

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

**W.P. No.4298/2019**

Metropolitan Corporation Islamabad through its Mayor

*versus*

Chairman, CDA & another

Petitioner by: M/s Adil Aziz Qazi, Muhammad Ahmad Tariq Fani, Ahmed Hassan Rana, Nabeel Rehman, Ahmad Shahzad Awan, Kalsoom Rafique, Raheema Khan, Muhammad Saeed Raja, Sardar Murtaza Arif Khan, Raja Shaheryar Khan, Khurram M. Hashmi, Rifaqat Islam Awan, Zulfiqar Ali Abbasi, Shahid Munir and Muhammad Jamshaid Hussain Shah,  
  
Yawar Hussain Rana, SO (MCI), Ministry of Interior.

Respondents by: M/s Hafiz Arfat Ahmad Ch. , Kashifa Niaz Awan, Tariq Zaman, Haseeb Hassan, Tariq Zaman Ch., Rehan Seerat, Ch. Kamil Hayat, Malik Javed Iqbal Wains, Ch. Muhammad Asif Khan, Advocates for CDA along with Muhammad Tariq Latif, Director (Revenue), CDA,  
  
Mr. Ayaz Shauakt, DAG.  
Raja Muhammad Aftab Ahmad, AAG.

Date of Hearing: 03.11.2020.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this common judgment, I intend to decide the captioned writ petition as well as writ petitions mentioned in Annexure-A appended with instant writ petition having common questions of law and facts.

2. Through the above mentioned writ petition as well as in Annexure-A, the petitioners have assailed the demand notice of the CDA issued for recovery of property tax.

3. Brief and consolidated facts of above referred writ petitions are that the Metropolitan Corporation Islamabad (MCI) was formed under the Islamabad Capital Territory Local Government Act, 2015 with several political, financial and administrative functions as detailed in Schedule-II & III of the said Act, while Section 89 of the Act, 2015 empowers the MCI to collect the property taxes in the district, however the Capital Development Authority in violation of said provision of law is collecting property taxes. On the other hand, the Government is under legal obligation as per Section 78 of the Act to transfer and release the funds into the accounts of the local Government on monthly basis, but the Federal Government has neither transferred the financial funds nor has it devolved the administrative and financial powers upon the MCI. Likewise, the private petitioners, who are residents of different housing societies established in ICT, are also aggrieved with the claim of property tax by the CDA on the grounds that all amenities and basic civic facilities are being made available by the housing societies, as such, the rates imposed on the properties are too high keeping in mind the area of the Islamabad Capital Territory.

4. Learned counsel for petitioners contended that the CDA has no power to collect or retain the property tax in Islamabad and any such act on the part of respondents is nullity in the eyes of law, as such, the authority and power to collect taxes, including the property tax in Islamabad, are vested in the MCI; that the Federal Government is under

legal obligation to transfer the funds to the MCI in accordance with provisions of the ICT-Local Government Act, 2015, but the defiance thereto on the part of respondents hampers the smooth functioning of the local Government, as such, the MCI is also not being allowed to utilize the available funds; that the law clearly specifies that the authority to impose a tax vests with the Federal Government and not with the CDA; that the demand notice issued by the CDA with respect to property tax appear to have been made applicable retrospectively, which otherwise has been assessed without proper assessment of the properties.

5. Conversely, learned DAG, AAG as well as learned counsel for CDA opposed the filing of instant writ petitions on the grounds that the MCI has not performed according to the mandate conferred upon it by the residents of the Islamabad; that as per Section 118 of the ICT-Local Government Act, 2015 the MCI was required to frame its by-laws and rules to give effect to the provisions of the Act, 2015, but the MCI despite elapse of 04 long years could not undertake the said exercise and failed to utilize huge sum of money collected through Directorate of Municipal Administration for the welfare of the residents of the Islamabad Capital Territory; that Section 78 of the Act, 2015 required the MCI to establish a “Local Fund” wherein all the proceeds of taxes, tolls, fees, rates and other charges levied were to be credited to the said fund, but the MCI has not yet established the “Local Fund” in order to meet the requirements of the Act, 2015, therefore, direction needs to be issued to the MCI to have its accounts reconciled/settled with the CDA; that SRO No.805(1)(91), dated 20.08.1991, empowers the CDA to collect property tax from the petitioners whose residences fall within the municipal limits of Islamabad, as such CDA has

not imposed any charge on civic amenities on street lights, water supply and janitorial services, rather only a bill of property tax has been issued by the CDA; that levy of property tax has been based on Wafaqi Mohtasib findings, dated 16.02.2018 and Presidential Order, dated 13.02.2017, which are equally applicable across all societies without discrimination and entailed after comprehensive dialog with the management of different societies situated within the municipal limits of Islamabad.

6. It has been pointed out by learned counsel for the CDA that a similar matter is also pending in the apex Court in HRC No. 318/1993 & C.M.A Nos. 7645/2018, 2370/2020, 2416/2020, 2417/2020 & 2606/2020, whereby certain directions were issued and a committee was constituted, however, when this situation has been confronted to the representative of the Federal Government, whereby Mr. Ayyaz Shaukat, Deputy Attorney General has taken a categorical stance that instant matter has nothing to do with the subjudice matter of the apex Court and this Court can pass the judgment independently as the committee constituted by the apex Court was with reference to resolve the issues between CDA and MCI in amicable manner for the enforcement of ICT Local Government Act, 2015. On the assurance and undertaking given by the Deputy Attorney General, instant matter was reserved for final arguments and matter was heard at length.

