

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. NO. 308 of 2016.

Malik Bashir Ahmed, etc.

VERSUS

**The Federal Government of Pakistan, through Secretary Cabinet Division,
Pak Secretariat, Islamabad, etc.**

Petitioners by : M/S Hassan Murtaza Mann, Mr Abdul Latif and Mr Wajid Ali
Shah Gillani, Advocates for the petitioners in their respective
petitions.

Respondents by : Mr Mansoor Ahmed, Advocate for the respondent no.4 /
Federal Government Employees Housing Foundation,
Islamabad.

Mr Muhammad Nazir Jawad and Ch. Asghar Ali, Advocate for
the respondents / CDA.

Mian Abdul Rauf, Advocate General, Islamabad.

Khawaja Muhammad Imtiaz, A.A.G.

Ms Rabia Aurangzeb, Additional Land Collector.

Malik Zafar Abbas, Director Law, FGEHF.

Date of Hearing : **15-08-2017.**

ATHAR MINALLAH, J.- Through this consolidated
judgment, I intend to decide the instant writ petition along with the
petitions listed in "Annexure-A", attached hereto, since common questions
of law and facts are involved.

2. The prayers sought in the instant petitions are as follows:-

"In the light of the foregoing submissions, it is respectfully prayed that this Honourable Court may be graciously pleased to:

- a) Declare that the Impugned Notifications are illegal, unlawful, arbitrary, malafide, discriminatory, without jurisdiction, void ab-initio and are of no legal effect;*
- b) Declare that the land of the Petitioners can only be acquired under the CDA Ordinance and the land acquisition procedure framed thereunder for purpose of the Master Plan only;*
- c) Declare that the entire acquisition proceedings initiated by the Respondents are unlawful, malafide, arbitrary and unsustainable for noncompliance of the mandatory statutory provisions as well as the purpose of the acquisition is not for the benefit of the general public;*
- d) Declare that self-financing housing schemes on ownership basis for federal government employees in the Federal Capital are without lawful justification, arbitrary and against the public interest;*

- e) *Alternatively, direct the Respondents to treat the Petitioners and all other affectees under the 'land for land' scheme as provided under the CDA Ordinance and the procedure framed thereunder, and declare any other formula for compensation illegal, arbitrary, unlawful and unconstitutional;*
- f) *Grant costs of this Petition.*

Any other relief which this Honourable Court may deem fit and proper may also be granted".

3. The petitioners in all these petitions assert that they are natives of villages covered under the impugned notifications issued under the Land Acquisition Act 1894 (hereinafter referred to as the "**Acquisition Act**"). The Land Acquisition Collector has issued the impugned Notification, dated 20.05.2015, under section 4, while the other impugned Notification, dated 04.12.2015, has been issued by the Commissioner, District Islamabad, under sub-section (1) of section 17 of the Acquisition Act. The petitioners have, therefore, called into question the proceedings initiated by the Land Acquisition Collector to acquire land for 'public purpose' at the request and for the Federal Government Employees Housing Foundation (hereinafter referred to as the "**Foundation**"). It is the case of the petitioners that their fundamental rights, guaranteed by the Constitution of the Islamic Republic of Pakistan 1973 (hereinafter referred to as the "Constitution") inter alia, under

Articles 9, 23, 24 and 25 are being violated and that they are being forcibly deprived of their ancestral lands in violation of the law.

4. The relevant facts, in chronological order, for adjudication of the instant petitions are as follows;-

30.04.1986.

A summary was sent for approval of the Federal Cabinet for construction of 5000 houses for government servants on ownership basis in the Federal Capital Territory, Islamabad. The recommendations were in respect of giving effect to the Sixth Five Year Plan which had envisaged construction of 6000 housing units by the Federal Cabinet for government servants. The summary, inter alia, recommended a management system consisting of three tiers i.e. a Board of Governors headed by the Minister for Housing and Works, an Executive Committee of the Board of Governors headed by the Secretary, Housing and Works and a Directorate headed by a BPS-20 Engineer.

05.08.1986.

The Cabinet approved the above summary in its meeting held on 05.08.1986.

21.06.1989.

The Executive Committee in its 5th meeting, inter alia, decided to set up an institutional entity for the implementation of the housing scheme and that the status thereof would be autonomous. It is noted that

neither was the Executive Committee mandated in this regard nor was approval sought from a Ministry or Division, let alone the Cabinet.

26.03.1999.

Pursuant to the above decision of the Executive Committee, the Foundation was incorporated as a juridical person under section 42 of the Companies Ordinance, 1984 (hereinafter referred to as the "**Ordinance of 1984**") and accordingly a Certificate of Incorporation was issued by the Corporate Law Authority. The objects for which the Company was established are mentioned in its Memorandum of Association which are as follows;-

- a) *To eradicate shelterlessness for Federal Government Employees, serving and retired, and for other specified groups of people as decided by the Foundation from time to time and assist as far as possible each of them to have a house at the time of his retirement or earlier, and his dependents in case of his death before retirement, on such terms as the Foundation may determine;*
- b) *To initiate, launch, sponsor and implement Housing Schemes for Federal Government Employees, serving and retired, and for other specified groups of people as decided by the Foundation from time to time on ownership basis in Islamabad, the Provincial Capitals and other major cities of Pakistan; and*

- c) *To do all such things as are incidental or conducive to the attainment of the above objects or any of them, in particular to do the following:-"*

March, 1992.

The Foundation launched its housing scheme in Phase-II pursuant to the above mentioned decision of the Cabinet. The beneficiaries included serving and retired Federal Government employees except those who owned houses, flats / residential plots in Islamabad/Rawalpindi either in their names or in the names of their dependents. It is noted that since land can only be acquired in the Islamabad Capital Territory under the Capital Development Authority Ordinance, 1960, therefore in order to execute the scheme, plots were allocated by the Capital Development Authority in the already acquired sectors.

20.12.1993.

The Cabinet in its meeting held on 20.12.1993, constituted a Committee to look into the possibility of developing a housing scheme for Members of the National Assembly, Journalists, Civil Servants, Judges, etc in Islamabad.

03.05.1994.

The Committee constituted pursuant to the above decision of the Cabinet made recommendations to the Prime Minister, which were approved by the latter and the same are as follows:-

- i) *The Federal Government Employees Housing Foundation may acquire the land in Sector G-13*

Islamabad through DC, Islamabad under Land Acquisition Act 1894 for the proposed housing schemes. The existing charter of the Housing Foundation was reasonably broad-based and would require no change for the implementation of the scheme.

- ii) Only plots may be provided to the target groups instead of constructed houses.*
- iii) The Housing Foundation may draw up detailed proposals for implementing the scheme after approval in principle to the above recommendations.”*

As it will be discussed in more detail, these recommendations were made by those who themselves were to be the beneficiaries of the largess which definitely involved substantial financial interest to private persons. The provisions of the Capital Development Authority Ordinance, 1960 were not considered. It is interesting to note that contrary to the decision of the Cabinet, the Committee excluded Members of the National Assembly.

PHASE-III.

The Foundation launched phase-III for a housing scheme located in Sector G-13, which was spread over a vast area and was yet to be acquired under the Acquisition Act.

08.11.1999.

The owners of land which was being acquired in Sector G-13 challenged the acquisition proceedings through Writ Petition No. 338 of

1999 before the Lahore High Court, Rawalpindi Bench, Rawalpindi. The petition was decided vide judgment, dated 08.11.1999. The learned High Court besides upholding the acquisition proceedings also prescribed the criteria for allotment of plots to the Judges of the Superior Courts and gave directions for including employees of autonomous and semi autonomous organizations, Election Commission of Pakistan, Honourable Supreme Court of Pakistan, Federal Shariat Court and Rawalpindi Bench of the Lahore High Court, the National Assembly, senior members of the Armed Forces, Journalists, Doctors, Engineers and Lawyers. The allotments already made by the Foundation were declared as invalid and the latter was directed to allot plots in the light of the directions given by the learned Single Judge in Chambers.

15.03.2000.

Criminal Original No.1-W of 2000 was filed alleging that the directions given by the Lahore High Court vide its order, dated 08.11.1999 were being violated by the Foundation. The Foundation took the plea that since plots in Sector G-13 had been exhausted, therefore, other applicants would be accommodated in the next phase. However, the learned Single Judge in Chambers was pleased to approve allotment of plots in sector G/13 to selected judges, two senior lawyers namely late Sharif ud Din Pirzada and Aziz A. Munshi besides former Chief of Navel Staff namely Admiral (R) Fasih Bukhari.

22.11.2007.

The Prime Minister of Pakistan approved the criteria for allotment of plots to officers serving in BPS-22. This largess involving substantial

private financial benefit was in addition to allotment of plot by the Foundation.

Phase-IV.

The Foundation launched and completed yet another housing scheme in Sub-Sectors 1,2 and 3 of G-14 while Sector G-14/4 was allocated to the employees of Quaid-e-Azam University.

04.11.2013.

A summary was sent for approval of the Prime Minister proposing acquiring Sector F-14 for the Foundation. However, the request made by the Cabinet Division was turned down by the Prime Minister on account of observations and objections raised by the Capital Development Authority (hereinafter after referred to as the "**Authority**").

06.01.2015.

The Secretary Ministry of Housing and Works initiated a fresh summary regarding acquisition of land for the Foundation covering Sector F-14 and parts of Sector F-15. It is noted that the objections raised by the Authority were explicitly mentioned in the summary and the same are as follows;-

*"Any private Housing Scheme is not allowed in
Zone-I of ICT.*

*Sector F-14 cannot be planned to provide 7,000 small
category plots by the FGEHF as per its requirement.*

In F-Series Sectors the number of plots is much less than 7000.

Allocation of sector to another organization would deprive CDA from funds recovered through sale of commercial plots to meet the expenditures for trunk infrastructure.

Allocation of F-14 sector to FGEHF for allotment to FGEs and Supreme Court Bar members will be in violation of ILDR, 2005.

Inclusion of quota for lawyers in ILDR, 2005 will establish a precedent for other professions, increase litigation and erosion of space for CDA to develop sectors for general public”.

