

**JUDGMENT SHEET.**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT.**

**W.P No.2229/2019.**

**Asad Mehmood Abbasi etc. Vs. CDA through its Chairman etc.**

Petitioners by: Mr.Haseeb Hassan Khan, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate for CDA & MCI. Ijaz Ahmad Sheikh, Director Urban Planning, CDA. Iftkhar Ahmed, LDC, DC Office.

**W.P No.2307/2019.**

**Farhad Gul etc. Vs. CDA through its Chairman etc.**

Petitioners by: Mr.Nadeem Hussain Mughal, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate for CDA & MCI. Ijaz Ahmad Sheikh, Director Urban Planning, CDA. Iftkhar Ahmed, LDC, DC Office.

**W.P No.2241/2019.**

**Muhammad Babar Abbasi etc Vs. CDA through its Chairman etc.**

Petitioners by: Mr.Haseeb Hassan Khan, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate for CDA & MCI. Ijaz Ahmad Sheikh, Director Urban Planning, CDA. Iftkhar Ahmed, LDC, DC Office.

**W.P No.2304/2019.**

**Faisal Ansari Vs. CDA through its Chairman etc.**

Petitioner by: Mr.Samee Ahmed, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate for CDA & MCI. Ijaz Ahmad Sheikh, Director Urban Planning, CDA. Iftkhar Ahmed, LDC, DC Office.

**W.P No.2314/2019.**

**Muhammad Maqsood Abbasi etc. Vs. CDA through its Chairman etc.**

Petitioners by: Mr. Saif Ullah Khan, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate for CDA & MCI. Ijaz Ahmad Sheikh, Director Urban Planning, CDA. Iftkhar Ahmed, LDC, DC Office.

**W.P No.2319/2019.****Muhammad Mazhar Ullah  
Khan Malik****Vs. CDA through its Chairman etc.**

Petitioners by:

Malik Tahir Mehmood, Advocate.

Respondents by:

Mr. Aamir Latif Gill, Advocate for CDA &  
MCI. Ijaz Ahmad Sheikh, Director Urban  
Planning, CDA. Iftkhar Ahmed, LDC, DC  
Office.**W.P No.2485/2019.****Imran Kayani****Vs. CDA through its Chairman etc.**

Petitioner by:

Ms. Afshan Aziz Abbasi, Advocate.

Respondents by:

Mr. Aamir Latif Gill, Advocate for CDA &  
MCI. Ijaz Ahmad Sheikh, Director Urban  
Planning, CDA. Iftkhar Ahmed.**W.P No.2428/2019.****Mukhtar Hussain****Vs. CDA through its Chairman etc.**

Petitioner by:

Ms. Afshan Aziz Abbasi, Advocate.

Respondents by:

Mr. Aamir Latif Gill, Advocate for CDA &  
MCI. Ijaz Ahmad Sheikh, Director Urban  
Planning, CDA. Iftkhar Ahmed.**W.P No.2400/2019.****Zohaib Amjad****Vs. Metropolitan Corporation of  
Islamabad through Mayor of  
Islamabad etc.**

Petitioners by:

Mr. Fazi Qadir Khan, Advocate.

Respondents by:

Mr. Aamir Latif Gill, Advocate for CDA &  
MCI. Ijaz Ahmad Sheikh, Director Urban  
Planning, CDA. Iftkhar Ahmed.**Date of Decision:****03.07.2019.**

**MOHSIN AKHTAR KAYANI, J:** Through this single judgment, I intend to  
decide the captioned writ petitions involving common questions of law and facts.

2. All the petitioners have assailed actions of the respondents, whereby Capital  
Development Authority (CDA) as well as Municipal Corporation Islamabad (MCI)  
declaring the licenses of Kiosk situated in different sectors of Islamabad as illegal and  
started demolishing the said Kiosks without any prior notice.

