

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2233 of 2016

Ednan Syed & others

Versus.

Federal Government Employees Housing Foundation
and another

Date of Hearing: 30.06.2016
Petitioners by: Mr. Babar Sattar, Advocate,
Respondents by: Mr. Mansoor Ahmed, Advocate, and Malik
Zafar Abbas, Director Law.

MIANGUL HASSAN AURANGZEB, J:- All eleven petitioners in this writ petition are employees/former employees of autonomous/semi-autonomous public sector organizations. The prayers sought by the petitioners are as follows:-

"In the light of foregoing submissions, it is most humbly prayed that:

- i. the Respondents be restrained from taking any adverse action against the First Drive members, including the petitioners, for their refusal to deposit Rs.600,000/- for purchase of land at the Green Enclave Scheme;*
- ii. the Respondents be restrained from unilaterally and retrospectively altering the terms of membership of the First Drive Members, including the Petitioners;*
- iii. The Respondent No.1 be restrained from allotting any plots to the members registered under the Phase-II Drive in Sector F-14 and any other scheme until such time when the backlog of the First Drive Members, including the Petitioners, has been cleared;*
- iv. The Respondents be directed to maintain the seniority of the First Drive Members, including the Petitioners, from the date of their subscription as members of the respondent No.1;*
- v. The Respondent No.1 be directed to consider the First Drive Members, including the Petitioners, for allotment in all future schemes including F-14 launched by the Respondent No.1;*
- vi. Allotment made to Phase II Drive members be declared illegal and void ab initio;*
- vii. Respondent No.1 be directed to cease transfer of plots allotted to Phase II Drive members to avoid 3rd party right till the decision of the case."*

2. The gist of the case is that in 2009, respondent No.1 (Federal Government Employees Housing Foundation), through a public advisement, launched a membership drive for the registration of Federal Government Employees ("FGEs") under which seniority of the registered members was based on the date of registration/'first-come-first-served' basis ("Membership Drive-I"). The petitioners got

themselves registered and paid the requisite registration fees. Prior to this, seniority was determined on the basis of FGE's age and seniority in Government service. After thousands of FGEs were registered under the said membership drive, the respondents decided to revert to the age-wise seniority and allot plots in Sector F-14, Islamabad, to FGEs on the said basis ("Membership Drive-II"). The petitioners assert that this reversion could destroy their vested rights to get a plot on 'first-come-first-served' basis. The petitioners are also aggrieved by respondent No.1's decision to confine the members registered under Membership Drive-I (initiated in 2009), to respondent No.1's housing scheme in Barakahu.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

3. Mr. Babar Satter, learned counsel for the petitioners submitted that the primary object of respondent No.1 is to eradicate shelterlessness for the serving and retired FGEs, and for other specified groups, and assist them in having a house at the time of their retirement or earlier; that respondent No.1 can also initiate, launch, sponsor and implement housing schemes for the FGEs, etc; that prior to 2009, respondent No.1 offered housing in a particular housing scheme to the FGEs on the basis of their age and seniority in the government service; that in 2009, Membership Drive-I was launched whereunder, housing was offered in all the housing schemes of respondent No.1 on 'first-come-first-served' basis; that under this membership drive, a member/FGE was entitled to an allotment of a plot in any future scheme of his choice; that in the categories of members created by respondent No.1, the employees of autonomous bodies had a 10% quota; that the petitioners are the employees of autonomous bodies; that thousands of people, including the petitioners, were registered under this membership drive; and that in any future housing scheme of respondent No.1, only the registered members were to be accommodated.

4. It was further submitted that under Membership Drive-I, if an offer for an allotment of a plot by respondent No.1 in a particular housing scheme was not accepted by a registered member, he would continue to retain his seniority, and could opt for any other housing scheme launched by respondent No.1; that respondent

No.1, on 30.04.2015, after the approval of the Prime Minister, launched Membership Drive-II; that the essential difference between Membership Drive-I and Membership Drive-II was that the former was on “first-come-first-served” basis, whereas the latter was to be based on seniority in age and government service; that the launch of the Membership Drive-II could not adversely affect the seniority of FGEs registered under Membership Drive-I; that Membership Drive-II was launched to accommodate senior government officials in Sector F-14, Islamabad; that these government officials had not applied for membership under Membership Drive-I; that this was done regardless of the suggestion by the Director (Law) of respondent No.1; that the new membership drive should be launched with prospective effect; that the members under Membership Drive-I have been unlawfully confined to respondent No.1’s housing scheme at Barakahu, Islamabad; that there is a marked difference between the value of land in Barakahu and Sector F-14, Islamabad; that the respondents could not relegate the members registered under the Membership Drive-I to the housing scheme at Barakahu, Islamabad; that simply because a member under Membership Drive-I does not accept an offer for allotment in Barakahu, should not disentitle him from opting for an allotment of a plot in Sector F-14, Islamabad; that respondent No.1 could not invite applications for allotment of plots in Sector F-14, Islamabad, unless all the members under Membership Drive-I were accommodated by allotment of plots; that Membership Drive-I was advertised for all the future housing schemes of respondent No.1, and not just for the one in Barakahu; that a member under the Membership Drive-I continues to retain his seniority and eligibility for an allotment of a plot regardless of whether he declines to accept the offer for an allotment of a plot in a particular housing scheme; and that Membership Dive-II was to be prospective and could not in any manner effect the seniority of the members already registered under Membership Drive-I. He further submitted that the respondents are estopped from violating the petitioners’ vested rights under the doctrine of promissory estoppel. Learned counsel for the petitioners prayed for the writ petition, to be allowed. In making his submission, learned counsel for the petitioners placed