The justifications mentioned against each were vague and in violation of the Master Plan, the Ordinance of 1960 and the regulations made there under.

01.05.2015.

The Prime Minister accorded his approval to the above summary.

20.05.2015.

The Land Acquisition Collector issued impugned notification under section 4 of the Acquisition Act

04.12.2015.

Notification was issued by the Commissioner under section 17(1) of the Acquisition Act.

16.02.2016.

The Sub-Committee of the Foundation recommended quota policy and eligibility criteria in respect of allotment and distribution of plots in the proposed Sector F-14 and parts of Sector F-15. Based on this report summary was forwarded by the Ministry of Housing and Works to the Prime Minister for his approval.

01.09.2016.

The Secretary Housing and Works was informed that the Prime Minister had seen the summary and had observed that the policy did not require his approval and that it should be decided by the Foundation on its own. However, it was specifically directed as follows;-

- i) *Any such policy should comply, in letter and spirit, with the provisions of 'Abolition of Discretionary Quotas in Housing Scheme Act, 2013'; and*
- ii) There should be no special quota for any Group/Service or Organization at all, as a matter of principles of equity and fairness."

April, 2017.

Despite the fact that the instant petitions were pending the Foundation obviously at its own risk, issued letters to its members wherein they were asked to deposit the first instalment for their respective plots. The Foundation has collected substantial funds despite the pending petitions. It is beyond comprehension how the Foundation sent offer letters and collects instalments when the matter was subjudice.

5. The learned counsels appearing on behalf of the petitioners have contended that; the Capital Development Authority Ordinance, 1960 (hereinafter referred to as the "**Ordinance of 1960**") is a special law and, therefore, shall prevail over the provisions of a general law; the Ordinance of 1960 is a self contained comprehensive statute, which provides for acquisition of land and prescribes a procedure relating thereto; for the purposes of determination of fair compensation Land Acquisition and Rehabilitation Regulations, 2007 (hereinafter referred to as the "**Acquisition and Rehabilitation Regulations**") has been made and duly notified; the Acquisition Act is inconsistent with the provisions of the Ordinance of 1960 and, therefore, land cannot be acquired there under; reliance has been placed on "*Mst. Shah Sultan and 45 others versus Chief Commissioner of Islamabad and 05 others*" [2004 CLC 145]; Section 22 of the Act of 1960 is explicit and the legislature in its wisdom has declared that the land within the 'specified areas' shall be liable to acquisition at any time in accordance with the provisions of this Chapter; the legislature through primary legislation has declared the entire area liable to acquisition; section 22 is a statutory declaration having the effect of a notice under section 4 of the Acquisition Act; as long as section 22 is

enforced notice under section 4 of the Acquisition Act cannot be issued within the 'Specified Areas'; the impugned notices are ultra vires the Ordinance of 1960; land cannot be acquired within the 'specified areas' except under the Ordinance of 1960 and in the manner prescribed therein and the regulations made there under; compensation offered by the Land Acquisition Collector is far less than what is paid under the Acquisition and Rehabilitation Regulation; the adjoining Sector i.e. F-13 is being acquired by the Authority and the affectees are being compensated in accordance with the Acquisition and Rehabilitation Regulations, while the petitioners are being treated differently; the land belonging to the petitioners is being forcibly taken for the benefit of the most privileged and influential segments of the society; the scheme and the entire process is inherently discretionary; without prejudice to the argument that land cannot be acquired under the Acquisition Act, forced acquisition in the facts and circumstances of the instant petitions cannot be treated as 'public purpose' in the context of the Acquisition Act since land is being taken from less privileged and given to the powerful and influential classes of the society; the entire scheme is a fraud upon the fundamental rights of the people of Pakistan and the intent of the legislature envisaged under the Ordinance of 1960 as well as the Constitution; the proposed housing scheme is in violation of the law expounded and laid down by the august Supreme Court in respect of disposition and sale of assets which vest in the State i.e. the Government; it is settled law that executive authorities are not vested with power or jurisdiction to dispose of or sell assets vested in the Government in a non-transparent manner; the beneficiaries of the scheme for whom land is being acquired in sectors F 14 and F 15 are otherwise not entitled nor have a vested right; the plots are being

offered to the beneficiaries at prices far lower than what it would fetch if auctioned through a transparent process; it is settled law that what cannot be done directly can also not be done indirectly; the selection of persons for allotment of plots is not based on rational and reasonable classification; such non-transparent disposition or sale and extending benefits involving substantial pecuniary benefit is in violation of the law laid down by the august Supreme Court and simultaneously violates the fundamental rights not only of the petitioners but the people of Pakistan; the executive authorities are not empowered to sell or dispose of State property in a non-transparent manner by giving substantial pecuniary benefit to the beneficiaries unless the same has been expressly authorised under an Act of the appropriate legislature and meets the test of rational and reasonable classifications; acquisition of land for distribution amongst privileged classes in a non-transparent manner cannot qualify the test of 'public purpose'; the Land Acquisition Collector without application of mind has issued the impugned notification on the dictation of the authority which is alien to the provisions of the Acquisition Act; the Land Acquisition Collector and other officers in the hierarchy of the administration of Federal Capital Territory are themselves beneficiaries and, therefore, the acquisition proceedings stand vitiated because of their private pecuniary interests; the proceedings under the Acquisition Act are of a quasi-judicial nature and, therefore, the element of bias, particularly when there is pecuniary interest would vitiate the entire proceedings; the Master Plan of Islamabad has statutory backing and the same is being violated in collusion with officials of the Authority; under Article 173 of the Constitution of the Islamic Republic of Pakistan, 1973, the executive authorities cannot sell / dispose of property owned and vested in the

Government except in a transparent manner and that too subject to an Act of Parliament; the beneficiaries cannot claim a right over property owned by the Government; sale or disposition of State asset in a non-transparent manner is violation of the fundamental rights of the people of Pakistan; no vested right exists in favour of the beneficiaries to claim such a financial benefit; reliance has been placed on "*Syed Mehmood Akhtar Naqvi versus FOP through Secretary Law and others*" [PLD 2012 S.C. 1089], "*Maj. Mehtab Khan versus The Rehabilitation Authority and another*" [PLD 1973 S.C. 451], "*Muhammad Mohsin Ghuman and others versus Government of Punjab through Home Secretary, Lahore and others*" [2013 SCMR 85], "*Syed Mushahid Shah and others versus Federal Investment Agency and others*" [2017 SCMR 1218], "*BNP Pvt. Ltd. and others versus Capital Development Authority*" [PLD 2017 Islamabad 81], "*Nazir Ahmad and 08 others versus Commissioner, Lahore Division, Lahore and 03 others*" [2000 MLD 322], "*Divisional engineer, Gujranwala and 03 others versus Rana Muhammad Sharif*" [2002 CLC 985], "*Haji Ghulam Zamin and another versus A.B. Khondkar and others*" [PLD 1965 Dacca 156], "*Nagpur Improvement Trust and another versus Vithal Rao and others*" [AIR 1973 S.C. 689] and "*Chiniot Co-operative Housing Society Ltd. through President versus Government of Punjab through Secretary Cooperative Department and 02 others*" [PLD 2016 Lahore 293].

6. The learned counsel appearing on behalf of the Foundation has argued that; the scheme was approved by the Prime Minister vide approval, dated 01.05.2015; the Foundation has been declared by the august Supreme Court as an agency of the Federal Government; the Foundation had made a request regarding acquisition of land in Sectors F-

14 and F-15; Award, dated 15.11.2016 has been finalized and an area measuring 7003 Kanals has been acquired; out of 650 affectees, 280 have filed references under section 18 of the Acquisition Act; the Acquisition Act is extended to the Federal Capital Territory; there is no conflict between the provisions of the Ordinance of 1960 and the Acquisition Act; efficacious remedy is available to the petitioners under section 18 of the Acquisition Act; there is no malafide on part of the Land Acquisition Collector nor the proceedings suffer from illegality; the land is being acquired for 'public purpose' and not for the Foundation as a Company; the purpose and object is to provide plots to Federal Government Employees and other groups; earlier land for Sectors G-13 and G-14 was acquired and the proceedings were challenged before the Lahore High Court, Rawalpindi Bench, Rawalpindi and were upheld through judgment reported as "*Ghulam Murtaza, etc versus Ghulam Jillani, etc*" [2000 YLR 1798]; acquisition of land for a housing scheme comes within the ambit of the expression 'public purpose'; the Foundation is under the control of the Federal Government and, therefore, is covered under the definition given in the Companies Act, 2017 i.e. section 2(54) thereof; the august Supreme Court has also declared the Foundation as an agency of the Government and reliance in this regard has been placed on "*Federal Government Employees' Housing Foundation through Director General, Islamabad and another versus Muhammad Akram Alizai, Deputy Controller, PBC, Islamabad*" [PLD 2002 S.C. 1079]; as an agency of the Government, the Foundation was competent and empowered to request the Land Acquisition Collector for acquisition of land in Sectors F-14 and F-15; the judgment of the Lahore High Court, Rawalpindi Bench, Rawalpindi, rendered in the case "*Mst. Shah Sultan and 45 others versus*