3. Learned counsel for the petitioners in all the writ petitions have heavily relied upon the offer for restoration of Kiosks issued in compliance of resolution passed by the House of Mayor, Metropolitan Corporation Islamabad vide orders dated 28.08.2017 & 28.09.2017, whereby the authorities have provisionally approved restoration of Kiosks to the present petitioners, who are stated to be licensees; that all the petitioners have paid the security amount as well as different charges claimed by the respondents and the respondents have started action under the garb of orders passed by Apex Court, whereas no such direction has been issued by Apex Court in the order dated 11.06.2019; that the CDA has no authority to cancel the allotted Kiosks, which have been referred in the master plan of the CDA and allotted prior to the promulgation of The Islamabad Capital Territory Local Government Act, 2015 and the petitioners have spent huge sum of money from their pocket to establish the designed Kiosks approved by planning wing; that the petitioners have not been given due opportunity of hearing in terms of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

4. Conversely, learned counsel for CDA as well as MCI contend that all the Kiosks were allotted to the petitioners temporarily in the previous years and are called licensees for establishment/running of tea stall/tuck shop/kiosk/counter cabin/snack bars etc within the municipal limits of Islamabad only with intent to provide some basic necessities in the under developed sectors; that the policy was prepared by the Planning Wing, CDA in the year 1996 to resolve the issue of all developing sectors alongwith peripheral service roads and around a sector and highways in the urban area and in parks and recreational places for nor more than three years for establishment of such Kiosks but subsequently the licenses were cancelled on the basis of report of Judicial Commission constituted by this Court, even by CDA itself; that no rules or law permits CDA to allow such Kiosks in Islamabad, even CDA Board has not yet decided any such issue; that all 485 Kiosks have been declared illegal and CDA is demolishing each and every Kiosks without any intimation or notice as the Apex Court has observed different illegalities in Islamabad Capital Territory, which has been taken care by CDA as well as MCI in appropriate manner.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that the petitioners are aggrieved by the actions of CDA as well as MCI, whereby different Kiosks have been demolished or the petitioners have been evicted from the Kiosks, which were duly allotted in shape of licenses or through offer of license to establish such Kiosks in different sectors of Islamabad by CDA/MCI.

7. Record further reveals that majority of the petitioners are in possession of license document issued by CDA or offer for restoration of Kiosks licenses issued by Director, Municipal Administration, MCI. In order to resolve the controversy, it is necessary to go through the entire history of these licenses, whereby CDA issued policy dated 20.04.1986 regarding location of cabin shops, kiosks, tea stalls and temporary structure in Islamabad, whereby Chapter-II deals with location of those cabin shops etc, which can only be allowed in the following manner:-

- “(i) *in developing sectors;*
- (ii) *along peripheral service roads and around a sector and highways in the urban area; and*
- (iii) *in parks and recreational places.”*

8. The policy covers all three above mentioned locations and the said Kiosks and shops were only established with intent to tackle the requirements as interim arrangement to facilitate needs of the people in the developing sectors, where construction work was carried out and proper bazaar has not yet been established. Similarly, it also provides reasons that the travelers require cigarettes, cold drinks, newspapers, guide map etc, therefore, such Kiosks were allowed to be established near bus stops and petrol pumps. Similarly, these Kiosks were allowed in parks and recreational areas for casual shopping, drinks and snacks, however, conditions of the license in Chapter-IV refer different kinds of percentage for its allotment with security deposit and license fee but the particular condition, which plays key role at the initial policy is (4-c) is that **“the license period shall not be more than three years at a time. This can however be renewed after expiry of this period.”** Similarly, Chapter-V provides temporary structure, which is liable to be demolished, however, CDA Board in its 25<sup>th</sup> meeting held on 31.10.2011 decided to impose ban for allotment of new Kiosks/tea stalls and cancelled all the Kiosks and tea stalls w.e.f. 01.01.2000 and also recommended the relocation of Kiosks on alternate site in consultation with Planning Wing, whereas Director, Municipal Administration, MCI

refers that 249 Kiosks are operating since 1992, however, in the said decision, the CDA Board further requires policy preparation in this regard.

9. Besides the above referred background, this Court in another writ petition of similar nature had constituted Judicial Commission to inquire into the affairs of CDA, whereas vide report dated 05.04.2013, temporary permission for leases/licenses regarding use of CDA land was recommended to be banned. On the basis of said report of Judicial Commission, this Court directed MCI to cancel all temporary licenses in Islamabad vide order dated 01.11.2013 and directed all the license holders to handover peaceful possession of the site to the Enforcement Director, CDA immediately, failing which, site were directed to be taken forcibly at the risk and cost of licensees. In the year 2016 the matter was again placed before CDA Board through summary with detailed history of all kinds of Kiosks, tea stalls etc, whereby the notice of the matter was taken by the Standing Committee of National Assembly on the request of Kiosks/Khokha Association and on the intervention of the said committee, the demolishing work was stopped and following decision have been made by the said committee:-

