A., in exercise of the powers conferred by Sections 11 and 51 of the C.D.A. Ordinance, made the Islamabad Capital Territory (Zoning) Regulations, 1992 ("the 1992 Regulations"). Under the 1992 Regulations, Islamabad Capital Territory was divided into the following five zones:-

- "(1) Zone-1. This zone constitutes sectors upto the existing alignment of the G.T. road from the point of intersection of G.T. road with Shahrah-e-Kashmir to the point of the Nicolson Monument inclusive of sector H-14, H-15, H-16, H-17, I-14, I-15, I-16, I-17.*
- (2) Zone-2. The zone consists of an area bounded by G.T. road in the north & north east, north of Shahrah-e-Kashmir and Capital limits in the west, comprising residential sectors G-15 (part), G-16, G-17, F-15 (part), F-16, F-17, E-15 (part), E-16, E-17, D-16, D-17, C-17 and B-17.*
- (3) Zone-3. Margallah Hills National Park as notified under section 21 of the Islamabad Wild Life (Protection, Preservation, Conservation & Management) Ordinance, 1979, other protected ranges, forest areas and unacquired land falling between the Margallah Hills & north of Murree Road shall constitute this zone.*
- (4) Zone-4. This zone comprises Islamabad Park and rural periphery wedged between Murree road towards north and Lehtrar road towards south and extending beyond Simly road upto the ICT limits in the north-east. This zone excludes the part of Margallah Hills National Park and Rawal Lake.*
- (5) Zone-5. This zone comprises areas falling south of Islamabad Park and extending upto outer limits of ICT towards south, south west and south east."*

21. Zone-IV was the largest zone with an area of 70,026 acres. This was predominantly a green zone reserved for sports, recreation, agro farms, large institutions and model village schemes. C.D.A. has acquired 12,188 acres of land in Zone-IV. Most of the acquired area had been utilized for the development of agro farms, model villages and construction of buildings for government or government controlled institutions. As regards the un-acquired area, the C.D.A. could not enforce the land use as prescribed in the 1992 Regulations. This resulted in unplanned development and construction of private housing schemes, residential and commercial buildings.

22. The 1992 Regulations initially did not permit private housing schemes in Zone-IV.

23. The Hon'ble Supreme Court of Pakistan, on the basis of a news item published in the newspaper in which comments were made on increase of prices of different commodities in the market due to the loose administration and weak policy of the Government regarding price control, having taken cognizance of the matter in exercise of its powers conferred under Article 184(3) of the Constitution, called for reports from the concerned quarters. This case was numbered and registered at *suo moto* case No.10/2007, and decided on 24.01.2008. The judgment of the Hon'ble Supreme Court is reported as (*PLD 2008 SC 673*).

Paragraph 9 of the said report is reproduced herein below:-

*“9. The main purpose of C.D.A. Ordinance was to plan and develop Islamabad in a proper manner and C.D.A. has to take effective steps to facilitate the people to develop the private owned area to integrate with the rest of development area and to achieve this purpose, irregular uncontrolled and unplanned construction is to be avoided. It is thus essential to frame regular housing and commercial scheme in the area of Zone 4 which cannot be utilized for Farming and in the area in which Farming is possible, minimum size of 4 Kanals of Farm is feasible to make the scheme practicable. The C.D.A. has no unlimited and unlimited and undefined powers to impose restriction on the use of private land in the capital area in an unreasonable manner without carrying out the purpose of C.D.A. Ordinance. The law does not authorize the C.D.A. to deprive the owners of property to use it in lawful manner and thus without the acquisition and payment of compensation no scheme can be prepared by any authority on the private land detrimental to the interest of owners, therefore, C.D.A. may either acquire the land for the purpose of a scheme and*

*earmark. The land for such scheme or remove the unreasonable restriction for not using it for any other purpose except the Agricultural Farming.” (Emphasis added)*