Chief Commissioner of Islamabad and 05 others” [2004 CLC 145] is distinguishable since in that case the matter related to Punjab Land Acquisition Rules, 1983 and the land had been acquired for a Company; the judgment rendered by the Lahore High Court, Rawalpindi Bench, Rawalpindi, reported as *"Mst. Shah Sultan and 45 others versus Chief Commissioner of Islamabad and 05 others” [2004 CLC 145]*, wherein it was declared that the Acquisition Act is not attracted in the Federal Capital Territory, Islamabad is per incuriam and in this regard reliance has been placed on *"Sindh High Court Bar Association through its Secretary and another versus FOP through Secretary, M/O Law and Justice, Islamabad and others” [PLD 2009 S.C. 879]*; the Acquisition and Rehabilitation Regulations are not attracted since the land is not being acquired under the Ordinance of 1960; section 22 of the Ordinance of 1960 is attracted only in case of land which is acquired under the Ordinance ibid and has no relevance for the purposes of Acquisition Act; reliance has been placed on *"Islamabad Club versus Punjab Labour Court No.2, etc.” [PLD 1981 S.C. 81]*, *"The Murree Brewery Co. Ltd. versus Pakistan through The Secretary to Government of Pakistan, Works Division and 02 others” [PLD 1972 S.C. 279]*, *The Federation of Pakistan through The secretary, Establishment Division, GOP, Rawalpindi versus Saeed Ahmad Khan and others” [PLD 1974 S.C. 151]*, *"Dr Muhammad Nasim Javed versus Lahore Cantonment Housing Society Ltd. through The Secretary Fortress Stadium Lahore Cantt and 02 others” [PLD 1983 Lahore 552]*, *[PLD 2009 S.C. 217]*, *"Allah Ditta and others versus Province of Punjab” [PLD 1997 Lahore 499]*, *Tej Ram Jag Ram versus Union of India, Ministry of Works, Housing and Supply, New Delhi and others” [AIR 1959 Punjab 478]*, *"Smt. Somawanti and others versus The State of Punjab and*

others" [AIR 1963 S.C. 151], *"State of Gujarat and another versus Musamigan Imam Haider Bux Razvi and another"* [AIR 1977 S.C. 594] and *"Faisalabad Development Authority versus Raja Jahangir Nasir and others"* [2004 SCMR 1247]; the learned counsel has further informed this Court that the august Supreme Court has allowed Constitutional Petition no. 38 of 2013 vide order, dated 29.09.2014 pursuant whereof land acquisition proceedings under the Acquisition Act have been initiated and contempt proceedings are pending before the august Supreme Court.

7. The learned Advocate General has argued the case at length. He has contended that; the Acquisition Act is enforced in the area of Islamabad Capital Territory; the arrangement for acquisition of the scheme for which the land is being acquired is a composite arrangement between the Authority and the Foundation; the judgment of the august Supreme Court rendered in the case titled *"Mustafa Impact versus Government of Pakistan"* [PLD 2016 S.C. 808] is being misinterpreted by the learned counsels for the petitioners; Article 173 does not require separate legislation for sale or disposition of land vesting in the Government; the expression 'public purpose' is not open to judicial review; the impugned notifications have been issued in accordance with the powers conferred by the learned Land Acquisition Collector; alternate remedy is available to the petitioners and, therefore, the instant petitions are not maintainable; the scheme for which land is being acquired is not in violation of the Master Plan; the learned Advocate General was asked whether the judgment rendered by a Division Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi reported as *"Mst. Shah Sultan and 45 others versus Chief Commissioner of Islamabad and 05 others"* [2004

CLC 145], was assailed before the august Supreme Court. The learned Advocate General answered in affirmative and stated that it has been upheld by the august Supreme Court vide judgment, dated 27.02.2017, passed in Civil Appeal No. 1628 of 2006; the learned Advocate General on query of this Court conceded that since the judgment rendered by the Lahore High Court, Rawalpindi Bench, Rawalpindi has been upheld, therefore, the declaration to the effect that Acquisition Act is not attracted in case of land acquired in Islamabad Capital Territory stands confirmed.

8. The learned Assistant Attorney General has adopted the arguments of the learned Advocate General.

9. The learned counsels for the parties, learned Advocate General and Assistant Attorney General have been heard and the record perused with their able assistance.

10. The admitted facts are that land is being acquired, as stated, by the Land Acquisition Collector for 'public purpose' under the Acquisition Act and not the Ordinance of 1960. The latter statute is a special law while the former is general in nature. The Ordinance of 1960, as a special law, is enforced in the "Specified Area" known as Islamabad Capital Territory. The Foundation is a Company incorporated under the Ordinance of 1984 and it is not an attached department or organization in terms of the Rules of Business, 1973. The Foundation is a juridical person and it is not empowered to exercise executive powers of the State or to perform such functions consigned to this branch under the Constitution. The approval of the housing scheme proposed to be established in Sector F-14

and part of F-15 was accorded by the Prime Minister of Pakistan without placing the proposal before the Federal Cabinet, whereas no Act of Parliament empowers the Prime Minister or any other member of the executive to sell, transfer, lease or in any other manner dispose of land or assets vested in the Government otherwise than in a transparent manner. Sale or disposition of land vested in and owned by the Government in a non transparent manner attracts the offence of corruption and corrupt practice as defined in section 9 of the National Accountability Bureau Ordinance 1999. The Executive Committee of the Foundation selects the groups or categories of beneficiaries and also determines their respective quota. The beneficiaries are serving or retired officers and employees of Federal Ministries, Divisions, Attached Departments and their sub-ordinate offices declared as such and included in the Rules of Business, judges of the superior courts i.e. the Hon'ble Supreme Court, all the High Courts, including Azad Jammu and Kashmir Supreme Court and the High Court and Chief Court of Gilgit Baltistan and the Federal Shariat Court. The beneficiaries also include serving and retired employees of autonomous/semi-autonomous bodies and public corporations under the control of the Federal Government, journalists, media workers, lawyers, employees of the Foundation, employees of the Ministry of Housing and Works and attached departments, employees of Ministries and constitutional bodies, spouses of those eligible government employees etc who retired on superannuation of service and have passed away, employees of the Federal Government and other constitutional bodies having major disabilities. The funds for the acquisition of land and its development are received from the successful allottees of plots. According to the statement made by the Foundation, a developed plot is transferred

and sold to the allottee at its cost price i.e. the cost of acquisition and development, which essentially is in violation of the principles of transparency. There is no restriction on the further sale of the plot. It is also admitted that if such a sale is made in a transparent manner then it would fetch a far higher price. The plots are allotted on the basis of primary eligibility criteria, which in the case of government employees is seniority in age.

11. In the instant case, on 04-11-2013 the Prime Minister of Pakistan had turned down the summary for acquiring land for the Foundation in Sector F-14 and part of F-15 under the Acquisition Act because of objections raised by the Authority. However, the summary was resubmitted after more than two years and was allowed by the Prime Minister without recording reasons for reviewing his earlier decision. The Land Acquisition Collector has not invoked Part VII of the Acquisition Act, i.e. sections 38 to 44 *ibid*, despite the fact that the Foundation is a juridical person, a company incorporated under the Ordinance of 1984. The acquisition proceedings have been initiated on the assumption that the land is being acquired for the Federal Government for a 'public purpose', while nothing has been placed on record to show that a request in this regard was made by the Federal Government.

12. It is also not denied that the effect of the completion of the acquisition proceedings would be that the land so acquired would absolutely and exclusively vest in the Federal Government in terms of section 16 of the Acquisition Act. The compensation offered to the affectees of the acquisition proceedings is not determined under the

Acquisition and the Rehabilitation Regulations. The Judges of the District Courts of Islamabad Capital Territory, who would ultimately hear and decide references of the affectees under section 18 of the Acquisition Act, have either already availed the benefit or have applied for plot to the Foundation, thus resulting in them having a personal financial interest in the cases before them. Moreover, almost every official who was involved in preparing and forwarding the summary to the Prime Minister for the forced acquisition of land which would absolutely vest in the Government and which would be disposed of or sold in a non transparent manner, is either already a beneficiary or expects to be a recipient of this State largess in the future. The entire machinery involved in the acquisition of land through the police force of the State, from the Chief Commissioner to the Land Acquisition Collector, have a financial interest in the Foundation i.e. to get a plot at a price lower than what it would fetch through a transparent sale. Journalists and media workers, who are supposed to hold the State organs accountable by exposing their misdeeds to the people of Pakistan, have also been made stake holders. Likewise, lawyers who should defend the affectees and highlight their grievances relating to violations of their fundamental rights are also a part of this State largess. Interestingly, none of the members of these categories have a vested right to obtain land in a non transparent manner. Such an extra ordinary privilege is not part of the terms and conditions of a Federal Government Servant or any other employee who is a member of the Foundation. The State has no commitment to give a plot in a non transparent manner to the judges, journalists, lawyers or any other beneficiary of the Foundation. The learned counsel for the Foundation, in reply to the Court's query, stated that this largess is a matter of "grace" and that no vested right

exists in favour of any recipient of precious State land owned by the Government. These admitted facts have been recorded for a better understanding of the "public purpose" for which land is being taken from its owner through police power of the State rather than an arm's length transaction.

13. In these petitions, besides other grounds, the main issue involved is whether in these facts and circumstances land is being acquired for a 'public purpose'. It would, therefore, be beneficial for proper appreciation of the issues, to sum up the nature of the scheme and the manner in which it is to be executed. Federal Government Servants had conceived and proposed the acquisition of land through the police power of the State under the Acquisition Act. Approval was granted by the Prime Minister. On completion of the proceedings the land so acquired will absolutely and exclusively vest in the Government under section 16 of the Acquisition Act and the latter will become its owner for the purposes of Article 173 of the Constitution. The land, after being vested in and owned by the Government, or in other words the people of Pakistan, will be distributed by the Foundation amongst the few selected beneficiaries without observing the principles of transparency. The fortunate allottees will then be at liberty to sell, lease or dispose of the land, vested in and owned by the Government and the people of Pakistan, for a price negotiated at arm's length. In other words, the allotment will create a substantial private financial interest in case of each allottee. There is no legislation enacted by the Parliament to empower the executive to sell, dispose of, lease or grant State owned land other than in a transparent manner i.e. through public auction. This extraordinary largess, which

involves substantial private financial benefit, has been termed as "Grace".
This scheme will hereinafter be referred to as "State largess"

14. In the light of the admitted facts, the nature of the State largess and the arguments advanced by the learned counsels, the questions which emerge for consideration of this Court are, first, whether the provisions of the Ordinance of 1960 are inconsistent with the Acquisition Act, secondly, whether in the facts and circumstances involved in the instant petitions, the State largess is a 'public purpose', thirdly, whether the Prime Minister and other executive authorities are vested with the jurisdiction and power to approve or grant the State largess or, in other words, can they lawfully sell, transfer and dispose of land, which is vested in and owned by the Government, in a non transparent manner and that it essentially involves substantial private financial benefit to every allottee of a plot, fourth, whether the selection of the categories of beneficiaries and the determination of respective quotas qualifies the test of rational and reasonable classifications, fifth, whether there is conflict of interest of the beneficiaries viz-a-viz their official or Constitutional obligations and duties on account of accepting the State largess and, lastly, if the answer to the questions above is in the affirmative then what consequences would follow.

