

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No.820/2018

Malik Muhammad Younas

versus

Capital Development Authority through its Chairman & 03 others

Petitioner by: Malik Muhammad Zubair, Advocate.

Respondents by: Mr. Intizar Hussain, Advocate for
Respondent No.1 (CDA)
Mr. Muhammad Asif Khan, Advocate
for Respondent No.2. (IESCO)
Mr. Muhammad Aftab Ahmad, AAG.

Date of Decision: 08.02.2021.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner seeks direction to be issued to the respondents to permit installation of new electricity and gas meters in village Dherik Mori, Islamabad and that to de-notify the award dated 22.08.2008 or in alternative, a fresh award at current rate of land and BUP may be announced.

2. Succinctly, the Capital Development Authority (CDA) announced acquisition award, dated 22.08.2008, with respect to revenue estates Bheker Fateh Bukhsh, Seri Saral, Shah Allah Ditta, Pind Sangral, Dherk Mori, Maira Sumbal Akku, Maira Sumbal Jaffar and Thallah Syedan, Islamabad without making any payment, even otherwise, sale and purchase of the land as well as built up properties have adversely been affected, moreso, the CDA restricted the IESCO (Respondent No.2) and D.G. Gas, Ministry of Petroleum and Natural Resources (Respondent No.3) not to permit

electricity and gas connection to the said areas. As such, petitioner being resident of the affected area i.e. Dherik Mori, is aggrieved due to the inaction on the part of respondents authorities. Hence, instant writ petition.

3. Learned counsel for petitioner contended that the inaction of the respondents is derogatory and violative of the Constitution of the Islamic Republic of Pakistan, 1973 with respect to fundamental rights guaranteed therein, as such, the petitioner is not being treated in accordance with Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which makes entitled all citizens equal before the law; that the CDA has not made any payment relating to the award dated 22.08.2008, even the residents of purportedly acquired revenue states have been deprived of their fundamental rights and basic necessities.

4. Conversely, learned counsel for respondents No.1 and 2 contended that the Hon'ble apex Court, in HRC No.6465-G/2017, has directed not to provide any electricity connection to buildings not sanctioned by the competent authority, as such, since the matter has already been decided by the Hon'ble Supreme Court of Pakistan, the instant writ petition is not maintainable; that since award has been announced and ownership of the suit land has been transferred to the CDA, there is no question of further construction upon the CDA land or without its NOC.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner Malik Muhammad Younas is aggrieved with the acquisition proceedings of his land situated in village Dherik Mori (Sector E-13 Golra Railway Station, Islamabad) and as such, the acquisition claim has not yet been settled. The petitioner has

simultaneously challenged the award, dated 22.08.2008, and claims that installation of new electricity and gas connection for his properties may be resumed, which has been restricted by the respective departments being basic necessity of life.

7. It has been observed that the award has been made by the Deputy Commissioner, CDA on 22.08.2008 by acquiring the land of Mouza Bheker Fateh Bukhsh, Seri Saral, Shah Allah Ditta, Pind Sangral, Dherk Mori, Maira Sumbal Akku, Maira Sumbal Jaffar and Thallah Syedan, Islamabad, comprising of 21723 Kanal & 10 Marla, at flat rate of Rs.800,500/- per Kanal, as a result whereof the land was transferred in the name of CDA, however it has been notified in the award that the *land owners / affectees having less than 4 Kanal of land will be entitled to receive compensation under CDA Acquisition and Rehabilitation Regulations, 2007 (Land Sharing Basis)*. As such, the affectees / land owners are entitled for allotment of plot as compensatory benefits. The petitioner's forefathers had been living in the land in question since age, thus making the petitioner a permanent resident of said area, as such, the petitioner now intends to get electricity and gas connection for his property due to increase in the number of family members, per se, the IESCO authorities / respondent No.2 have taken the stance that they have no objection on installation of new electricity meter if the CDA issues the NOC. On the other hand, the respondent SNGPL has not contested this petition. Similarly, the Cabinet Division has provided a summary of the Cabinet, whereby it has been recommended to remove the restriction on installation of new electricity and gas connections imposed by the Cabinet vide their decision dated 19.04.2004.

8. While considering this background, the Federal Cabinet in their decision, dated 08.09.2020, (*removal of difficulties in installation of new electricity and gas meters in Islamabad*), a Committee, comprising for Minister for Law & Justice being its convener with Chairman, CDA and other advisors and members, has been constituted to give its recommendation within the period of 60 days, however till date no such decision has been passed or brought on record, therefore, this Court has no other option but to review the entire case on its merits.