24. The Hon’ble Supreme Court declared the C.D.A.’s byelaws and farming scheme applicable to private land in Zone-IV to be unjust, unreasonable and discriminatory. Furthermore, the Hon’ble Supreme Court gave the following directions reproduced in paragraph No.11 of this judgment:-

*“(1) The Gazette of Pakistan Notification S.R.O. 670 (I)/2007 shall be implemented in letter and spirit and landowners in Zone 4 Islamabad shall be facilitated in getting necessary approvals for development/construction on the private land falling within the purview of notification referred to above.*

*(2) The building bye-laws of C.D.A. shall be made applicable to Zone 4 which necessary and suitable amendment as per need of the area and shall be published in the Electronic and Print Media for information of public in general within one month.*

*(3) The existing Abadies and construction in Zone 4 either residential or commercial raised in violation of bye-laws and J rules referred to above shall be regulated in a proper manner by the C.D.A. with the consultation of Rural Development Department of ICT and representatives of union councils.*

**(4) Subject to the bye-laws and building regulations and approved site plan by the C.D.A., the private land owner in Zone 4 Islamabad shall be allowed to raise residential and commercial construction like other areas and Zones of Islamabad.**

*(5) The land which is surrendered by Abadies or which cannot be utilized for Farming shall be allowed for the construction of housing colonies and commercial building by preparing regular scheme to avoid irregular construction of houses, plazas and shops in the area.*

*(6) The provision in respect of the size of farm houses of 20 Kanals shall apply only to the C.D.A. owned land and shall have no application to private land. The private landowners in Zone 4 shall be entitled to establish Agro Farm of minimum size of 4 Kanal and can also utilize/develop their land for any lawful purpose including the construction of houses and commercial building subject to the bye-laws and regulations as well as approved site plan from C.D.A.*

*(7) In the light of the above directions, the C.D.A. shall amend the rules accordingly to bring the same in consonance to the purpose of C.D.A. Ordinance and to the spirit of law and Constitution.”(Emphasis added)*

25. The implementation of the said directions required changes not just in the 1992 Regulations, but the master-plan of

Islamabad. Under Section 11 of the C.D.A. Ordinance, 1960, a change in the master-plan had to be approved by the Federal Government. Section 11 of the C.D.A. Ordinance, 1960, is reproduced herein below:

*“11. Master-plan and Master-programme.- The Authority shall prepare a master-plan and a phased mater-programme for the development of the Capital Site, and may prepare a similar plan and programme for the rest of the Specified Areas, and all such plans and programmes shall be submitted to the [Federal Government] for approval.”*

26. Zone-IV was proposed to be divided into five sub-zones. Sub-Zone (A) covering 12,188 acres mainly constituted the land which had already been acquired by the C.D.A. Sub-Zone (B) covering 12,941 acres was further sub-divided into two parts, namely Part: B-1 (6805 acres), and Part: B-2 (6136 acres). The petitioner’s housing scheme falls in sub-zone (B) of Zone-IV.

27. For the implementation of the said directions of the Hon’ble Supreme Court of Pakistan, the following major changes in the land use in Zone-IV were proposed by the C.D.A:-

	Subject	Existing	Proposed
a.	Agro-farming	Not less than 20 Kanals	Minimum size of 4 Kanal shall be permissible.
b.	Hosing	No private housing or housing scheme permissible	Hosing schemes in selected areas shall be permissible.
c.	Commercial	No commercial activity is permissible	Commercial activity astride defined major roads shall be permissible on selected locations.
d.	Construction of houses	No construction of houses and expansion of settlement is allowed.	Houses on private land in unutilized patches of built up area shall be allowed, as per CDA byelaws.
e.	Sub-Zones	No provision of sub-zones	Area divided into sub-zones