reliance on the law laid down in the cases titled as Federal Government Employees Housing Foundation Vs. Muhammad Akram Alizai (PLD 2002 SC 1079), Munir Ahmed Vs. Mst. Shirin (2015 SCMR 441), Muhammad Shafique Vs. Zafar Abbas (2004 YLR 1047), Muhammad Raza Vs. Jammu and Kashmir Cooperative Housing Society (PLD 2013 Islamabad 49), and Muhammad Riaz Mehmood Vs. Secretary, Government of Punjab (2016 PLC (C.S) 354)

CONTENTIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:-

5. Chaudhry Mansoor Ahmad, learned counsel for respondent No.1 assisted by Malik Zafar Abbas, Director Law, submitted that respondent No.1 is a welfare organization registered under Section 42 of the Companies Ordinance, 1984; that respondent No.1 does not issue any dividends, and operates on “no-profit-no-loss” basis; that respondent No.1 has been given a mandate by the Federal Government to evolve housing schemes for FGEs, so that their problems regarding shelterlessness is resolved; that up till now, six housing schemes have been launched by respondent No.1; that respondent No.1 does not have the land-bank to provide a plot to each and every FGE; that the Hon'ble Supreme Court in the Human Right Case No.5818 of 2006 (2008 SCMR 531) has held that FGEs do not have a right to get a plot; that the provision of a plot/housing to any FGE is a matter of grace/concession shown by the Federal Government to FGEs; and that respondent No.1 evolves housing schemes on self-finance/contributory basis.

6. He further submitted that all housing schemes of respondent No.1 prior to the initiation of Membership Drive-I, were based on age-wise seniority; that there was no legal infirmity in respondent No.1's decision to revert to age-wise seniority; that the problems of FGEs nearing retirement, who did not get themselves registered under Membership Drive-I, had to be addressed so that they were not left shelterless; that the petitioners had filed this petition on the basis of representations made by respondent No.1 with respect to Membership Drive-I; that these representations were in fact only an invitation; that FGEs and other eligible persons secured membership/registration by making a nominal deposit; that under Membership Drive-I, 36,000 persons were registered, and more

than 50% paid the down payment for plots; that presently, there are no plots available for allotment; that money has been collected from respective members, which is to be used for the purchase of land directly from land providers, and in the land acquisition process; that respondent No.1 follows the principle of 'first-scheme-first'; that when the allotment of plots in respondent No.1's housing scheme in Barakahu have been completed, only then will the allotments in the housing scheme in Sector F-14, Islamabad begin; that unless money for the purchase of plot is deposited by a member, there will be no enforceable contract between the member and respondent No.1.

7. It was further submitted that the petitioners are not claiming the enforcement of any right under a statute; that at no material stage was any contract executed between the petitioners and respondent No.1; that mere deposit of the registration fee does not create a contract between the petitioners and respondent No.1; that an applicant has to agree to a payment schedule as well as the terms and conditions of the brochure for a particular housing scheme for there to be a contract; that respondent No.1 is not denying that it has made a promise, but there is no concluded contract between the petitioners and respondent No.1 in terms of Section 2 (a) of the Contract Act; that no consideration has been paid by the petitioners; that the promise made by respondent No.1 never turned into an agreement; and that the promise made by respondent No.1 could not be specifically enforced.