7. Arguments heard, record perused.

8. Perusal of record reveals that question relating to imposition of levy of property tax in the Islamabad Capital Territory has been questioned by majority of the petitioners mainly on the ground that notification dated 17.12.2018, issued by MCI is illegal and all the property tax, bills issued by

CDA or in certain writ petitions by MCI is also illegal as the process adopted by the respective authorities for imposition of taxes on property is not in accordance with law, similarly in the main writ petition No. 4298/2019 titled Metropolitan Corporation Islamabad Vs. Chairman CDA, Islamabad and another, the petitioner has prayed for issuance of direction to the respondents to comply with The Islamabad Capital Territory Local Government Act, 2015 in accordance with its spirit and any collection of property tax by the CDA is illegal and further prayed that CDA be directed to release and transfer the funds already collected by them after the establishment of MCI.

9. In order to dilate upon the issue raised in these writ petitions following core questions are required to be answered:-

1. *Whether Capital Development Authority in terms of CDA Ordinance, 1960 can impose and levy property tax in Islamabad after enactment of ICT Local Government Act, 2015.*
2. *Whether in absence of by-laws and rules to give effect the ICT Local Government Act, 2015, the CDA Authorities can proceed under its own regime for collection and demand of the property tax.*
3. *Whether after the enactment of ICT Local Government Act, 2015, CDA could exercise its jurisdiction in Islamabad Capital Territory or the same is required to be dissolved by effect of the new legislation.*

10. In order to resolve the entire controversy, it is necessary to go through the historical background of the CDA Ordinance, which was promulgated on 27.06.1960, the Authority has been established for making all arrangements for the planning and development of Islamabad within the framework of a regional development plan and as such CDA is also authorized/compelled to perform functions of a Municipal Committee. In terms of CDA Ordinance, 1960, the Authority has been established by virtue of Section 6 of the Ordinance, comprising of four (04) Members,

whereas three members of the Board have to be appointed by the Federal Government. The Chairman and all other Members shall hold the office under the command of the Federal Government, the Chairman and the Financial Adviser shall hold office for a period of five years, if not transferred prior to completion of said period.

11. Chapter III deals with the powers and duties of the Authority, the Authority shall prepare a master plan and a phased master program for the development of the Capital Site in terms of Section 11.

12. Pursuant to the master plan and the master program, the Authority can call upon any local body or regime operating in the Specified Areas to prepare the scheme in respect of matters ordinarily dealt with by such local body or agency in terms of Section 12 of the CDA Ordinance, 1960 including, but not limited to land use, zoning and land reservation, public buildings, industry and transportation and communications, highways, roads, streets, railways, telecommunications, utilization of water, natural resources, community planning, housing etc.

13. Similarly, Section 15 deals with the powers of the Authority and Section 15A deals with the levy of tax. In Chapter IV, the concept of land acquisition has been referred. The entire scheme of the CDA Ordinance, 1960 revolves around the development of Islamabad Capital Territory and as such the Federal Government has been empowered to make rules to carry out the purposes of this Ordinance in terms of Section 50 and the Authority has also been empowered to make regulations, which are necessary for expedient and not inconsistent with the rules in terms of Section 51 of the Ordinance. At the end the CDA Ordinance also provides

mechanism to dissolve this Authority in terms of Section 52, which is the sole prerogative of the Federal Government.

14. Besides the above referred law, The Municipal Administration Ordinance, 1960 was also promulgated for the exercise and performance of powers relating to Municipal Committee.

**LEVY OF PROPERTY TAX WITHIN MUNICIPAL LIMIT OF ISLAMABAD**

In exercise of powers conferred under Section 15A by CDA Ordinance, 1960 read with Section 33 of the Municipal Administration Ordinance, 1960 and Capital Development Authority (Imposition of Taxes) Rules, 1981, the CDA levied property tax with the approval of Federal Government on 20.08.1991 vide gazette Notification No. SRO-806(I)91 dated 20.08.1991. The rates provided in the said notification were revised in 2001 vide SRO 24(I)/2001 dated 11.01.2001 and the same are still operative. Similarly, the Federal Government in terms of the powers referred in Section 15A of the CDA Ordinance, 1960 has been pleased to specify the area within the Islamabad Capital Territory in the above referred notification, as the area for which the CDA may exercise and perform municipal functions within the period of twenty (20) years with immediate effect.

15. It is important to mention here that a matter was brought before the apex Court through Civil Appeal No. 1583-1584/1995 and 1026/1996 titled **Mrs. Bilquis Anwar Khan and 39 others Vs. Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 3 others** reported as 2001 SCMR 809 with reference to levy of CDA's Property Tax within Municipal limit of Islamabad, the same was decided vide judgment

dated 08.11.2000, as a result, the powers conferred under Section 15A of the CDA Ordinance were declared within the legal domain of the CDA, whereby apex Court has dealt with the matter in the following manner:-

*“We have heard learned counsel for the parties and have perused the files. During the arguments, this Court made an inquiry from the learned counsel for the appellants as to whether Urban Immovable Property Tax Act, 1958, is applicable to Islamabad, or the appellants have ever made payment to the concerned agency under the provisions of the Act? Their frank reply was that neither the Act is applicable to Islamabad nor uptill-now they have made any payment towards the urban immovable property tax.*