28. On 08.04.2010, a summary for the Federal Cabinet was moved by the Cabinet Division proposing amendments in the

1992 Regulations, the sub-zonation plan for Zone-IV, and land use changes in Zone-IV. This summary was placed before the Federal Cabinet on 21.04.2010. The relevant extract of the decision of the Federal Cabinet is as follows:-

*“The Cabinet considered the Summary dated 8<sup>th</sup> April 2010 submitted by Cabinet Division on “Amendment in ICT Capital Zoning Regulations, 1992” and approved the proposed amendments in the ICT Zoning Regulations 1992 and the sub-zoning plan for regulating the Zone-IV of the Islamabad Capital Territory”*

29. It is an admitted position that the Planning Wing of the C.D.A. in its summary for the C.D.A. Board on the subject of “planning parameters for land use in Zone-IV” had proposed *inter-alia* the following:-

*“Access to the site would be minimum 100’ (for schemes fronting on existing narrow roads, 100’ width is to be arranged by the sponsors of the scheme to the extent of the scheme front on the road.”*

30. It is also an admitted position that the C.D.A. Board in its meeting dated 03.08.2010, had approved the said proposal.

31. After the said decision of the Federal Cabinet, the C.D.A. amended the 1992 Regulations. The amendments in the proposed land use of Zone-IV were set out in notification S.R.O. 1105(I)/2014, dated 08.12.2014. This notification was published in the gazette of Pakistan on 10.12.2014. The permissible land use for sub Zone-B, in Zone-IV was as follows:-

*“Sub Zone-B*

*8. The area of this sub zone shall be used for planning and development of small scale residential and commercial buildings. Existing residential and commercial developments shall be regularized by CDA. The owners of the existing developments/schemes shall get approval from CDA of their residential and commercial buildings after payment of security fee, regularization, development and commercialization charges as determined and levied by the Authority from time to time. The unutilized patches of land within this sub zone shall be utilized for residential schemes. Minimum contiguous area for such a scheme shall be 50 acres. Other parameters of the schemes shall be governed by the Modalities and Procedures framed under ICT Zoning Regulation 1992 for housing schemes in Zone-2 & 5.”*

32. In order to achieve planned development in Zones-II, IV and V of the I.C.T., and keeping in view the future congestion of traffic in the said Zones, it was proposed that the width of access

road to the housing schemes from the nearest arterial roads may be fixed as follows:-

<b>Sr. No.</b>	<b>Total Area of the Housing Scheme</b>	<b>Proposed width of access road (minimum)</b>
1.	400-700 Kanals	60 feet
2.	701-1000 Kanals	80 ft (dual carriageway)
3.	1001 Kanals and above	100 ft. (dual carriageway)

33. The said proposal was made in the summary dated 01.06.2017 for the C.D.A. Board prepared by the Member (Planning and Development), C.D.A. As mentioned above, for the housing schemes falling in Zone-IV of the I.C.T., Kurri Road was one of the roads declared as an “arterial road” for the purpose of providing an access to a private housing scheme. The said summary was approved by the C.D.A. Board in its meeting dated 09.06.2017.

34. The documents brought on the record show that prior to the C.D.A. Board decision dated 09.06.2017, the C.D.A. Board had decided that for housing schemes fronting on existing narrow roads, an access road with a width of 100 feet was to be arranged by the sponsor of the housing scheme. This decision of the C.D.A. Board (according to the documents filed by the C.D.A.) did not fulfill the desired objective and was required to be reviewed.

35. There is no document on the record which would show that prior to the C.D.A. Board’s decision dated 09.06.2017, a sponsor of a housing scheme with a total area of 1001 Kanals and above was required to provide/arrange a 100 foot wide access road from a main “arterial road” to a housing scheme. Since the earlier decision of the C.D.A. Board was only for a 100-foot wide access road to be provided/arranged by the sponsors of the housing schemes fronting on existing narrow roads, the pivotal question that needs to be determined is whether the C.D.A. Board could review its earlier decision, and require the sponsors of housing schemes (whose layout plans had already been approved, and to whom N.O.C.s had already been issued) to

provide/arrange a 100 feet wide access road to the housing schemes from a main “arterial road”.