15. In order to understand the gamut of the issues raised and required to be answered in these petitions, it would be beneficial to survey the relevant laws. In the context of the instant petitions the two relevant statutes are the Ordinance of 1960 and the Acquisition Act.

16. The legislative intent in promulgating the Ordinance of 1960 can best be discovered by examining the historical events which had preceded its enactment. The Islamic Republic of Pakistan came into existence after a long drawn struggle. On the eve of independence the newly formed nation did not have a capital. The first task of the Government was to search for the most suitable place which could be declared as the country's capital. The Government of Pakistan appointed a consultant company namely MRVP to prepare a master plan for the city of Karachi. The master plan was prepared in 1952 but it could not get official approval. The then President of Pakistan constituted a special Commission for identifying a suitable location for the Capital. The Commission held its first meeting in 1959. Nine Sub-Committees were constituted consisting of experts from various fields to make recommendations. In February 1959, the President of Pakistan appointed a renowned architect and city planner having international repute, namely Dr C. A Doxiadis, as Advisor to the special Commission for location of the Capital. A preliminary report was submitted by the Commission, i.e. DOX-PA 88, to the Government. In June 1959, the special Commission for location of the Capital submitted its report wherein it was recommended that the city of Karachi was not a suitable site for establishing a Capital and that the area around the city of Rawalpindi was more appropriate. Two sites i.e. A & B were proposed. In June 1959, the President of Pakistan publically announced his decision regarding the selection of proposed area-A as the site for the Capital. Dr. C. A Doxiadis was given the task of preparing the next phase. In September 1959, the President of Pakistan and the Cabinet established the Federal Capital Commission. The renowned international firm of town planning, namely M/S Doxiadis Associates, was appointed as consultant to

the Federal Capital Commission. The said Commission constituted fourteen sub committees of experts to carry out surveys and investigations for preparing a Master Plan for the selected area-A, which was to be the Capital of Pakistan. The said sub committees submitted several reports. On 24.02.1960, the Cabinet gave the new Capital the name of Islamabad. In May 1960, pursuant to the surveys and studies conducted by the fourteen committees, a preliminary master programme and master plan was prepared and designed by the Greek architect Dr C. A Doxodias and his firm. On 24.05.1960, the first Cabinet meeting was held in Islamabad. On 01.06.1960, the Federal Capital Commission was succeeded by the Capital Development Authority. The Authority was established on 01.06.1960 for planning and developing the Capital i.e. Islamabad, in accordance with the Master Plan and the phased master programme. The President of Pakistan was pleased to promulgate the Ordinance of 1960. Simultaneously another crucial legislative instrument i.e. Pakistan Capital Regulation MLR-82, 1960 (hereinafter referred to as the "**MLR-82**") was also enforced.

17. After extensive surveys and studies the sub committees submitted their final reports. Dr. C. A Doxiadis and his consultant firm submitted a final report titled 'Recapitulative Report DOX-PA 88'. This report consists of three parts and an introduction. The three parts are titled "Towards a new Capital", "Towards Islamabad" and "Programme and plan for Islamabad" respectively. This report is the descriptive part of the Master Plan and programme for the development of the Capital. I have had the privilege of going through this historical document and its detail, comprehensiveness and professional excellence has left me in awe.

This document in fact explains and gives the details of the Master Plan (hereinafter referred to as the "Master Plan"). This historic and internationally outstanding work of town planning was the outcome of several months of deliberations and extensive surveys conducted and data collected by various sub committees which had been constituted for this purpose. Constantinos Apostolou Doxiadis was honoured with special awards for this masterpiece of town planning i.e. the Master Plan of Islamabad. The vision of the founding planners of the capital of Islamabad is recorded in page 160 of the Master Plan as follows:-

"The Capital of a country is not merely just another city; it is a LEADER among cities. To this city come leaders of administration and politics, commerce and trade, literature and art, religion and science. From this city flows the inspiration which pulsates life into the nation. It is a symbol of our hopes. It is a mirror of our desires. It is the heart and soul of the nation. It is, therefore, essential that the environment of the Capital should be such as to ensure continued vitality of the nation".

18. The Master Plan prescribes detailed guidelines for a five year and a twenty year plan. The Master Plan is indeed a comprehensive document giving the details for the planning and development of Islamabad as the Capital of Pakistan. The Master Plan, inter alia, caters to the needs of all the different classes i.e. from the highest to the lowest income groups. The Master Plan has divided the entire territory of the 'Specified Areas' of the Federal Capital into five distinct Zones. The Master

Plan is protected and has statutory backing in terms of section 11 and the Zoning Regulations, which would be discussed later.

19. The purpose for which the Authority was established and its duties and obligations under the Ordinance of 1960 have been eloquently described by Dr. C. A Doxiadis at page 426 of the final report, which was approved by the Government, and the relevant portions thereof are reproduced as follows;

"1041. CDA will be responsible for coordinating all endeavours for the development of the whole of the Capital Region so that unity of purpose is ensured at all times. The extent of the region to be controlled will be defined immediately upon approval of the regional plan, which has to be prepared as soon as possible.

1042. But even before that point is reached, in fact from now on, CDA will be generally responsible for coordinating all development within the Metropolitan Area.

1043. As soon as the regional plan is completed, CDA will have to take full control of all new developments within the region, which means that no major development till be possible within the region without its special approval.

1044. CDA may authorize other authorities to prepare plans or carry them out within the region without being itself in charge of all these projects. For example, a new resort may be created, of which CDA might in principle approve the location, size and importance, while at the same time leaving

the designs in the hands of another authority for organization although necessarily retaining the right to approve these designs.

1045. Within the Metropolitan Area, however, the responsibilities of CDA will be much larger. It is within the Metropolitan Area that CDA should have not only full control, but full responsibility for every development. Here CDA will itself issue the permits for every kind of building, even the smallest one.

1046. It will not be permitted to add houses to existing villages, or even demolish houses within villages, without the special permission of CDA. This is because CDA may well think that some villages will have to be demolished later and that no investment should be encouraged or allowed in them, or that some villages must be preserved as elements of the National Park and that thus no addition to them should be allowed.

1047. The same is true of all other types of development within the Metropolitan Area and not only of buildings and construction. For example, change of cultivation, or cultivation of new areas, will also have to be approved by CDA, as likewise will the opening of new roads, even of minor importance, or the creation of new Cantonments.”

20. The above mentioned events and the background which led to the enactment of the Ordinance of 1960 are a relevant guide in understanding the legislative intent. It would, therefore, facilitate in appreciating the legislative scheme and intent of the Ordinance of 1960, which was notified in the official gazette on 27.06.1960. The preamble describes the object and purpose for establishing the Authority as making all arrangements for the planning and development of Islamabad within the framework of the Regional Development Plan. Sub-section (2) of Section 1 explicitly provides that it extends to the 'Specified Areas'. Section 2 defines various expressions. Agency and Authority are defined in Clauses (a) and (b) while the Board and the Chairman are defined in Clauses (c) and (f) respectively. Clause (i) defines 'land'. Clause (o) defines a 'Scheme' as meaning a planning scheme or a development scheme made under the Ordinance of 1960. The two other important definitions are that of a 'Capital Site' and 'Specified Areas'. Capital Site is defined as meaning part or parts of the 'Specified Areas' declared to be the site for the Pakistan Capital under Section 3. Likewise, 'Specified Areas' is defined in Clause (2) (p) as meaning the areas specified in the schedule and any other such area or areas which may from time to time be included therein by notification in the official gazette. Section 3 empowers the Federal Government to declare any part or parts of the 'Specified Areas' to be the site for the Capital of Pakistan. The 'Specified Areas' are described in the schedule of the Ordinance of 1960. Chapter II relates to the constitution of the Authority. Chapter III describes the powers and duties of the Authority. Section 11 provides that the Authority shall prepare a master plan and a phased master programme for the development of the Capital Site and a similar plan and programme for the

rest of the 'Specified Areas'. All such plans and programmes are required to be submitted to the Federal Government for approval. As already noted, the Master Plan was prepared and approved at the time of the enactment of the Ordinance of 1960. Section 12 empowers the Authority pursuant to the master plan and the master programme to call upon any local body or agency operating in the 'Specified Areas' to prepare in consultation with the Authority a Scheme or Schemes in respect of matters dealt with by such local body or agency. The scope of a scheme has been described in clauses (a) to (i) of sub-section (2) of Section 12. Section 13 vests the power and jurisdiction in the Authority to prepare on its own a Scheme pursuant to the master programme whenever it considers it desirable to do so in the public interest. It is obvious from a plain reading of these provisions that the Scheme prepared has to be within the framework of the Master Plan and a phased master programme. The language of sections 12 and 13 explicitly provide that the Scheme so prepared has to be pursuant to the Master Plan and the master programme. Section 14 describes the manner and form in respect of the preparation of a Scheme. Section 15 enumerates the powers vested in the Authority, which are expansive and, inter alia, explicitly includes acquiring any land in the 'Specified Areas' in accordance with the procedure laid down in the Ordinance of 1960. Section 15A was inserted by the Capital Development Authority (Amendment) Act 1966 and vests in the Authority the power to perform municipal functions. Section 19 provides the procedure for amending a Scheme while section 21 describes how it is to be executed. Chapter IV of the Ordinance of 1960 explicitly relates to acquisition of land in the "Specified Areas". Section 22 unambiguously provides that all land within the 'Specified Areas' shall be

liable to be acquired at any time and in accordance with the provisions of Chapter IV of the Ordinance of 1960. It is noted that through this statutory provision the entire land comprising the 'Specified Areas' has been declared as being liable to acquisition. It is a declaration made by the legislature and the use of the expression "shall" instead of "may" is significant. Section 22, being a provision of primary legislation, has a higher status than a declaration made through the issuance of a notice under section 4 of the Acquisition Act. Sections 23 to section 30 explicitly describe the power vested in the Authority and the procedure for acquiring land within the 'Specified Areas'. Section 32 unequivocally declares that immediately on making of the award under Section 28, the land shall vest in the Authority free from all encumbrances and, subject to reasonable notice, it shall enter and take possession thereof. Section 33 vests the power of acquisition of the land within the 'Specified Area' in cases of urgency. Chapter V of the Ordinance of 1960 empowers the Authority to appoint officers and servants and to determine their terms and conditions of service. Chapter VI is in respect of matters relating to Finance and the powers of the Authority with regard thereto. Chapter VII is in respect of penal provisions. Section 46 explicitly provides that whoever contravenes any provision or any rules or regulations made or sanctioned under the Ordinance of 1960 shall, if no other penalty is provided for such contravention, be punishable with imprisonment. Section 49 describes the power of the Authority in respect of the disposal of land which vests in it. Sections 49-C and 49-D provide for the powers of the Authority in relation to the removal of buildings etc erected or used in contravention of the Ordinance of 1960. Sections 50 and 51 empower the

competent authority, as the case may be, to make rules and regulations respectively.