9. The original decision passed by the Federal Cabinet, dated 19.05.2004, is reproduced as under:

- i. *Henceforth, construction in contravention of zoning law should not be allowed to be development in Zone-II, III & IV Islamabad on Government or private land and,*
- ii. *WAPDA, SNGPL, PTCL shall, henceforth, not provides connections in the above mentioned Zones unless an NOC has been obtained by the applicant from CDA. CDA issues proper detailed guidelines for the facility of the public in this regard.*

10. While going through above decision, it has categorically been construed that construction as well as installation of electricity, gas and PTCL connections is barred in *Zone-II, III and IV* under Islamabad Capital Territory (Zoning) Regulations, 1992 and as such, the area in question falls within Zone-I of the Regulations, 1992, which is excluded from previous order of the Federal Cabinet. Similarly, the CDA has placed on record a detailed order, dated 09.11.2020, with reference to Ministry of Interior and Ministry of Law & Justice, while considering the recommendation given

by the Committee appointed by the Federal Cabinet, whereby it was held that:

1. **Zone-I:** *There is no issue of utility connections in the sectors developed by CDA because buildings are constructed after the approval of CDA.*
 2. **Zone-II, IV & V:** *Private housing societies have been allotted to develop their projects in these zones after the approval of Layout Plans (LOP) and issuance of NOCs of their schemes from CDA. Some of the LoP /NOCs of the housing schemes were subsequently cancelled by CDA due to the default on the part of the sponsors / developers.*
 3. **Zone-III.** *The utility connections may only be provided to the villagers / native & their legal heirs who are included in the Award List subject to verification from Union Councils. No connection shall be allowed to the settlers who do not belong to the recognized village.*
11. While considering the above referred state of affairs, it appears that there is no restriction on installation of electricity or gas connection in Zone-I, if buildings / properties are constructed in accordance with CDA by-laws, however for utility connection in villages / native areas, including the awardees, are allowed subject to verification from the concerned Union Councils. This aspect has been referred for Zone-III and as such, there is no decision made by the CDA qua any rural area of Zone-I, therefore, the analogy drawn for Zone-III qua village areas has to be applied to the residents of Zone-I in their native villages, especially when they are not compensated till date.
12. The IESCO authorities conceded before this Court that they have no objection on grant of electricity connection, if CDA issues NOC, however at this point of time, the CDA authorities have half-heartedly settled the

issues by way of order, dated 09.11.2020, excluding certain areas which itself is discrimination and violation of settled fundamental guarantees of the individuals.

13. It has also been argued on behalf of the respondents that HRC No.6465-G/2017 and HRC No.113/2018 (in the matter of large scale encroachment of botanical gardens and unplanned / unregistered plazas in Bani Gala) are pending before the apex Court, whereby different orders have been passed and on the strength of these orders, the IESCO and SNGPL are not allowing installation of new connections, therefore, I have gone through different orders of the apex Court passed in above referred HRCs with the assistance of learned counsel for the parties and observed that order, dated 03.04.2018, is relating to encroachment in botanical garden in area of Bani Gala and the apex Court has further taken notice of recent construction carried out in areas of Bani Gala, Bhara Kahu, Shadra, Begowal, etc., as well as the catchment area of Rawal Lake in order to protect the Rawal Lake from pollution caused by the nearby residents, whereas the apex Court vide order dated 24.04.2017 imposed restriction on the issuance of electricity and sui gas connection in or around Korang Road to Murre Road, Bani Gala, and at the same time, unauthorized cutting of trees has also been banned. It has also been observed in the order dated 13.02.2018 that there was no restriction on new electricity or gas connection if the resident can satisfy the relevant agency that the construction has been raised in accordance with law. All these orders of the apex Court clearly establish that the restrictions are to the extent of Bani Gala, Korang Road and the adjoining population of Murre Road, as

such, it has nothing to do with Zone-I, which has also been conceded by the CDA vide their letter dated 09.11.2020.

14. I have also gone through the report submitted by the CDA in this case qua the status of land in question, which reveals that the built-up properties award has not yet been concluded and as such, the survey has not been conducted by the CDA or Survey of Pakistan, even otherwise, the question of genuineness of the local population is yet to be settled. A restriction has admittedly been imposed by the CDA authorities, though they themselves are responsible for their delay and inactions, which could not be made basis to deprive the residents of Islamabad of their right to install new electricity and gas connection, especially when the award concerning the built-up properties has not yet been finalized.

15. Keeping in view the above position, the IESCO and SNGPL have no justified standing to deprive the petitioner of his fundamental rights i.e. right to life in terms of Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 and as such, the Committee appointed by the Federal Government has already given its view, which has been reflected from CDA's letter dated 09.11.2020 qua electricity and gas connection, therefore, instant writ petition is ALLOWED to the extent of installation of electricity and gas meters and respondents IESCO and SNGPL are directed to provide installation of new electricity and gas connection to the petitioner within period of 30 days, subject to fulfillment of other codal formalities.

(MOHSIN AKHTAR KAYANI)
JUDGE