

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 4847 of 2014

Imtiaz Ahmed

Versus

CDA, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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11.03.2022	Mr. Faheem Ahmed Ch, Advocate for petitioner. Mr. Amir Latif Gill, Advocate for CDA. Syed Mudassir Ali Rizvi, Advocate for PTCL.
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The instant writ petition has been filed with the following prayer:-

- "a. Respondent No.1 be directed to abstain from converting the incidental open spaces, green area into residential plots or to any other uses.*
- b. To declare the change in layout plan for creation of new plots in end Corner Street as illegal, unlawful, void ab initio and the respondents be directed to withdraw and cancel the same.*
- c. The respondent No.1 be directed to abstain from taking any step directly or indirectly towards conversion of the said public green areas and open spaces, rainy water course by way of creating plots and allotment or giving possession, approving building plan for residential or commercial purposes etc.*
- d. Respondents 1 to 3 be directed to justify the creating of new plots while changes the master layout plan and start of development work by causing mental and physical torture to the petitioner and putting their life, liberty, privacy, right of easement etc. at risk without notice to them.*
- e. The respondents be directed to remove any stage of construction if made prior or during the process of this writ petition and restore the green area etc. in street No.58-A as the same was incorporated in the first layout plan.*
- f. Respondent No.5 be directed to stop all types of constructions or any step towards such construction by any person including the said respondent or his successor or any assignee in his name."*

2. The petitioner is resident of House No.475-E, Street No.58-A, Sector I-8/3, Islamabad and alleges multiple violations of the Master Plan and Layout Plan by the respondents 1 to 4-the Capital Development Authority ('CDA') whereby the latter converted open spaces, green area and other plots reserved and meant for public amenities to the personal uses and purpose for accommodating the blue eyed. Besides general accusation, a specific incident has been alleged to be of identical nature. According to the petitioner, the CDA in connivance with the respondent No.5 (PTCL) had thrown heavy machinery at the close end of Street No.58-A for raising a superstructure by demolishing the plantation, greenery and creating nuisance in the environment and that too without notice to the petitioner and other inhabitants. According to the petitioner the exercise of carving out of new plots in violation of relevant rules by changing the Master Plan had been discouraged by the Superior Courts time and again and the exercise if necessary cannot be carried out without inviting objections and approval of the Government in due course. The open spaces according to the petitioner are meant for healthy atmosphere and their conversion into commercial or residential purpose is also infringement of fundamental rights guaranteed by the Constitution.

3. Learned counsel for the petitioner argued that vacant, leftover or unutilized space cannot be allowed to be used for individual purposes under Rule 1.2.115 of the Islamabad Residential Sectors Zoning (Building Control) Regulations 2005 and Regulation No. 3(VIII) of the Islamabad Land Disposal Regulations, 2005 but despite a plot had been allotted to PTCL; that necessary environmental impact assessment was not carried out in accordance with the Environmental Protection Act, 1997 and regulations made thereunder and, therefore, allotment made in favour of PTCL being in derogation to the rules and regulations and the dictums laid down by the superior courts is liable to be struck down. Learned counsel relied upon case laws reported as *PLD 2006 SC*

394, 2010 CLC 1663 Lahore, PLD 2002 Lahore 412 and 1999 SCMR 2883.

4. On the other hand, learned counsel for CDA repelled the above submissions by contending that no allotment had been made to PTCL in violation of Master plan or Layout plan by carving any new plot; that the subject land does not form part of any green area or space being used for any public purposes and is a vacant space; that the PTCL earlier in the year 1986 was allotted a space of 40 sq. yards for establishing a Public Call Office but said space had been utilized for a masjid and thereafter PTCL was allotted the space of 40 sq. yards in lieu of allotment made in the year 1986 and that the allotment had been made in accordance with rules where under the CDA had authority to relocate the site by amending the Layout Plan. Learned counsel added that there was no violation of any rule and that petitioner has not come to the Court with clean hands as the plot over which he had raised constructions was not part of Master or Layout plan but was carved out subsequently and a report to this effect is part of record, therefore, petition is liable to be dismissed. Learned counsel placed reliance upon reported judgment of Hon'ble Division Bench of this Court in the case of Safdar Zaman v. Federation Of Pakistan and others (2019 Y L R 1625) [Islamabad].

5. Learned counsel for PTCL while adding to above contended that initially a plot in Bazar No.2, Sector I-8/1 Islamabad had been allotted to PTCL for the establishment of a Public Call Office, however, said plot was used for the masjid; that subsequently the CDA decided to allot a plot to PTCL at the end of Street 58-A, near Boys College, Sector I-8/3 Islamabad for installation of its equipment for the benefit of general public and is an amenity of the area and that PTCL had no plan to establish a Public Call Office over the plot. According to the learned counsel, no heavy machinery was involved or required for installation purposes.

6. Heard, record perused.

7. Letter dated 15.05.2012 issued by the Planning Wing of CDA reveals that on the request of DG/Executive Vice President (Estate Management) PTCL Headquarters, a site measuring 40 sq. yards had been approved at the end of Street No. 58-A, near Boys College, Sector I-8/3 for installation of equipment in lieu of the PCO site measuring 40 sq. yards earlier allotted in Bazar No.2, Sector I-8/1, Islamabad. It is thus obvious that it is not a case of conversion of any leftover, unutilized, or space meant for public use into residential plot rather it is a case of relocation of site within the same Sector.

8. The CDA in its written comments categorically refuted the stance of the petitioner in terms that *"neither the residential character of Sector I-8 is changed nor CDA can do it without approval of the Government because it is the change in the Master Plan of the Islamabad. But in this case, only the Layout Plan of Sector I-8 is amended by relocation of site PTCL exchange from one location to left over/unutilized CDA land. CDA Ordinance 1960 authorizes CDA for preparation of Layout Plans of Sectors and amendments therein. Entire Sector is not utilized fully in one go, rather most of the land is utilized in the shape of pockets for accommodating unforeseen land uses which may require land in coming years. The said site measuring 40 sq. yards has been approved for PTCL equipment only which is an amenity for the residents of area, and meant only for installation of equipment."*

9. The claim of the petitioner to have green area in the surroundings of his house has also been denied in terms that the same is leftover/unutilized land.

10. In the case of Safdar Zaman supra, this Court had restrained the CDA from carving out any new plot in the name of re-planning, rectification of layout plan or under any circumstance in any sector of Islamabad Capital Territory save in accordance with law-. It had also been declared that plots created by converting

green areas which were not part of original layout plan were illegal. While in the present case, no new plot had been created by converting any particular area that forms public amenity rather site had been relocated whereby a site of 40 sq. yards had been allotted to the PTCL in lieu of earlier allotted site of same measurement in the year 1986 vide letter dated 7-7-1986.

11. Moreover, by the decision in case of Safdar Zaman supra, newly created plots which had already been allotted to different individuals by way of auction or through direct allotment under any other eligibility whether construction thereupon was done or otherwise, rights of third-party had been created; same were given protection under the principle of past and closed transaction.

12. The relocation of the instant area/site, even if presumed as an allotment, is protected being past and closed transaction as it had taken effect in the year 2002, much prior to passing of the judgment *ibid* in 2019 while, on the other hand, the plot upon which petitioner had raised constructions i.e. No. 457-E retains identical antecedents, referred to above (newly created plots) created/re-planned subsequently on 20.1.2007 along with plots 475-A, B, C & D and were not part of Master plan or Layout plan, thus, enjoys the immunity under the ratio *ibid*.

13. In view of above discussion, the instant writ petition lacks merits and is accordingly **dismissed**, with no order as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on 07.04.2022

JUDGE