*“During demolitions the Khokha Association agitated. National Assembly took notice and further demolitions were stopped. National Assembly constituted a Special Committee. Decisions/Directions are as under:-*

- i. CDA may restore all 485 licenses holding cabin/kiosk within three days under intimation to this secretariat.*
- ii. CDA may formulate the policy to differentiate between legal & illegal cabins/kiosk within 15 days of the meeting in order to stop the illegal mushroom growth of cabin/kiosk in Islamabad.*
- iii. CDA may scrutinize the licenses of cabin/kiosk owners and take stern action against the violators/encroachers.”*

10. After above referred decision of Standing Committee of National Assembly, the matter was placed before CDA Board for restoration of Kiosks and policy decision dated 01.04.2016 in 4<sup>th</sup> Board Meeting, whereby following decision was made:-

*“The summary was presented by Director Municipal Administration CDA. The Board after scrupulous deliberation deferred the summary with following directions.*

***For serial “a/b”***

- Clearance from Law Directorate of CDA may be sought to ascertain the restoration of Kiosks keeping in view the recommendations of the standing committee and the Judicial Commission Report on the subject.*

***For serial “c/d/e/g/h/i”***

- A committee may be constituted to give its recommendations to the Board on the issues narrated in the subject paras.*

***For serial “f”***

- *Action against illegal Khokhas is an administrative issue and therefore may immediately be undertaken strictly in accordance with law/rules and regulations by the concerned directorates and not requires permission from the Board.”*

11. Besides the above referred background, after promulgation of Islamabad Capital Territory Local Government Act, 2015, MCI in their 14<sup>th</sup> Meeting dated 28.08.2017 while considering restoration of all the Kiosks gave different recommendations and finally Planning Wing Directorate of Urban Planning raised certain objections on the basis of recommendations of MCI, however, the offer for restoration of Kiosks in Islamabad has been issued on temporary basis in exercise of powers delegated under Municipal Bye-Laws 1969 vide para-2 (i) & (ii), Chapter No.ii (8&9), Chapter No.8 (66, 67, 68 & 69) for use of unutilized area as well as under the powers of Municipal Administration referred in ICT Local Government Act, 2015. The Director, Municipal Administration was also compelled to pass order on the basis of resolution dated 28.08.2017 and 28.09.2017 of MCI for restoration of cancelled licenses of 484 Kiosks, however, in the first phase the Authorities have restored 238 Kiosks, which were earlier planned/ear marked by the Planning Wing subject to vetting of existing site as per plan.

12. The primary question which comes on record is as to whether the CDA can grant such permission at the initial stage without seeking any amendment in the master plan as well as layout plan in different sectors. Even it has been observed that some of the Kiosks have been constructed without any amendment in the layout plan nor any approval has been sought but no action has been taken rather selected operation of demolition has been carried out.

13. I have also gone through the powers and functions of MCI under Islamabad Capital Territory Local Government Act, 2015 and it has been observed with great concern that it is function of MCI in terms of section 73 of the ICT Local Government Act, 2015 to perform all such functions mentioned in third schedule subject to issuance of notification by Federal Government, whereas third schedule comprises of the following functions of MPC, which are reproduced as under:-

- “(a) implement rules and bye-laws governing public utilities;*
- (b) approve development schemes for beautification of urban areas;*
- (c) enforce all municipal laws, rules and bye-laws governing its functioning;*

- (d) .....
- (e) .....
- (f) *execute and manage development plans;*
- (g) .....
- (h) .....
- (i) *prevent and remove encroachments;*
- (j) .....
- (k) .....
- (l) .....
- (m) *urban renewal programmes;*
- (n) .....
- (o) .....
- (p) .....
- (q) .....
- (r) .....
- (s) .....
- (t) *collect approved taxes, fees, rates, rents, tolls, charges, fines and penalties;*
- (u) .....
- (v) *regulate markets and services and issue licenses, permits, grant permissions and impose penalties for violation thereof as and where applicable;*
- (w) .....
- (x) .....
- (y) .....
- (z) .....
- (aa) .....
- (bb) *perform such other functions as may be prescribed. ”*

14. Similarly, The Islamabad Capital Territory Local Government Act, 2015 provides powers to deal with licenses in 9<sup>th</sup> schedule, whereas relevant provisions of license has been provided in paragraphs 43, 44 & 65, which are reproduced as under:-