21. A plain reading of the above provisions unambiguously shows that the Ordinance of 1960 is a self contained, comprehensive and special statute enacted for establishing the Authority and having the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of a regional development plan. The Master Plan is the foundation or premise over which the scheme of the Ordinance of 1960 is dependent. As already noted, the Master Plan was prepared by an internationally renowned town planner and approved by the Government. The Authority was and continues to be under a statutory obligation to prepare Schemes and thereafter acquire land within the "Specified Areas" as has been held by the august Supreme in the case titled "*Capital Development Authority through Chairman and others versus Dr. Abdul Qadeer Khan and others*" [1999 SCMR 2636]. The Ordinance of 1960 explicitly provides for a complete mechanism of acquisition of land within the "Specified Areas" and describes the powers vested in the Authority in this regard. Section 22 is an unambiguous declaration by the legislature that the entire land shall be liable to acquisition at any time. The scheme of the Ordinance of 1960 has left no room or possibility for any other authority to interfere within the "Specified Area" nor can land be acquired otherwise than in the manner provided there under. The powerful legislative declaration made in section 22 of the Ordinance of 1960 has more legal weight than a notice under section 4 of the Acquisition Act. The legislative intent is to put a statutory charge or encumbrance on every inch of land which falls

within the "Specified Area" described in the schedule of the Ordinance of 1960. Before the land is acquired, the declaration in section 22 of the Ordinance of 1960 does not divest the owner of land of his or her right of disposing of the property. However, any such transfer of land within the 'Specified Area' would expose the transferee to the risks involved, particularly that it can be acquired at any time. It is the same risk which is involved in the case of land in respect whereof notice under section 4 of the Acquisition Act has been issued. In this regard reference is made to *"Haq Nawaz Khan and others versus Rab Nawaz and others"* [1992 SCMR 993]. The legislative intent is further affirmed by the enactment of MLR-82.

22. MLR-82 was enacted and notified on 16.06.1960. It extends to the "Specified Areas". Regulation 3 explicitly provides that its provisions or any rule or order made there under shall have effect notwithstanding anything to the contrary in any other law or in any contract, instrument or other document. Regulation 4 prescribes restrictions on building and use of land. The restrictions are in relation to the Capital Site and provide that no person shall construct or cause to be constructed any building or alter or enlarge any existing building except under the Authority or with the permission of the Commission appointed for this purpose nor can convert any land being used for purposes of agriculture to any other use, cutting of standing trees is also prohibited. Clause (b) of Regulation 4 (i) is in respect of lands outside the Capital Site. It unambiguously provides that within the "Specified Areas' outside the Capital Site no person shall construct or cause to be constructed any building except in accordance with such general or specific directions as may from time to time be

issued by the Commission to the local authorities. Likewise, conversion of land used for the purposes of agriculture to any other use, except in accordance with such general or specific directions as may from time to time be issued by the Commission in this regard, was barred. Section 12 provides for offences and penalties for contravention or failure to comply with the provisions of the regulations. MLR-82, therefore, when read with the provisions of the Ordinance of 1960, clearly shows the intent that the entire land comprising 'Specified Areas' has been exclusively identified and reserved for planning and developing the Capital of Pakistan, having regard to the Master Plan and in accordance with the provisions of the latter statute.

23. The Capital of the Republic (Determination of Area) Ordinance, 1963 (hereinafter referred to as the **"Determination of Area"**) declared the area specified in the schedule as the site selected for the Capital of Pakistan.

24. The expression 'Islamabad Capital Territory' has been defined in Regulation 2 (13) of the Islamabad Capital Territory (Zoning) Regulation, 1992 (hereinafter referred to as the **"Zoning Regulations"**) as meaning "Islamabad Capital Territory' defined under the Capital Territory Local Government Ordinance, 1979. Section 2 (d) of the latter statute defines 'Capital Territory' as meaning 'Islamabad Capital Territory' referred to in paragraph (b) clause (1) of Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973. The 'Islamabad Capital Territory', therefore, refers to and consists of the entire land described in the Schedule of the Ordinance of 1960 as the "Specified Areas". The

Ordinance of 1960 and the regulations and rules made there under are, therefore, enforced and attracted in the entire land consisting of "Specified Areas", whether acquired or un-acquired.

25. The Zoning Regulations have the effect of protecting and enforcing the Master Plan through delegated legislation. In the instant petitions land which is being acquired is situated in Zone 1. The Master Plan has divided the Specified Areas into five Zones and they are described in Regulation 3. Regulation 4(1)(A) relates to un-acquired land falling within Zone 1 and it is reproduced as follows;

4. Development Strategies of Zones.- *The*

development of land in the Zones shall be subject to the following conditions:-

(1) Zone-1.

A. Un-acquired Sectoral Areas. *In these areas of Zone-1,*

(i) land shall be acquired under a phased programme and developed by the Authority in accordance with the land use pattern spelled out in the Master Plan;

(ii) no sale / purchase of land which entails change in land use shall be allowed;

(iii) no construction of houses or buildings shall be allowed. However, repair of old houses and expansion of existing houses may be allowed by the Authority to the native residents subject to the conditions that the site is located within the main body of the village. The

covered area of such construction shall not exceed 1000 Square feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property whenever needed; and

(iv) no private scheme of any kind whatsoever shall be allowed, except in Sector E-11, Schemes in E-11 will be regulated according to the provisions applicable to schemes in Zone 2”.

26. The above regulation explicitly provides that land in Zone 1 shall be acquired under a phased programme and developed by the Authority in accordance with the land use pattern spelt out in the Master Plan. The sale / purchase of land which entails change in land use has been expressly barred. Sub-clause (iii) of Regulation 4 (1) (A) is couched in negative language and provides that the construction of houses or buildings shall not be allowed. No private scheme of any kind whatsoever is allowed except in Sector E 11. Even in case of E-11 a private scheme is subject to approval by the Authority and the strict restrictions expressly provided in the said regulations. A plain reading of the above regulations as a whole unambiguously shows that land is to be acquired and developed exclusively by the Authority and no other entity, not even another department or agency of the Government, is empowered in this regard.

27. A cumulative reading of the Ordinance of 1960, MLR-82 and the Master Plan to the extent of zoning, as incorporated in the Zoning

Regulations, makes it obvious that the entire land comprising Specified Areas has been exclusively reserved and encumbered for planning and developing Islamabad as the Capital of Pakistan. The Master Plan and regulations have placed strict restrictions on construction even in un-acquired land situated in the Specified Area. The obvious intent was to ensure that no investment is made so as not to frustrate the acquisition of land. Through section 22 a charge or encumbrance has been created over the entire land. Land within the Islamabad Capital Territory can only be acquired by the Authority in the manner prescribed in the Ordinance of 1960. Land within the Islamabad Capital Territory, on being acquired, exclusively vests in the Authority. The Authority has been established as an independent statutory regulator, planner and developer for this purpose. The Chief Commissioner, Islamabad Capital Territory, nor his subordinates have any role, power or jurisdiction under the Ordinance of 1960 except as provided therein. The Deputy Commissioner, defined under section 2(h), is vested with powers under Chapter IV and the same can only be exercised for such purpose and in such manner as has been mandated under the Ordinance of 1960. Moreover, land in Zone 1 can only be acquired and developed by the Authority and no other agency or department of the Government, let alone the Foundation. The Ordinance of 1960 is a special, self contained and comprehensive law, particularly in respect of the acquisition of land within the Islamabad Capital Territory. On the other hand the Acquisition Act is a general law and its provisions are definitely in conflict with the special law i.e the Ordinance of 1960. It is settled law that when the provisions of a general law and special law are in conflict the latter shall prevail. Reliance is placed on "*State Life Insurance Corporation of Pakistan through Chairman and others versus*

Mst. Sardar Begum and others” [2017 SCMR 999]. Even otherwise, as long as the declaration made by the legislature in section 22 of the Ordinance of 1960 remains enforced, notice under section 4 of the Acquisition Act would be invalid, hence having no legal effect. The impugned notifications are, therefore, without legal effect, invalid and ultra vires the Ordinance of 1960. These questions were neither raised, contested nor considered by the august Supreme Court while rendering the judgment in the case of *"Federal Government Employees' Housing Foundation through Director General, Islamabad and another versus Muhammad Akram Alizai, Deputy Controller, PBC, Islamabad"* [PLD 2002 SC 1079]. In a later judgment rendered by an equal number of Honourable Judges the august Supreme Court has declared and held that the provisions of the Ordinance of 1960 and the regulations made there under are of mandatory nature and are binding, so much so that a liberal construction thereof is not permissible. Reference in this regard is made to *"In the matter of: Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010"* [PLD 2010 SC 759].