*In order to resolve the controversy involved in these matters, it is more pertinent to refer here Section 15-A inserted to the C.D.A (Amendment) Act, which reads as under:-*

*(1) During such period and for such areas within the Islamabad Capital Territory as the (Federal Government) may by notification in the official Gazette, specify, the Authority may, notwithstanding anything contained in any other law for the time being in force, exercise, and perform such powers and functions as a Municipal Committee may exercise and perform in relation to a Municipality under the Municipal Administration Ordinance, 1960.*

*(2) For the purpose of sub section (1), the provisions of sections 18,33 to 73, 77 to 106,109,115 to 118 and 122 of the Municipal Administration Ordinance, 1960 (X of 1960), and the second, Third and Fifth Schedules thereto shall, so far as may be, apply to the Islamabad Capital Territory as they apply to a municipality, references therein.*

*a) to or to the powers and functions of, the Controlling Authority being omitted; and*

*b) to Municipal Committee and Government being construed respectively as references to the Authority and the (Federal Government).*

*By insertion of the above section it is crystal clear that C.D.A has been authorized to perform functions and exercise powers of a Municipal Committee under the Municipal Administration Ordinance, 1960, in the area of Islamabad Capital Territory. Section 15-A further empowers the C.D.A to act as a municipal body subject*



*to necessary control by the Federal Government. The provisions of Municipal Administration Ordinance, 1960, which have been made part of C.D.A Ordinance under the principle of legislation by reference include sections 33 and 34 of the Municipal Ordinance, read as under:-*

*Chapter 11-Municipal Taxation. – 33. Municipal Taxation. – A Municipal Committee, with the previous sanction of the Government, may levy, in the prescribed manner, all or any of the taxes, rates, tolls and fees mentioned in the Third Schedule.*

*34. Notification and enforcement of Taxes. (1) All taxes, rates, tolls and fees levied by a Municipal Committee shall be notified in the Official Gazette and unless otherwise directed by the Government shall be subject to previous publication.”*

*The bare reading of the above provisions read with Section 15-A make it clear that C.D.A has been empowered to levy various tax etc., which find mention in Third Schedule. Entry No.1 of Third Schedule reads as under:-*

*“TAXES, RATES, TOLLS AND FEES WHICH MAY BE LEVIED BY A MUNICIPAL COMMITTEE (Sec Section 33).*

*1. Taxes on the Annual Value of the buildings and lands.”*

16. Besides the above referred position, the CDA has performed its lawful duties till the enactment of the ICT Local Government Act, 2015, whereby certain new concepts have been emerged under the new law.

17. In terms of the ICT Local Government Act, 2015, the new local government system has been established to devolve political, administration and financial responsibility and authority to be given to the elected representatives of the local governments; to promote good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at local level. By virtue of Section 3 of the Local Government, working within the existing framework has been planned and a particular limit has been imposed

upon the local governments. The Section 3(3) of the ICT Local Government Act, 2015 is hereby reproduced:-

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

18. Similarly, the concept of local areas has been defined in Section 4 as Union Councils, Metropolitan Corporation, Islamabad have been established in terms of Sections 11 and 12 and complete Code of Elections has been provided in Chapter V of the Local Body Elections. Chapter-X has been referred for the purposes of Local Government Taxation in terms of Section 88, whereby taxes to be levied under this provision, which is as under:-

**88. Taxes to be levied.-(1).***Subject to this act, local government may, by notification, levy any tax, fee, rate, rent, toll, charge or surcharge specified in Fourth Schedule.*

(2) *The government shall vet the tax proposal prior to the approval of the tax by the local government in order to ensure that the proposal is reasonable and in accordance with law.*

(3) *The government shall vet the tax proposal within thirty days from the date of receipt of the proposal failing which it shall be deemed to have been vetted by the government.*

(4) *A local government shall not levy a tax without previous publication of the tax proposal and inviting and hearing public objections.*

(5) *A local government may, subject to provision of sub section (1), increase, reduce suspend, abolish or exempt any tax.*

**89. Property Tax-(1).***The property tax, under this act, shall be collected by Metropolitan Corporation.*

(2) *In matters for which no provision or no adequate provision relating to the property tax has been made under this act, the*

*provisions of the Urban Immovable Property Tax Act (West Pakistan Act XV of 1958), as adopted in Islamabad Capital Territory, shall apply.*

*(3) The tax collected under this section shall be distributed amongst the Metropolitan Corporation and Union Councils in such a ratio as the government may, by notifications specified.*

**90. Collection of Taxes-(1).** *A tax or fee levied under this act shall be collected in the prescribed manner.*

*(2) The government may prescribe the mode of collection of a tax or a fee levied under this act.*

*(3) If a person fails to pay any tax or fee or any other money payable to a local government, the local government and, if so requested by the local government, the government shall recover the tax, fee or other money as arrears of land revenue.*

*(4) The recovery of tax, fee or other money under sub-section (3) shall not absolve the person from prosecution of any offence under this act or any other law.*

**91. Additional Powers of the Government-(1).** *Notwithstanding anything contained in this Chapter, the government may, by rules, determine the minimum rate of tax or fee to be levied and collected by a local government.*

*(2) The government may, for reasons to be recorded in writing and by notification, exempt the levy of any tax or fee of a local government for a specified period of not more than fifteen days or any special occasion or in order to alleviate the specific hardship suffered by people at large or a section of people.*

19. The above mentioned provisions of levy of the tax could not be enforced unless bye-laws of the Local Government Act has to be framed in terms of Section 118 of the ICT Local Government Act, 2015, whereby Local Government may make bye-laws not inconsistent with this Act and the rules to give effect to the provisions of this Act if required by the government. It has been informed to this Court that no such bye-laws have been made in this regard to give effect to the concept of property tax regime, as such this issue discloses the poor management and lack of coordination on the part of Federal Government, who have not yet considered the real issues of the residents of the Islamabad Capital

Territory, who are facing numerous difficulties and exploitations at the hands of the CDA officials.