36. Now, the first condition of the approval of the layout plan of the petitioner’s housing scheme is that *“no development work shall be carried out in the scheme until the NOC for development is obtained from CDA”*. It is implicit in the said condition that the petitioner must stop the development work when the N.O.C. is cancelled or withdrawn. By not stopping the development work after the cancellation or withdrawal of the N.O.C., the petitioner violated the terms and conditions on which the layout plan was approved, and soiled its hands.

37. Vide letter dated 23.01.2017, issued by the Planning Wing of C.D.A., the petitioner was warned that the development work on the scheme had been started without permission from the C.D.A. This, the C.D.A. asserted, was cognizable offence under the C.D.A. Regulations. Furthermore, the petitioner was advised to stop the development at the site till the no objection certificate was restored by the C.D.A. The said warning was again issued by the Planning Wing of the C.D.A to the petitioner, vide letter dated 17.02.2017.

38. Apparently, the petitioner continued with the development work despite the said warnings issued by the Planning Wing of C.D.A. Vide letter dated 02.06.2017, the Planning Wing of C.D.A., again voiced its concern over the petitioner continuing with the development work without restoration of its N.O.C. The petitioner was put on notice that such development work was in violation of the terms and conditions on which the layout plan was approved on 14.02.2013. The petitioner was advised in its own interest to stop the development work until an N.O.C. was obtained from the C.D.A. The petitioner was cautioned that in the event of failure to stop the unauthorized development work within seven days, the C.D.A. would initiate legal action, including the cancellation of the layout plan, and the imposition of penalties.

39. The C.D.A’s said warnings fell on deaf ears. Even during the pendency of this petition, the learned counsel for the C.D.A.



complained about the fact that the petitioner was continuing with the development work without an N.O.C. In the order dated 27.02.2017, this Court observed that anything done at the site by the petitioner during the pendency of this case, shall be entirely at its own risk and costs. The learned counsel for the petitioner did not deny that despite the cancellation of the N.O.C., the petitioner continued with the development work at its own risk. In the case of Al-Haaj Raees Ahmad Qureshi Vs. Water and Sanitation Agency (W.A.S.A.) (2005 YLR 326), it has been held *inter-alia* construction of a building without a sanctioned building plan was allowed by the High Court through an interim order at the petitioner's risk and cost. It was held that such an order would not create any right in the petitioner's favour.

40. Now, if this writ petition is to be allowed, this Court would either have to turn a blind eye or to simply condone the development work carried out by the petitioner despite the cancellation of the N.O.C. It ought to be borne in mind that the Planning Wing of the C.D.A. had time and again cautioned the petitioner not to carry out development work until the N.O.C. was restored. Scant regard was given by the petitioner to such advice. The instant case is not a case where the terms of the N.O.C., after its issuance, were amended so as to operate to the petitioner's detriment. The principle of promissory estoppels or legitimate expectation would not apply to the case at hand because the terms and conditions of the N.O.C. or the layout plan were not amended so as to make them more onerous to the petitioner during the validity of the N.O.C. The decision of the C.D.A. Board to require every housing scheme to have a 100 foot wide access road (dual carriageway) from an "arterial road" was made across the board and applied to all parties setting up housing schemes in Zone-IV. It must be borne in mind that when the said decision was taken by the C.D.A. Board in its meeting dated 09.06.2017, the petitioner's N.O.C. stood cancelled. It would have been a different matter had the said decision being taken during the validity of the N.O.C. dated 02.05.2014. True, the N.O.C. was cancelled because 79.43 Kanals of land had not

been transferred by the petitioner to the C.D.A. It is equally true that the said land was subsequently transferred to the C.D.A. But before a decision could be taken to restore the N.O.C., the C.D.A. Board took a decision that all housing schemes in Zone-IV were required to provide a 100-foot wide access road from the main arterial road. We must also not lose sight of the fact that despite the cancellation of the said N.O.C., the petitioner continued unabashed with the development work in the face of continued warnings by the Planning Wing of the C.D.A. to stop the development work. The vital question that must be asked that in the face of such brazen defiance of warnings issued by C.D.A., can the petitioner be granted relief in the equitable/discretionary jurisdiction of this Court. I would say certainly not.