28. The learned counsel for the Foundation, the learned Advocate General and the learned Assistant Attorney General have heavily relied on the judgment of the august Supreme Court rendered in the case of *"Federal Government Employees' Housing Foundation through Director General, Islamabad and another versus Muhammad Akram Alizai, Deputy Controller, PBC, Islamabad"* [PLD 2002 SC 1079] in support of the contention that land is being acquired for a public purpose. The said judgment had not arisen from acquisition proceedings. Moreover, the determination or scrutiny of the term 'public purpose' is related to the

facts and circumstances in the matter which is before the Court. In these petitions the acquisition proceedings relating to sector F-14 and part of F-15 have been challenged and, therefore, the determination of whether or not the acquisition is being made for public purposes would essentially depend on the facts and circumstances before this Court in the present matter. I shall, therefore, advert to the question whether land is being acquired for a 'public purpose'. There is no cavil to the proposition that the Government is the best judge as to whether 'public purpose' is served. However, it is settled law that Courts have the jurisdiction and constitutional duty and obligation to determine the matter whenever an aggrieved person has raised a challenge, complaining that his or her fundamental rights are being infringed. The determination will depend on the facts and circumstances in each case. It is the duty of the Court to closely examine such facts and circumstances, particularly when it is not a case of acquiring land for the construction of a public school, hospital, road or such other project which is exclusively for the benefit, welfare and use of the general public. There is no precise definition of the expression 'public purpose'. However, a bench of the august Supreme Court consisting of four Hon'ble Judges in the case titled "*Fauji Foundation and another versus Shamimur Rehman*" [PLD 1983 S.C. 457] has held and observed as follows;-

"Similarly here too, the expression 'public purpose' has no precise and rigid meaning except that it should have the criterion of benefit or advantage to the public as distinguished from the private interest of an individual".

29. In the facts and circumstances of the instant case, the land is being acquired for the distribution of State largess amongst persons belonging to a certain service, institution or profession. This State largess is neither a reward nor compensation. The learned counsel for the Foundation has stated that it is a 'Grace'. The expression 'Grace' has been defined in Black's Law Dictionary, Sixth edition as 'a favour or indulgence' as distinguished from a right. Admittedly, none of the recipients of this extra ordinary State largess have a right in this regard. If it is a favour or indulgence then for what purpose? The only criterion for a Federal Government Servant is seniority in relation to his or her age. The learned counsel for the Foundation, the learned Advocate General and Assistant Attorney General were asked whether this State largess could be extended to and availed by those who may have entered into plea bargain or voluntary return relating to allegations of corruption and corrupt practices or against whom inquiry/investigations or trial is pending under the National Accountability Ordinance 1999. They replied that they were not excluded. They were asked whether persons who may be incompetent or against whom disciplinary proceedings are pending or penalties may have been imposed for misconduct are entitled to this State largess. They candidly answered that no such scrutiny is made since nothing in this regard is prescribed in the eligibility criterion. They were asked whether violators of the Constitution, tax evaders and those who may be accused in criminal cases and facing trials before courts of law are barred from this extra ordinary State largess which involves substantial personal and private financial benefit. They had no answer. They were asked whether

the possibility exists that such persons may have benefited in the past from this 'Grace'. They said that they could not answer.

30. State largess involving substantial private financial benefit is available to only those who are selected by the Foundation. This selection has no rational basis. There is nothing on record to justify the selection of the beneficiaries. The selection is made arbitrarily and on the basis of subjective assessment. It could not be explained why only those who work for the Government or Constitutional bodies are offered this benefit. Admittedly, it does not have any nexus with the performance of an individual in relation to official or Constitutional duties. It definitely is a largess extended to private persons who only happen to be employed with the Government or Constitutional bodies. There is also no explanation why teachers employed in private schools, drivers who are privately employed, engineers and doctors in private sector, carpenters, sweated labour or others engaged in many other professions have been left out while journalists and lawyers have been included. There is no explanation why this largess is available to persons who are privileged and wield influence in society while the less privileged, down trodden, and shelter less have no access to such lucrative financial benefit. There is also no explanation why those who were evicted from sector I/11 and their mud houses bulldozed were not offered such profit making largess by the State. It is difficult to comprehend that why shelter less struggling young lawyers were ignored while two senior successful lawyers named above, who indeed were not in need of financial assistance or shelter, were offered this grace or largess at the expense of land which vested in the State. It is obvious from the scheme that in fact private pecuniary benefit is given as

largess to individuals who otherwise are not entitled nor can they claim a right with regard thereto. In the case titled "*Syed Nazar Abbas Naqvi versus Commissioner, Sargodha Division, Sargodha and 29 others*" [1996 SCMR 1277], the august Supreme Court has acknowledged that unjust enrichment could be a factor negating public purpose. In the instant case the beneficiaries, using their influence as public office holders, have conceived, approved and initiated the execution of the scheme which essentially involves substantial private financial gain, for their own benefit and the stampede to get a part of this largess indicates the quantum of the financial benefit involved. It is a mode devised to gain private financial benefit on account of the non transparent disposition of land vested in and owned by the Government. The scheme does not include the homeless and needy citizens. A person may own multiple properties in Islamabad Capital Territory or could be earning a seven digit salary and yet would be entitled to the pecuniary benefit at the expense of land that vests in the State. The pecuniary benefit to the individual is obvious and the disposition of property in violation of the principles of transparency is also not denied. Financial benefit for a few individuals at the cost of land owned and vested in the State definitely cannot be treated as a 'public purpose'. What benefit or advantage is gained by the public from the non transparent sale of the most precious asset of the State. The loss to the public and private financial gain for a few privileged individuals is obviously not a 'public purpose'. Private financial gain is an antithesis of public purpose. Rather than an advantage or benefit to the public, it is loss to them because the property over which they have a right of ownership is robbed from them and given to few individuals as a private financial benefit. Every inch of land which vests in the Government

belongs exclusively to the people of Pakistan. The loss to the people of Pakistan and the exchequer can best be illustrated by the schemes launched by the Foundation in sectors G-13 and G-14 of Islamabad. Both were prime sectors of the Capital and were to be developed and then managed by the Authority for the general public. The plots were to be sold through public auction and the revenue collected would have enabled the Authority to develop more sectors for the general public. Both the sectors were acquired for the Foundation and the plots were sold to few selected privileged individuals in a non transparent manner. The financial loss to the Authority and the people of Pakistan is immeasurable. This incalculable revenue loss to the Authority resulting in financial gains to few individuals in their private capacity was definitely loss caused to the people of Pakistan. Would this not attract the offence under section 9 of the National Accountability Ordinance 1999? Such arbitrary and irrational distribution of land belonging to the people of Pakistan as a largess to a few individuals which benefits them financially and causes loss to the people of Pakistan by no stretch of the imagination comes within the ambit of the expression "public purpose". It is, therefore, declared that the object and purpose for which land is being acquired does not meet the threshold of public purpose. The object and purpose is to take land from the less privileged and after it vests in the Government or the State to give it to the most privileged individuals of society without observing the principles of transparency. Interestingly, this scheme of State largess is managed, executed and adjudicated by those who themselves are the beneficiaries. Fiduciaries and Trustees who hold the assets and wealth as trust on behalf of the people of Pakistan benefit themselves financially and thus breach their duties and obligations. This offends the fundamental

rights guaranteed to the public under the Constitution of the Islamic Republic of Pakistan, 1973. This alone is sufficient for vitiating the proceedings and declaring the impugned notifications as illegal, void and a fraud upon the Acquisition Act, the Ordinance of 1960 and the Constitution.

31. Lastly, it brings this Court to a crucial question having a direct nexus with the impugned notifications i.e. was the Prime Minister, in the first place, empowered and competent to approve a scheme which involved the sale and disposition, in a non transparent manner, of land vested and owned by the Government? And secondly, could such a proposal have been forwarded by persons who had a stake in such disposition? As already noted, acquisition of land for public purpose by means of police power of the State under the Acquisition Act has the inevitable consequence of vesting such land absolutely in the Government, as mandated under section 16 of the Acquisition Act. Is the Executive branch of the State vested with power or jurisdiction regarding its sale or disposition otherwise than in a transparent manner? Is it open to the executive to distribute, in a non transparent manner, the most precious asset of the State as largess, which belongs to the people of Pakistan? It is an admitted position that the sale or disposition is made after the land vests in and is owned by the Government. It, therefore, becomes an asset of the State and thus can only be disposed of, leased or sold in the most transparent manner. In the recent past the jurisprudence developed by the august Supreme Court has eloquently elucidated the principles and law in a chain of authorities. In the case titled "Habibullah Energy Limited and another versus WAPDA through Chairman and others" [*PLD 2014 S.C.*

47], the august Supreme Court has succinctly described the status of holders of public office and their obligations towards the citizens. The relevant portion is reproduced as follows;-

"We have on numerous occasions emphasized the fiduciary nature of the interaction between the State and the citizen. In Muhammad Yasin v. Federation of Pakistan (PLD 2012 S.C. 132), we held that 'holders of public office are first and foremost fiduciaries and trustees for the people of Pakistan.....And when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan.' The basis of fiduciary relations is the exclusive benefit principle, according to which the fiduciary has a duty to act solely in the interests of the beneficiary. Fiduciary obligations depend on the complete commitment of the fiduciary to act in the best interest of the principle."

"At this point, it is important, it is important to note that not all decisions by state functionaries are to be subjected to an exacting judicial oversight. This is because the principal, (the people) has in fact vested state agencies with discretionary power of an administrative nature. Such delegation of authority by the principal is essential to the efficient functioning of the government. However, given the possibility of the agent's deliberate or negligent deviation from the best interests

of the beneficiary, the court will enforce fiduciary obligations under certain circumstances. A breach of the duty of loyalty, such as in the case of a self dealing transaction or one involving conflict of interest, will trigger heightened scrutiny by the court. Further, if public officials fail to exercise the duty of care that is expected of a prudent manager, the court will assess the underlying action or transaction to ascertain whether the state functionaries have breached their fiduciary obligations to the people of Pakistan.”