20. The important question which emerges at this occasion is as to whether there is a need to continue with the CDA Ordinance, 1960 in any manner or to regulate its affairs by virtue of the Islamabad Capital Territory Local Government Act, 2015 simultaneously.

21. While dilating upon this issue, I have gone through the concept of transitional provisions provided in Chapter XV of the Act, 2015, where Section 127 demonstrates interim authorities and the legislation has not provided any timeline or a cut-off date, rather the previous authorities were directed to continue discharging functions and providing services without any interruption until a local government is established under this Court for the local area. Similarly all duties shall continue to be performed by the respective Departments and its officials unless the matter has successfully been transferred to the local government in terms of Section 127(2) of the ICT Local Government Act, 2015. The Federal Government has to transfer the management of the institution to the local government compulsorily in terms of Section 128 of the Act, similarly the concept of financial transition has also been embodied in the law in terms of Section 129 of the act, which is as under:-

*129. Financial transition. – ( 1) All taxes, cesses, fees, rates, rents, tolls or charges which were being charged, levied and collected by any office of a local government or any authority shall continue to be charged, levied and collected under this Act by the successor local government or the authority and every person liable to pay such a tax, cess, fee, rate, rent, toll, charge or any arrear of the tax, cess, fee, rate, rent, toll or charge shall continue to make the payment until such tax, cess, fee, rate, rent, toll or charge is revised, withdrawn or varied under this Act.*

*(2) Where any local government established under the Federal Capital Local Government Ordinance, 1979 (XIII of 2001) was*

*receiving any grant or any compensation in lieu of Octroi or Zila tax, the successor local government under this Act shall continue to receive such grant or compensation.*

*(3) Where a local government assumes the office under this Act for the first time:*

*(a) the Government shall transfer grants to the local government on the basis of a formula notified by the Government; and*

*(b) its budget for the financial year during which it assumes the office shall relate to the remaining period of that year and provisions regarding budget under this Act shall, as far as possible, apply to such a budget.*

*(4) On allocation, re-allocation or transfer of the employees of the Government or any other body of any local government or any other organization established under the Federal Capital Local Government Ordinance, 1979 or the Capital Development Authority Ordinance, 1960, the salaries, emoluments and pensions of such employees shall not be reduced on such allocation, re-allocation or transfer.*

*(5) The Government shall ensure payment of salaries and other emoluments of the employees referred to in sub-section (4) till such time as the Government may deem appropriate.*

22. At last, the timeframe fixed by the legislature for the transfer and handing over the entire working of the Municipal functions to MCI of the Local Government is within *one hundred and eighty days* in terms of Section 130 of the act, whereby all rights, assets and liabilities would be transferred and conditions have been imposed in terms of Section 130(2) upon the government to bring all bye-laws, rules, regulations, notifications or any other legal instrument, issued under any law in force on the date of commencement of this Act, in conformity with this Act *within a period of two years* from the date of commencement of this Act, but surprisingly the Federal Government has acted in negligent manner in this legal regime of transformation and transfer of powers from CDA to local government, which demonstrates the lack of will at the part of those persons, who are sitting at the helm of affairs.

23. The entire scheme of Local Government Act also reveals that a local government fund has to be established under Section 78 of the Act, whereby all the revenues received by the local government from the taxes, tolls, fees, rates or charges shall be credited even all the grants, gifts, contributions, income, fines, penalties and monies have to be transferred to said fund under this Act. Similarly, complete scheme has been provided as to how to manage these funds even the concept of budget, its transfer and spending of accounts have been given in detail, but all these provisions could not have been given effect by the political insufficiency on the part of Federal Government, who are not interested to wriggle out from sphere of the CDA, though there is no cavil to the proposition that CDA has become a white elephant at the present time, who is not able to cater growing needs of the Islamabad Capital Territory, rather the Authority destroyed the beauty of this city in a systematic manner with corruption, ill planning, poor performance, inefficient officials and adhoc appointment on the command of political elites.

24. Another important aspect is the provision relating to repeal and saving in terms of Section 132 of the Act, whereby The Capital Territory Local Government Ordinance, 1979 (XXXIX of 1979), the Islamabad Capital Territory Local Government Ordinance, 2002 (CXV II of 2002) and Section 15-A of the Capital Development Authority Ordinance, 1960 (XXIII of 1960) have been repealed in particular, therefore, the power domain of the CDA in terms of Section 15-A of the CDA Ordinance stand curtailed, through which, the CDA can impose/levy the property tax, therefore, all municipal functions conveyed to the CDA in terms of CDA (Amendment) Act including the municipal taxation and enforcement of taxes as provided

in Third Schedule stand repealed and mandate under the law provided to CDA ends by virtue of the said provisions of ICT Local Government Act, 2015.