**“43. Power to vary licence.-** *If a local government is satisfied that any place used under a licence granted by it under this Act is a nuisance or is likely to be dangerous to life, health or property, the local government may, by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations, additions, or improvements as will, in the opinion of the local government, render it no longer a nuisance or dangerous.*

**44. Carrying on trade, etc., without licence or in contravention of paragraph.-** *No person shall carry on any trade, calling or occupation for which a licence is required without obtaining a licence therefor or while the licence therefor is suspended or after the same has been cancelled, or after receiving a notice under paragraph 65, use or allow to be used any building or place in contravention thereof.*

**65. Conditions which may be attached to licences.-** *A licence granted to any person under paragraph 89 shall specify the part of the local area in which the licensee may carry on his trade, calling or occupation, and may regulate the hours and manner of transport*

*within the local area of any specified articles intended for human consumption and may contain any other conditions which the local government thinks fit to impose in accordance with the bye-laws made under this Act."*

15. While considering the above background, CDA and MCI received millions of rupees from different individuals under the name of license fee, renewal charges and restoration fee as well as security charges, even the petitioners have spent millions of rupees for construction of Kiosks as per standard laid down by the CDA.

16. I have asked the learned counsel for MCI and CDA to assist the Court as to whether MCI can allocate any land for the purpose of kiosks, whereby the learned counsel for CDA conceded that this is the right of CDA to allocate any such land for such purposes, however the license can be offered by MCI and falls within their jurisdiction, therefore, the land in the Islamabad Capital Territory has to be regulated with reference to master plan as well as under the layout plan approved by the Federal Government in terms of CDA Ordinance, 1960 and as such, anything contrary to said master plan, which was not approved by the Federal Government, shall not be considered legalized or valid. Surprisingly, the CDA in this case has initially prepared a policy document for establishment of kiosks only with intent to help out citizens of Islamabad in underdeveloped sectors for the period of three years and on expiry of the said period of 03 years, all these kiosks are liable to be removed after completion of Sector, but with the passage of time the kiosks have taken the shape of permanent structure as the subsequent political Governments have allotted number of kiosks without any approved policy or law.

17. The CDA neither framed any regulation nor even sought any approval from the Federal Government under the CDA Ordinance, 1960 for establishment of these Kiosks, therefore, the action for establishing any kiosk anywhere in Islamabad is illegal from the very inception as it is in violation of master plan of the CDA. However, the conduct of the CDA is not above board as they have received millions of rupees from different individuals under the name of license of kiosks, therefore, the rights of individuals have to be considered under Section 52 of the Easement Act, 1882, whereby the term license has been defined as under:

*License: Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable*



*property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.*

It is settled law that the license is not a contract between licensee and licensor, but a mere personal permit, which may become illegal as and when its licensing authority withdraws its permission. In order to resolve the controversy, I have gone through judgments of superior Courts reported as 2018 MLD 802 (H. Nizam Din and Sons (Pvt.) Ltd. vs. Pakistan Defence Officers Housing Authority), PLD 1963 WP Lahore 418 (Muhammad Hashim vs. Zulfiqar Ali Khan), PLD 1965 SC 83 (M. A. Naser vs. Chairman Pakistan Eastern Railways), 2003 SCMR 50 (Rehmatullah Khan vs. Government of Pakistan), 1997 CLC 697 (Shafiq Ahmad vs. Federation of Pakistan) as well as 2005 CLC 1982 (M/s Sign Source vs. M/s Road Trip Advertisers), whereby it was settled that the concept of license can only be considered as personal/gratuitous, which is revocable in nature and there is no compulsion upon grantor to inform the other party before seeking its cancellation and even the person, whose license has been revoked, cannot call himself as aggrieved party within the meaning of Article 199 of the Constitution, because the concerned authority can revoke/terminate the license at any time. The only remedy available to individual, whose license has been cancelled is that he can be given time to remove structure of his Kiosk or recover the losses he has suffered due to act of respondent authority, whereas no declaration in shape of writ petition could be given against the cancellation of license, therefore, all the captioned writ petitions are hereby **DISMISSED** for being meritless.

19. Before parting with this judgment, the respondent authorities are directed to grant time of at least 30 days to all the petitioners as well as other licensees to remove the structures of their Kiosks/Khokas together with their merchandises/commodities held therein. However, the petitioners can approach the competent court of law for redressal of their grievances to the extent of compensation, subject to any decree, if so passed.

(MOHSIN AKHTAR KAYANI)  
JUDGE