32. The august Supreme Court in case titled "*Suo Motu Case No. 13 of 2009 and C.M.As. Nos. 4204 and 4686 of 2009*" [PLD 2011 S.C. 619], has enunciated principles and law relating to obligations and duties of executive authorities while dealing with public assets and services in the following words:-

"The Government bodies are invested with powers to dispense and regulate special services by means of leases, licences, contracts, quotas, etc., where they are expected to act fairly, justly and in a transparent manner and such powers cannot be exercise in an arbitrary or irrational manner. Transparency lies at the heart of every transaction entered into by, or on behalf of, a public body. To ensure transparency and fairness in contracts, inviting of open bids is a prerequisite. The reservations or restrictions, if any, in that behalf should not be arbitrary

and must be justifiable on the basis of some policy or valid principles, which by themselves are reasonable and not discriminatory”.

33. The august Supreme Court in the case titled "*Raja Mujahid Muzaffar and others versus FOP and others*" [2012 SCMR 1761] emphasized the observance of principles of transparency in relation to government largesse and the same is as follows:-

"Public funds, public property, licenses, jobs or any other government largesse is to be dealt with by public functionaries on behalf of and for the benefit of the people. Public authority must necessarily be examined in accordance with law keeping in view the Constitutional Rights of the citizens. Thus, this Court has not hesitated in the exercise of its jurisdiction of judicial review conferred by Article 184(3) of the Constitution to scrutinize matters where public money is being expended through procurement or public property is being sold, so as to ensure that transactions are undertaken and contracts executed in a transparent manner, legally, fairly and justly without any arbitrariness or irrationality”.

34. In the case titled "*Punnen Thomas versus State of Kerala*" [AIR 1969 Kerala 81] Kathew J. while dissenting, dilated upon the scope of the executive authorities in matters relating to largesse and the same is reproduced as follows:-

"Even so, the Government is not and should not be as free as an individual in selecting the recipients for largess. Whatever its activity the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal".

35. The above principles were reiterated and affirmed by the apex Court in the judgment reported as "Khawaja Muhammad Asif versus FOP and others" [PLD 2014 S.C. 206]. Regarding the standards of transparency required to be observed by every public functionary entrusted with State assets, wealth or other financial interests, the august Supreme Court in the case titled Khawaja Muhammad Asif (supra), has observed and held as follows;-

"In the matter of Suo Motu Case No. 13 of 2009: Joint Venture Agreement between CDA and Multi-Professional Cooperative Housing Society (MPCHS) for development of land in Sector E-11 Islamabad (PLD 2011 Supreme Court 619), we have emphasized that the Government and its instrumentalities are expected to act fairly, justly and in a transparent manner. Transparency lies at the heart of every transaction entered into by or on behalf of a public entity such as SSGCL. It was also

observed by us that 'any transaction which is not transparent and goes against the interests of the general public constitutes violation of Article 9 of the Constitution'. This Article guarantees the right to life as defined by this Court starting from the case of "Ms. Shehla Zia v. WAPDA (PLD 1994 S.C. 693)."

36. In the case titled "*Muhammad Afsar versus Malik Muhammad Farooq*" [2012 SCMR 274], the august Supreme Court has emphasized the duty cast on a public functionary to act in a transparent manner, and the relevant portion is as follows;-

"The Courts are duty bound to uphold the constitutional mandate and to keep up the salutary principles of rule of law. In order to uphold such principles, it has been stated time and again by the superior Courts that all acts should be done by the public functionaries in a transparent manner after applying judicious mind and after fulfilling all requirements. The public functionaries are supposed to adhere to the principle of transparency in the performance of their duties and are not bound to carry out/implement any order which is not in accordance with law and they are only obliged to carry out the lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should put on record their dissenting notes. But unfortunately, the officers in the

Estate Office not only implemented the illegal orders but apparently acted for their own personal benefits/gain”.

37. Likewise, the august Supreme Court in the case titled "*In the matter of Human Rights Cases Nos. 7734-G/2009, 1003-G/2010 and 56712 of 2010*" [2012 SCMR 773] has urged the need for transparency in respect of resources and assets of the state in the following words;-

"Every action taken by the Government must be in public interest and its action would be liable to be invalidated on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

38. In the above judgment, the august Supreme Court has quoted with approval from a judgment of the Indian Supreme Court rendered in "*Ram and Shyam Company versus State of Haryana and others*" [AIR 1985 S.C. 1147] and the same is as follows;-

"Disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. The welfare State may be able to expand its beneficent activities by the availability of larger funds.....where disposal is for augmentation of revenue and nothing else,

the State is under an obligation to secure the best market price available in a market economy."

39. The august Supreme Court in the case titled "*In the matter of: Human Rights Cases Nos. 4668 of 2006, 1111 of 2007 and 15283-G of 2010*" [PLD 2010 S.C. 759] while following the law laid down in the case titled "*Messrs Airport Support Services versus The Airport Manager, Quaid-e-Azam International Airport, Karachi and others*" [1998 SCMR 2268] has observed that time and again it has been emphasised that public functionaries ought to adhere to the principles of transparency in the performance of their duties. Reference is also to be made to "*Malik Atta Muhammad and another versus Government of Punjab through Secretary, Local Government and Rural Development, Lahore and others*" [2007 SCMR 178].

40. It would also be relevant to examine the provisions of Article 173 of the Constitution and the same is reproduced below;

"173. Power to acquire property and to make contracts, etc.- (1) *The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the purchase or acquisition of property on behalf of, the Federal Government or, as the case may be, the Provincial Government, and to the making of contracts.*

(2) All property acquired for the purposes of the Federation or of a Province shall vest in the Federal Government or, as the case may be, in the Provincial Government.

(3) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the President or Governor by such persons and in such manner as he may direct or authorize.

(4) Neither the President, nor the Governor of a Province, shall be personally liable in respect of any contract or assurance made or executed in the exercise of the executive authority of the Federation or, as the case may be, the Province, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

(5) Transfer of land by the Federal Government or a Provincial Government shall be regulated by law”.

41. A combined reading of the above provisions show that the executive authority of the Federation indeed extends to the grant, sale, disposition and mortgage of land, but the same has been expressly made subject to any Act of the appropriate legislature. Likewise, it is a Constitutional mandate that the disposition of land

shall be regulated by law. The expression 'regulated' precedes 'law'. Law, therefore, in the context of Article 173(5) is not to be interpreted in its generic sense, rather it has an obvious reference to law or statute legislated by an Act of the appropriate legislature.

42. A Division Bench of the Lahore High Court in the case titled "*Calicon Pvt. Ltd. versus Federal Government of Pakistan and others*" [1996 MLD 705], placing reliance on the judgment of the Supreme Court of India titled "*Rai Sahib Ram Jawaya Kapur and others versus The State of Punjab*" [AIR 1955 S.C. 549], held that since Article 298 of the Constitution of India and Article 173(1) of the Constitution of Pakistan were para materia, therefore, it did not see any reason to depart with the view taken by the Indian Supreme Court in relation to Article 298 of the Indian Constitution. With utmost respect, though Article 298 of the Constitution of India and Article 173(1) of our Constitution are in respect of the same subject but the language is different. Moreover, the judgment of the Supreme Court of India in "*Rai Sahib Ram Jawaya Kapur and others versus The State of Punjab*" [AIR 1955 S.C. 549] supports the view that if rights of the citizens are involved and the executive authorities require powers in addition to what they possess under the ordinary law then specific legislation would be required. I am afraid that the judgment rendered by the Supreme Court of India in the case of Rai Sahib Ram Jawaya Kapur and others (supra), was not appreciated in its correct perspective.

43. This Court is, therefore, of the opinion that the case titled Rai Sahib Ram Jawaya Kapur (supra) also supports the interpretation that

in case of the sale, disposition or transfer of land that vests in the Government, the executive authority shall extend subject to any Act of the appropriate legislature. Any other interpretation would render the expression 'subject to any Act of the appropriate legislature' as redundant.

44. It is, therefore, obvious from the above discussed law expounded by the august Supreme Court that the executive authorities are in the position of fiduciaries and that they hold the property vested in the Government as trustees. It is their duty to act solely in the interest of the beneficiaries i.e. the people of Pakistan. While exercising executive authority of the Federation in relation to the sale or disposition of property vested in and owned by the Government, highest standards of transparency must be ensured, otherwise it would tantamount to breach of the fiduciary duty as a trustee. Transparency is paramount in the disposition or sale of property which vests in the Government. In case such property is intended to be disposed of or sold in a non transparent manner then it would require an express authority and power in this regard through an Act of the appropriate legislature. The Ordinance of 1960 may be cited as an example of authorising the executive authorities to sell, lease exchange, rent or otherwise dispose of land vested in it. However, the law laid down by the august Supreme Court regarding ensuring highest standards of transparency will be attracted to any such disposition. The principles of transparency cannot be dispensed with through delegated legislation because the Ordinance of 1960 does not expressly empower the Authority to sell or in any other manner dispose of property vested in it in a non transparent manner.

45. The Prime Minister, as the Chief Executive of the country, was, therefore, not empowered to approve the summary which had the effect of the sale or disposition of property vested in and owned by the Government in a non transparent manner. Moreover, once the same summary had been turned down, accepting it the second time after almost two years and without recording reasons can best be termed as colourable exercise of executive authority which was not even vested in the latter. The Prime Minister, as the Chief Executive of the country, cannot claim a position above the Constitution and law and is bound to obey the Constitution as envisaged under Article 5(2) of the Constitution and the law laid down by the superior courts in their various pronouncements. Reliance is placed on "*Government of Pakistan through Director General, M/O Interior, Islamabad and others versus Farheen Rashid*" [2011 SCMR 1], "*Ch. Zahur Ilahi, M.N.A. versus Mr Zulfikar Ali Bhutto and 02 others*" [PLD 1975 S.C. 383] and "*Zahid Akhtar versus Government of Punjab through Secretary, Local Government and Rural Development, Lahore and 02 others*" [PLD 1995 S.C. 530]. The sale or disposition or an attempt thereof, of land vested in the Government in a non transparent manner and offered as arbitrary, unreasonable and irrational largess may have exposed the Prime Minister or any other official, involved in the proceedings relating to the instant petitions, to the offences of corruption and corrupt practices defined under section 9 of the National Accountability Ordinance 1999.