25. Learned counsel for the CDA has been confronted with all these legal provisions, whereby he has conceded that 22 Directorates have been transferred to Metropolitan Corporation Islamabad under the orders of Ministry of Interior, but despite that Municipal Corporation Islamabad has failed to discharge its functions, resultantly when the tenure of MCI and Union Councils ends in November, 2020, the functions stood restored to the CDA by virtue of CDA Ordinance, 1960, such arguments in the light of the law discussed above is not acceptable as CDA Authorities have no legal jurisdiction to impose any tax or can levy any property tax by any stretch of imagination.

26. The petitioner side has mainly argued their case with reference to the provisions of Sections 88 and 89 of the ICT Local Government Act, 2015, which deals with the taxes to be levied and property tax collected by the Metropolitan Corporation in Islamabad Capital Territory, whereby it has been argued that when there is no provision or adequate concept relating to property tax, the provisions of Urban Immovable Property Tax Act (West Pakistan Act V of 1958) shall apply. Such concept is not a new, rather it has already been applied in Province of Punjab, however, it is now settled that when a specific procedure has been provided under the Act, the method provided in the Urban Immovable Property Tax Act (West Pakistan Act V of 1958) has been mentioned for reference only.

27. The procedure provided in the Urban Immovable Property Tax Act (West Pakistan Act V of 1958), provides the concept of evaluation of

property and rating areas, which has to be established through a notification after inviting public objections. If the citizens have not been associated in the assessment proceedings for charging tax amounts, it would be considered as denial of their rights in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, i.e. based upon the principle of due process and transparency. It is settled law that the tax provisions have to be applied in strict manner as procedure provided under the Act, however, when the CDA authorities have been confronted as to whether any notice was published or objections have been invited from the public, the answer is in negative.

28. The levy of tax depends on various factors and not just a plot area or covered area of the building, rather it has to be considered as per the rental value of property including its location as well as facility, which were provided in the said sector, whereas nothing has been considered in this regard nor such procedure has been adopted/applied by the respondents authorities in any manner, which resulted into disputed situation, where number of residents have challenged the notification in question at the touchstone that the CDA Authorities or the MCI have not yet extended any services qua the utilities, amenities in the sectoral areas, though enactment of local Government has been made in order to rationalize and recognize the local government system, even by virtue of Section 1(2) of the Act, it extends to Islamabad Capital Territory except any area excluded by the Federal Government by notification, for reasons to be recorded in writing and as such the Federal Government has not yet demonstrated through any notification that any particular area stands excluded from the plan of the ICT Local Government Act, therefore, the proper procedure for



levy of tax is to be made in terms of Section 88 of the Act, which provides the concept of tax proposal by the local government, similarly the government shall vet the tax proposal within thirty days from the date of receipt of the proposal and there is a categorical restrictions imposed under Section 88(4) of the ICT Local Government Act, 2015, which says "local government shall not levy a tax without previous publication of the tax proposal and inviting and hearing public objections".

29. The above mentioned provisions dilate upon the entire issue, whereby CDA Authorities as well as MCI have been confronted with these provisions to satisfy this Court as to whether any public notice has been issued and objections were invited, whereby both the parties have failed to demonstrate such requirements nor even provide any document of publication and objections to demonstrate that such exercises were carried out, rather notification dated 17.12.2018 was issued in terms of Sub-Section 5 of Section 88 of the ICT Local Government Act, 2015 with reference to 30<sup>th</sup> meeting of MCI held on 29.11.2018, whereby the revision of property tax was approved, though the MCI has taken a shelter behind the judgment passed by this Court in I.C.A No. 83/2017, I.C.A No. 84/2017, I.C.A. No. 20/2018, I.C.A No.21/2018 titled Shafqat Ali Vs. Capital Development Authority, Islamabad etc decided on 12.07.2018, whereby following directions have been issued:-

- iii. *initiate the process of property tax with the approval of Federal Government in accordance with law in all housing schemes as well as from all other individuals who are residing in different zones of Islamabad.*

30. The above referred directions simply empower the competent authority i.e. CDA and MCI or as the case may be for levy of property tax

under the law. The respondents, including the MCI, have not performed their lawful obligations in terms of The ICT Local Government Act, 2015 neither they have invited the objections nor any tax proposal has been prepared and no such document has been presented before this Court to understand the concept of increase or decrease of the property tax regime as such when public notice has not been given and imposition of tax has not been made in accordance with law, the entire concept is declared to be illegal. Reliance is placed upon PLD 2017 Lahore 790 (Mehar Pervaiz Akhtar Vs. Director General Excise and Taxation, Lahore and others).

31. I have also gone through the concept of notification referred in Section 20A of the General Clauses Act, 1897, which requires the publication of notification, failing which no effect could be extended to such notification, even there is no reference that the said notification has been published in any official gazette nor it is the case of the CDA, though the same was published, however, in order to understand the concept referred in the said notification qua the rating area, plot area and covered area, it is necessary to reproduce the same:-

**METROPOLITAN CORPORATION ISLAMABAD**  
**(CHIEF OFFICE)**

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No. MCI-1(1)/Notification-4/2018/325 Islamabad, December 17, 2018

**NOTIFICATION**

*In exercise of powers conferred by Sub-Section 5, Section-88, Chapter-X of ICT Local Government Act, 2015, the Metropolitan Corporation Islamabad in its 30<sup>th</sup> Meeting held on 29-11-2018, has approved Revision of "Property Tax" in Islamabad Capital Territory. This is in continuation of previous Notification vide No. S.R.O. 24(1)/2001, dated; 11-01-2001 and specified in Cabinet Division Notification No. S.R.O. 805(1)/91 dated; 20-08-1991 read with their subsequent Notification No. S.R.O. 1(1)/99, dated 01-01-1999.*