41. A party establishing a housing scheme within the Islamabad Capital Territory has to show respect to the provisions of the C.D.A. Ordinance, 1960, as well as the rules and regulations made thereunder. The petitioner took a calculated risk in continuing with the development work in the face of continued warnings from the Planning Wing of the C.D.A. The consequences of the risk that the petitioner took is something that it must now face. One such consequence is that it would not be entitled to relief in the discretionary/equitable jurisdiction of this Court. The Regulations made by the C.D.A. making the issuance of the N.O.C. as an essential pre-requisite for the development works cannot be given a go-bye because of the magnitude of the petitioner's housing scheme or the financial benefit that the petitioner was aiming to gain from the sale of plots in such housing scheme. It is just not possible for this Court to validate the construction carried out by the petitioner during the period when the N.O.C. stood cancelled. Such construction was not permissible under the terms on which the layout plan was approved, as well as the law. In the case of Gouriet Vs. Union of Post Office Workers [1977] 1 All ER 696, Lord Alfred Thompson Denning observed: *"Be you ever so high, the law is above you"*.

42. As mentioned above, in the writ petition, the petitioner had challenged the notification dated 07.11.2014, whereby C.D.A. had cancelled/withdrawn the N.O.C., dated 02.05.2014. The petitioner had filed the writ petition on 04.07.2016 (i.e. more than one year and seven months after the issuance of the impugned notification dated 07.11.2014). Therefore, in such circumstances, the indolence on the petitioner's part cannot be ignored, while deciding whether or not to extend to it relief under the extraordinary and discretionary jurisdiction of this Court under Article 199 of the Constitution. It must also be appreciated that in all this time (one year and seven months), the petitioner was not sitting idle, but was carrying on construction and development works with no N.O.C. in its favour.

43. It is well settled that under Article 199 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds on which relief can be refused by a Court exercising writ jurisdiction is when the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 199 of the Constitution, that he should come to the Court at the earliest possible opportunity. An inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioner. Thus, when the petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the petitioner from discretionary relief under Article 199 of the Constitution from the High Court, particularly, when there is no plausible explanation on the petitioner's part for his blame worthy conduct of approaching the High Court with undue delay. It is well settled that Courts cannot come to the rescue of persons, who are not vigilant regarding their rights. It is unjust to give the petitioner a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver.

44. There is indeed no period of limitation for the High Court to exercise its powers conferred under Article 199 of the Constitution. Furthermore, there is nothing preventing the High

Court from interfering in a matter after the passage of a certain length of time. It is only in the cases where the order impugned is wholly without jurisdiction, *coram non judice* or *void ab initio* that the High Court in exercise of its jurisdiction under Article 199 of the Constitution can overlook the delay on the petitioner's part in approaching the High Court. But it would be a sound exercise of discretion for the High Court to refuse to exercise its extraordinary powers under Article 199 of the Constitution in cases where petitioners do not approach it expeditiously for relief.

45. In view of the above, and for the petitioner's conduct in admittedly continuing with the development work despite the cancellation of the N.O.C., I do not find the petitioner to be entitled to the relief of setting aside the cancellation of the N.O.C. dated 02.05.2014, and the setting aside of the decision of the C.D.A. Board requiring a 100 foot wide access road to a housing scheme in Zone-IV from an "arterial road", in the equitable/discretionary jurisdiction of this Court under Article 199 of the Constitution. Consequently, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan\*

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