46. The impugned notifications were based on illegal approval sought from the Prime Minister which offended the Constitutional mandate. Likewise, the object for which land was being acquired definitely

did not meet the stringent criterion of public purpose. The fundamental rights guaranteed under Articles 23 and 24 of the Constitution are inalienable rights of every citizen. These constitutional guarantees are subject to the legitimate exercise of the power of the eminent domain of the State. The public functionaries are under an obligation to ensure that their actions are based on just decisions, since improper exercise of power of forcibly taking a citizen's property is an infringement of *his or her constitutional right to own, possess and enjoy his or her property*. Any unlawful deprivation of property also entails a violation of the right of liberty. Unauthorized actions of the executive, as was the case in the instant petitions, erodes rule of law. The learned counsels for the petitioners, during the course of their arguments, had referred to the order of the august Supreme Court, dated 23.09.2014, passed in Constitutional Petition No. 38 of 2013 and various orders passed in contempt proceedings. I have carefully perused the order, dated 23.09.2014, wherein it has been recorded that the petition had not been pressed. No order has been placed before this Court whereby the august Supreme Court may have decided a question of law or enunciated a principle of law in relation to the facts and circumstances of the instant petitions.

47. It was argued that this 'Grace' has been extended to the beneficiaries for more than 70 years and has never been objected to. I am afraid that illegality in the past, having the effect of causing colossal loss to the people of Pakistan and depriving them of their guaranteed fundamental rights, can neither be condoned nor allowed to be perpetuated. The loss already suffered by the people of Pakistan in case

of sectors G-13 and G-14 has been discussed above. Should this Court turn a blind eye and allow public office holders to deny to the people of Pakistan their guaranteed rights and in return enrich themselves?. Not an inch of land vested in the State, let alone a plot, can be disposed of in a non transparent manner unless the legislature through a primary legislation, and based on rational and reasonable classification has expressly authorised the executive authorities to do so. The august Supreme Court in the case titled "*All Pakistan Newspapers Society and others versus FOP and others*" [PLD 2012 SC 1] has declared that it is a solemn duty of every Constitutional court to zealously and vigilantly protect the fundamental rights guaranteed to the people of Pakistan. The argument that the culture of State largess by way of giving plots has been there since decades can be aptly answered by quoting the renowned French economist Fredric Bastiat;

"When plunder becomes a way of life for a group of men in a society, over the course of time they create for themselves a legal system that authorizes it and a moral code that glorifies it." and,

"But how is this legal plunder to be identified? Quite simply. See if the law takes from some persons what belongs to them and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime".

48. There is another important question involved in these petitions i.e. whether the Federal Government, directly or indirectly through the Foundation may engage in matters, which are in violation of the Ordinance of 1960. Section 5(2) of the said statute expressly provides that the general direction and administration of the Authority shall vest in the Board. However, subsection 2 of section 5 explicitly mandates that the Board in discharging its functions shall act on sound principles of 'development, town planning and housing' and that it shall be guided on questions of policy by such directions as the Federal Government may from time to time give. Sub section 3 of section 5 further provides that if any question arises whether any matter is a matter of policy or not, the decision of the Federal Government shall be final. The legislature in its wisdom has assigned specific role and statutory duty to the Federal Government in the context of development and town planning under the Ordinance of 1960. It has been empowered to guide the Authority on question of policy in matters relating to development and town planning. Its word regarding policy matters is final. Any role assumed or undertaken by the Federal Government in respect of development, town planning and housing in the Islamabad Capital Territory otherwise than as expressly provided under the Ordinance of 1960, besides giving rise to conflict of interest will definitely be illegal and ultra vires the statutory provisions. The Federal Government, directly or indirectly, is not vested with power and jurisdiction under the Ordinance of 1960 to transgress its role in matters relating to development, town planning or housing beyond what has been expressly provided under section 5 *ibid*. Through the Foundation personal financial interests of the Federal Government Servants have been created

in matters relating to development, town planning and housing in the area where the Ordinance of 1960 is enforced. This not only gives rise to conflict of interest but violates and defeats the intent of the legislature as expressly provided under section 5 of the Ordinance of 1960. It is, therefore, declared that any indulgence, direct or indirect, of the Federal Government or through the Foundation in matters relating to development, town planning or housing otherwise than as provided under section 5 of the Ordinance of 1960 is ultra vires, illegal and void. The Foundation and its role in matters relating to development, town planning or housing in areas where the Ordinance of 1960 is enforced is illegal, void and without lawful authority.

49. The upshot of the above discussion is that once property vests in the Government, every inch of it belongs to the people Pakistan. The executive authority of the Federation extends to the sale, disposition, lease, mortgage or transfer of land vested in and owned by the Government, subject to any Act of the appropriate legislature. Not an inch of such a precious asset of the State can be sold or disposed of except by observing the highest standards of transparency, so that it fetches the maximum price and so that no loss is suffered by the people of Pakistan. The law and principles enunciated by the august Supreme Court regarding the sale or other modes of disposal of wealth, assets or land vested in and owned by the Government in the most transparent manner is binding on all the executive authorities, as mandated under Article 189 of the Constitution. No executive authority, including the Prime Minister, is vested with the power and jurisdiction to sell or dispose of land vested in the Government in a non transparent manner except if it is expressly

authorized by an Act of the appropriate legislature. Such unauthorized sale or disposition is a serious breach of the duty of a fiduciary or trustee and would expose the person to consequences, including proceedings under the National Accountability Ordinance 1999. State largess based on irrational and unreasonable classification is definitely not a public purpose. In case the State largess is based on the sale or disposition of land that vests in the Government i.e. people of Pakistan, and its consequence is personal financial benefit of a few individuals not vested with a right in this regard, then it is obviously a fraud upon the expression 'public purpose', the fundamental rights of the public at large and the Constitution. Loss to the general public is an antithesis of 'public purpose'. It is axiomatic that the Government as well as private individuals are accountable under the law. The law ought to be applied equally to all and if an exception is to be created then the differentiation must be clearly justified. No fiduciary or trustee can have the slightest personal financial or pecuniary benefit when dealing with matters relating to assets of the State and the same principle would apply to every other holder of public office. Reliance is placed on "*FOP versus Muhammad Akram Shaikh, etc*" [PLD 1989 SC 689], "*Asif Ali Zardari and another versus The State*" [PLD 2001 SC 568], "*Ms Benazir Bhutto versus The President of Pakistan and another*" [1992 SCMR 140] and "*Government of NWFP through Chief Secretary and another versus Dr Hussain Ahmad Haroon and others*" [2003 SCMR 104]. If there is a conflict of interest it would vitiate actions and proceedings. The Federal Government, directly or indirectly, is not empowered to deal with or engage in matters relating to development, town planning or housing otherwise than as expressly provided under section 5 of the Ordinance of 1960. The Ordinance of 1960 is a special law

and thus over rides the provisions of the Acquisition Act. Land within the Islamabad Capital Territory can only be acquired under the Ordinance of 1960 and the regulations made there under. Even under the Acquisition Act the object for which land is being acquired does not meet the stringent requirements of 'public purpose'. The State has no obligation to provide land in the shape of largess but if it does then it must be available to every citizen and on the same terms. Arbitrary disposal of land as State largess is by definition a violation of the right to be treated equally. The approval granted by the Prime Minister and pursuant thereto the acquisition proceedings under the Acquisition Act and all actions or orders in relation thereto are void ab-initio, without jurisdiction and ultra vires the Constitution and the law.

50. For the above reasons, these petitions are allowed, the acquisition proceedings, all actions and orders relating to acquiring land for the Foundation in sectors F-14 and F-15 are declared as illegal, void and without jurisdiction and legal effect besides being ultra vires the Constitution and the law. Consequently, the impugned notifications are hereby set aside. However, it shall be open to the Capital Development Authority to forthwith initiate proceedings for the acquisition of land in accordance with the provisions of the Ordinance of 1960 and the Regulations made there under for planning and development of sectors F-14 and F-15 for the general public. In case the affectees have received compensation then the same would be adjusted while making a determination under the Acquisition and Rehabilitation Regulations.

51. Before parting it would be pertinent to record my observations regarding the conduct of the Federal Government and the Capital Development Authority. For reasons best known, the latter appears to have abdicated the obligations which it owes to the people of Pakistan. The comments filed by the Authority in the instant petitions can either be termed as a deliberate attempt to mislead the court and thus subvert the course of justice, or ignorance regarding the laws and regulations which it is required to enforce and administer. Islamabad, which is the Capital of the Islamic Republic of Pakistan, has become a classic example of rule of men rather than rule of law. The Capital Development Authority and its Board holds the entire land of Islamabad Capital Territory as a trust for every citizen of Pakistan. The Chairman and every Member of the Board are jointly and severally liable for breach of their fiduciary duties. The regulatory failure and negligence on the part of the Authority is too obvious to be ignored. It has also become a classic example of regulatory capture. There is a looming environmental crisis on account of unregulated urbanisation and construction, which is in flagrant violation of the Ordinance of 1960 and the regulations made there under. It is a challenge for the Federal Government, the Parliament and every organ of the State to ensure that the provisions and mandate of the Ordinance of 1960 and the regulations made there under are enforced, so as to make the Capital of Pakistan a bastion of the rule of law. If urgent steps are not taken posterity will never forgive those who are in a position to enforce and implement the spirit and essence of the laws which have been blatantly violated for seven decades. Laws which were supposed to protect the rights of citizens have been used as tools to abuse those very

rights. Indeed justice delayed is justice denied, but its never too late to put an end to the perpetuation of injustice.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 23.10.2017.

JUDGE

Approved for reporting.

*Asad K/**

Uploaded By: Zulqarnain Shah

ANNEXURE-A

Sr. No.	W.P. No.	Title of the case.
1.	310/2016	Malik Dad, etc versus The Federal Government of Pakistan, etc.
2.	309/2016	Zulfiqar Hussain, etc versus The Federal Government of Pakistan, etc.
3.	2128/2015	Muhammad Sabir, etc versus FOP, etc.
4.	3496/2015	Malik Ghulam Mustafa, etc versus FOP, etc.

Uploaded By: Zulqarnain Shah