2. The annual value of buildings and lands for the purpose of this levy shall be determined by an admixture of plot area and the covered area of the buildings thereon multiplied by the respective figures shown below against each category:-

i) **(RESIDENTIAL PROPERTIES)**

Category/Rating Area		Plot Area Per Sq.yds Rs.	Covered Area Per Sqft. Rs.
1.	<u>E-Series</u>		
	Plot area upto 100 Sq.yds Excluding flats	6.00	8.00
	Plot area 101-200 Sq. yds Excluding flats	8.00	10.00
	Plot area 201-250 Sq. yds Excluding flats	10.00	12.00
2.			
	Plot area 251 Sq.yds & above Excluding flats	12.00	15.00
	<u>F-Series</u>		
	Plot area upto 100 Sq.yds Excluding flats	6.00	8.00
3.			
	Plot area 101-200 Sq. yds Excluding flats	8.00	10.00
	Plot area 201-250 Sq. yds Excluding flats	9.00	12.00
	Plot area 251 Sq.yds & above Excluding flats	10.00	15.00
4.	<u>G-Series</u>		
	Plot area upto 100 Sq.yds Excluding flats	4.00	6.00
	Plot area 101-200 Sq. yds Excluding flats	5.00	8.00
	Plot area 201-250 Sq. yds Excluding flats	6.00	9.00
	Plot area 251-356 Sq.yds Excluding flats	8.00	10.00
5.			
	Plot area above 356 Sq.yds.	10.00	12.00
	<u>I-Series &amp; Model Villages including Chak Shahzad &amp; Humak Town.</u>		
	Plot area upto 100 Sq.yds Excluding flats	4.00	6.00
	Plot area 101-200 Sq. yds Excluding flats	5.00	8.00
6.			
	Plot area 201-250 Sq. yds Excluding flats	6.00	9.00
	Plot area 251-356 Sq.yds Excluding flats	8.00	10.00
	Plot area above 356 Sq.yds.	9.00	12.00
	Flats/Apartments	Rates will be applied of relevant series/sector	
7.	Any residential property other than to above areas including Sector I-8, D-12, E-11 etc.	4.00	6.00

ii) NON RESIDENTIAL PROPERTIES

S.#	Category	Plot Area Per Sq.yds Rs.	Covered Area Per Sqft. Rs.
1.	<u>Blue Area</u>		
	a) Ground Floor	12.00	18.00
2.			
	b) Other than ground floor including basements	9.00	12.00
3.	<u>Markaz E&amp;F Series</u>		
	a) Ground Floor	10.50	16.50
4.			
	b) Other than ground floor including Basement	7.00	11.00
5.	<u>Markaz, G &amp; I Series</u>		
	& Model Villages, I, & T Centre/Class III, Shopping centers and non-residential Properties outside Commercial area	7.00	11.00
6.	Private Hospitals		
		7.00	11.00
7.	Agro Farms/Orchard / (P & V) Scheme & Kahuta Triangle Industrial area	2.00	6.00 (Shed Area 4.00)
	<u>Hotel/Motels</u>		
8.	a) Plot area upto 10000 Sq.yds	12.00	18.00
	b) Plot area more than 10000 Sq.yds above	15.00	22.00
9.	Fruit and Vegetable, Market, Cold Storage etc.	6.00	10.00
	Industrial and Institutional prosperities, including Public & Private Corporations & Councils Club/Islamabad Club & Gyms, etc.	5.00	9.00 (Shed Area 4.20)
10.	Petrol Pumps/CNG and Service Station etc.	90.00	----
	Note: 10% increase will be applicable for every year on the revised rates after three years from 1 <sup>st</sup> July of the relevant year.		

III) THE FOLLOWING CATEGORIES OF BUILDINGS AND LANDS SHALL BE EXEMPTED SHOWN AGAINST CATEGORY

Category	Exemption
1) One residential house, flat or apartment owned and self-occupied (not on self-hiring basis) by the owner /allottee or his family including his parents. GPA having selling power is not entitled for any exemption. 2) One residential house, flat or apartment belonging to a widow if she owns no other built up property anywhere in Pakistan. This exemption shall also be available to widow minor sons and un-married daughter of a widow after her death. 3) One residential house flat or apartment owned and occupied (not on selfhiring basis) by a retire Government employee whether in his own name or in the name of or jointly with his/her spouse or dependent minor children. This exemption shall be available if it is his/her on their only property in Pakistan and he/she or they are themselves living in the house or, as the Case may be, flat or apartment. This exemption shall also be available in case of death of the retired employee to the surviving spouse and minor children of the deceased employee. (In case of any one have another built-up property, the owner shall be entitled for any exemption. 4) Places set apart for public worship and actually so used and use for no other purpose. 5) Hospitals, dispensaries, clinics, educational or training institutions and libraries located on the plot allotted for specific purposes and run wholly from charitable contributions and donations. 6) Buildings and lands owned by the Federal or a Provincial Government, but excluding Semi Government/Autonomous bodies, public and private corporations. 7) Buildings and lands vesting in the Capital Development Authority/MCI. This however does not include lands leased out to private individuals and corporations, companies and firms or to any group of individuals. <b>Note:-</b> Self occupation rebate would be allowed only on current dues and arrears of last one year.	

Note:

- a) Exemption at, S.# and 3 will be allowed on production of affidavit on Stamp Paper dully attested by Notary Public OR on simple paper attested by Gazetted Officer other than CDA/MCI Officers for each respective year.
- b) In case the tax is paid by an assessee by 30<sup>th</sup> September, within the financial/year for which the tax is paid he shall be entitled to a discount or rebate of 5 percent.
- c) After the expiry of financial year, a surcharge @ 1.5% per month shall to payable on outstanding tax.
- d) Basements of residential properties will be charged @ half rates applicable charge of tax on built up covered area against respective Sectors.

2. These rates shall come into force w.e.f 1st July, 2019 and shall remain operative till further orders.

32. As it is well settled that if the gazette notification was not issued, the entire superstructure raised upon the said notification crumbles down as without publishing notification in official Gazette, same will be termed as

non-existent and superstructure built upon same shall automatically fall. Reliance is placed upon PLJ 2017 SC (AJ&K) 47 (M/s Friends Technical Engineering Association, Muzaffarabad/Rawalpindi and others Vs. Barrister Syed Iftikhar Ali Gillani, Member AJ&K Legislative Assembly, Azad Jammu & Kashmir, Muzaffarabad and others). The notification published in any official Gazette is a public document and carries certain presumptions of its legality and authority and its enforcement as well. Such attributes cannot be attached to an order or direction which is issued, notified or published without publication in the official Gazette. Reliance is placed upon PLJ 1998 SC 472 (Karachi Metropolitan Corporation, Karachi Vs. Messrs S.H.H. Industries (Pvt.) Limited, Karachi and 2 others).

33. In view of the above reasons, I am of the considered view that when law had prescribed a method for doing a thing in a particular manner then such provision of law should be followed and doing a thing in a manner other than provided manner would not be permitted under the law. Reliance is placed upon 2020 YLR 2031 [Election Tribunal Balochistan] (Mir Lashkari Raisani Vs. Qasim Khan Soori and others), 2020 PLC (C.S) 413 [Peshawar High Court (D.I.Khan Bench] (Dr. Karim Shah Vs. Chairman, Search and Nomination Council/Health Minister, Government of Khyber Pakhtunkhwa, Peshawar and others), 2018 YLR 253 [Lahore] (Muhammad Rafiq Vs. Muhammad Ali and another), 2018 YLR 1313 [Lahore] (Farzand Ali Vs. Muhammad Ishaq), 2018 YLR 1985 [Supreme Court (AJ&K)] (Muhammad Sajjad Khan Vs. Abdul Qadoos Khan and 3 others), PLD 2017 Lahore 479 (Alamdar Hussain Vs. National Accountability Bureau through Chairman and others), PLD 2017 Lahore 802 (Munda Eleven Cricket Club Vs. Federation of Pakistan and 4 others).

34. At last the impugned notification dated 17.12.2018 is silent qua its reasoning as to why the areas of the societies have been excluded, though model villages have been referred in this notification which is only limited to Chak Shehzad and Humak Town, hence it could easily be presumed that by virtue of notification issued by Federal Government for Islamabad Capital Territory, the majority portions of the area was excluded by the CDA and MCI without any intelligible differentia nor any reasonable classification has been provided, whereby it was settled law that equal protection of law as envisaged under Articles 4 and 25 of the Constitution has to be given effect and all the similarly placed and situated persons are to be treated alike. The reasonable classification is permitted subject to law on the basis of intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out, however, no such nexus has been provided as held in 2018 YLR 222 [Islamabad] (Moazzam Habib and others Vs. Federation of Pakistan and others), though the public functionaries were required to treat all citizens placed in similar circumstances alike under equal doctrine as held in PLD 2016 Balochistan 56 (Tahir Humayun and others Vs. High Court of Balochistan through Registrar and others). In such circumstances High Court has to exercise its constitutional jurisdiction in terms of Article 199 of the Constitution of Pakistan to examine any act, notification, act of parliament for delegated legislation including the notification, which violates any provision of the Constitution including fundamental rights, the same can be struck down as no unfettered powers/discretion are available to the Authorities, which can be applied in discriminatory manner. Reliance is

placed upon PLD 2016 Islamabad 141 (Educational Services (Pvt.) Limited and 4 others Vs. Federation of Pakistan and another).

35. In this backdrop, I am mindful of the fact that CDA has not played its role after the enactment of ICT Local Government Act, 2015. The Authority of the CDA has been referred to be curtailed in a systematic order as reflected from transitional regime concepts provided in Sections 127, 128, 129 and 130 of The ICT Local Government Act, 2015, therefore, in order to curb such like practices, it is now high time to resolve all the controversies in terms of Section 15-A of the CDA Ordinance, 1960, which has already been repealed under Section 132 of the ICT Local Government Act, 2015, as a result thereof, the powers extended to the CDA for levy of property taxes stands abolished, even the municipal functions specifically entrusted to the CDA have also been curtailed, rather the CDA has been confined to the extent of development of master plan and phase master program for the capital only through different schemes, and nothing more. At this stage it is requirement of the time that provision of Section 52 of the CDA Ordinance for dissolution of the CDA has to be applied, but it is the job of the Federal Government to consider all these aspects in a proper manner and exercise its due authority to give effect to ICT Local Government Act, 2015 in letter and spirit, hence there is no cavil to the proposition that the local Government set up in terms of ICT Local Government Act, 2015 is latter in time, which shall prevail in all circumstances, but the very intent of the legislature is clear from its provision of Section 3(3), whereby the CDA shall only be allowed to work for development, planning and overall maintenance of the master plan, which is not entrusted to the Local Government Authorities, therefore, if

CDA intends to plan a new city or a scheme under a master plan, the Authority can only give its recommendation within the master plan program, however, it could only be implemented through the MCI in future in terms of ICT Local Government Act, 2015.

36. This Court is mindful of the fact that when two statutes have overlapping jurisdiction on any subject, the interpretation has to be made to harmonize those laws and their constitutionality shall be maintained unless the law latter in time repeals the earlier one, in this regard the ICT Local Government Act, 2015 is latter in time and covers entire municipal functions, including imposition of property tax, which were previously followed by the CDA authorities under the CDA Ordinance, 1960, however after repeal of Section 15-A of the CDA Ordinance, 1960, the other concept of implied repeal is also to be seen with different angles from the transitional provisions of the ICT Local Government Act, 2015. The doctrine of implied repeal has been appreciated by the apex Court in PLD 2006 SC 249 (Tanveer Hussain v. Divisional Superintendent, Pakistan Railways), whereby it was held that, "*the necessary conditions of implied repeal of an earlier statute or a provision thereof by a later statute are that; firstly, the two statutes cannot stand or co-exists together; secondly, to stand side by side, they will lead to absurd consequence; thirdly, when the entire subject matter of the earlier statute or a provision thereof is taken away by the later statute.*" This aspect left nothing in favour of the CDA, rather the ICT Local Government Act, 2015 being later in time transmitted entire authority to the Local Government system as certain provisions have been repealed in the CDA Ordinance, 1960 and the others have to be repealed by efflux of time in the coming years. It is now clear that CDA Ordinance, 1960 being earlier in



time could not be reconciled with the ICT Local Government Act, 2015 on fundamental principles, therefore, inconsistency has to be settled in favour of the ICT Local Government Act, 2015. Reliance is placed upon 2020 SCMR 579 (Collector of Customs vs. Marosh).

37. The Federal Government is also under Constitutional obligation to establish a local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local government under the law in terms of Article 140A of the Constitution of Pakistan, 1973, in case, the Federal Government is not complying with such mandate, it amounts to denial of fundamental rights to the residents of Islamabad Capital Territory, especially when the ICT Local Government, 2015 has already been implemented in Islamabad, but the municipal functions are still catered through CDA, which amounts to negation of the scheme settled in the constitution, therefore, any action by the CDA Authorities which exclusively falls within the jurisdiction of ICT Local Government Act, 2015 is considered to be illegal and amounts to transgression and abuse of powers.

38. For what has been discussed above, all the captioned writ petitions are DISPOSED OF with the following directions:-

1. The notification dated 17.12.2018 is illegal and void as no taxes proposals were issued nor even any objection were invited in terms of Section 88(4) of the ICT Local Government Act, 2015 neither public hearings were given before the imposition of levy of the property tax in Islamabad.

2. CDA has no jurisdiction or authority to impose the property tax or recover the property tax in any manner as it is the sole prerogative of the MCI under ICT Local Government Act, 2015, hence any tax demand by CDA is illegal.
3. The tax proposal be prepared by MCI and objections be invited from the public through publication of notice in newspapers, whereafter a notification in terms of Section 88 of ICT Local Government Act, 2015 be issued in accordance with law within period of six (06) months positively.
4. All the areas of Islamabad Sectors, Societies, Rural Villages, Model Villages, the properties situated on the land of CDA be included in the notification by imposing the property tax in the Islamabad Capital Territory under the law after considering the concept of rating area, plot area, covered area and the services, which are required to be provided in those area.
5. The MCI after promulgation of the notice of the property tax shall provide the utility services within the Union Councils under the law, which includes the water, gas, electricity, roads, sanitation etc after preparation of different schemes.
6. The Federal Government shall establish the Local Government Fund for settlement of all the issues including the financial autonomy to the MCI, which

have not been dependent upon the Federal Government or the CDA.

7. The property tax which has already been imposed under the previous regime within the urban areas of Islamabad Capital Territory shall be charged from all the residents till the new notification is issued under the law after adopting due procedure and the citizens of Islamabad shall pay the property tax in a manner prescribed under the previous law within the next six (06) months, failing which, the surcharge be imposed accordingly, except those areas which were included in the impugned notification for the first time.
8. The tax/funds collected by CDA under the property tax from any of the allottee within Islamabad Capital Territory, shall stand transferred to Metropolitan Corporation, CDA has no authority to use property tax in any manner, nor they are permitted to disburse the same to any other entity or the Government in any manner.
9. The property tax collected by CDA after promulgation of ICT, Local Government Act, 2015 exclusively falls within the jurisdiction of MCI, therefore, special audit be conducted by the Auditor General of Pakistan for the calculation of the tax received by the CDA till date, the same would be transmitted to MCI, in case the amount has been used by the CDA, the CDA authorities shall be

liable to return the amount within period of one year from the passing of this judgment.

10. The Federal Government shall provide necessary funds for the establishment of Union Councils offices within the respective union councils alongwith its infrastructure, budget and necessary material to exercise all respective municipal functions by the Union Councils within the respective area.

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

Announced in open Court on: \_\_\_\_\_

**JUDGE**

RAMZAN