8. It was further submitted that the whole structure of respondent No.1 was based on participatory contribution; that the petitioners, by declining the offer for allotment of a plot in respondent No.1's housing scheme in Barakahu, Islamabad, forfeited their rights to an allotment in any other housing scheme in terms of Sections 64 & 67 of the Contract Act; that respondent No.1 never made a promise to give a right of choice to the members under Membership Drive-I; that as the Barakahu Housing Scheme was the first housing scheme in time after the launch of Membership Drive-I, allotments had to be first made in the said scheme; that a legal right is gained only when a deposit for the purchase of plot has been paid by another; that no right accrues without such

deposit having been made; that the payment of the registration fee for a membership is not a deposit for the purchase of a plot; that an option has already been given to the members of Membership Drive-I to join Membership Drive-II; that several members have already exercised this choice; that the petitioners were issued consent letters, but they refused to deposit the required amount; that presently about a thousand members have submitted their consent letters; that the last date for the submission of the consent letters in Membership Drive-I for the Barakahu Housing Scheme was 31.07.2016; that all 11 petitioners were asked to submit their consents, but they refused to submit their consents or to make a deposit for a plot in respondent No.1's housing scheme in Barakahu, because they wanted plots in Sector F-14, Islamabad.

9. It was further submitted that in filing the writ petition, the requirements of a representative suit under Order I, Rule VIII C.P.C., have not been fulfilled; that there are only 11 petitioners in this writ petition while there are thousands members registered under Membership Drive-I; that respondent No.1's decision regarding the launch of Membership Drive-II, does not suffer from unreasonableness; and that the petitioners have not been discriminated against. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed. In support of his submissions, learned counsel for the respondent relied upon case law titled as Syed Muhammad Saleem Vs. Ashfaq Khan (1989 CLC 1833), and Human Right Case No.5818/2016 (2008 SCMR 531).

ARGUMENTS OF THE LEARNED COUNSEL FOR THE PETITIONERS IN REBUTTAL:

10. In rejoinder, the learned counsel for the petitioners submitted that the petitioners were entitled to seek the best possible plot in any of respondent No.1's housing schemes; that the promise made by respondent No.1 in 2009, was accepted by the petitioners by depositing the registration fee, therefore, they had a right to hold the respondents to their promise; that the respondents had no right to change the membership criteria retrospectively; that the respondents could not exclude the petitioners from the future housing schemes by changing the membership criteria. He further submitted that the learned counsel for respondent No.1, in his

submissions did not address the question whether the petitioners and other members under Membership Drive-I were to be confined to respondent No.1's housing scheme in Barakahu, Islamabad.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

12. The record shows that on 03.09.2009 an advertisement was published by respondent No.1 in the Daily 'Jang' representing that respondent No.1 had launched a membership drive for the registration of FGSs. The registration form for the above purpose was available on respondent No.1's website and also at branches of Askari Bank Limited. The silent features of the said membership drive were stated to as follows:-

- “i. Membership drive approved by Prime Minister;
All Federal Government Employees including the fresh entrants who were in service on 01.07.2009 or thereafter are encouraged to apply;*
- ii. Membership requires one time registration fee for entitlement in future schemes;*
- iii. The registration fee would be refundable/adjustable towards cost of plots/apartment with 2% service charges;*
- iv. Registration counts from the date of deposit of fee;*
- v. Seniority of members would be based on the date of deposit of fee. In case of tie on the date of deposit of registration fee, the age-wise seniority would be made criteria;*
- vi. All members would have to pay progressively rising periodical contributions towards the cost of plot/apartment;*
- vii. Registration fee with application form to be deposited in designated branches of Askari Bank.”*

13. The membership drive launched by respondent No.1 came under discussion in the 107th meeting of the Executive Committee of respondent No.1 held on 01.07.2009. In this meeting, the Chief Executive of respondent No.1 pointed out that *“anomalies in the past emerged, primarily as fresh registration was required for every new scheme.”* Furthermore, it was pointed out that *“this scheme based membership conditionality created more problems than what were intended to be resolved, particularly for employees approaching retirement but deserved most attention of the welfare body ...”* The new proposal was made with the intention to provide every FGE with a chance to own a house or an apartment. A sub-committee was constituted to device a system for the launch of the membership drive and for developing a brochure.

14. Respondent No.1 had prepared a working paper for the 108th meeting of the Executive Committee. This working paper contained clarifications and explanations regarding various aspects of the membership drive. According to this working paper, the membership drive had been cleared by the Executive Committee of respondent No.1, and approved by the Prime Minister of Pakistan; it was launched by the Ministry of Housing and Works on 28.08.2009; and 6,000 employees had got themselves registered, and had deposited Rs.148 million. Two essential questions regarding the membership drive were answered as follows:-

“xiii. ...How would be seniority determined?:

(The seniority would be determined on “First Come First Serve” based on date of deposit in the relevant category. In case of more than one applicant on a particular date in a category then age-wise seniority would be made the criteria for that particular date.)...

xv. ...Would Government Servant be also allowed to apply for any scheme of the Foundation whenever launched subsequently? Would they be considered junior to those employees who had got themselves registered earlier?

(Government Servants would not be allowed to apply directly to FGE Housing Foundation for any scheme whenever launched in future. Only the registered employees would be entertained for the future schemes.)”

15. On 09.09.2009, the 108th meeting of the Executive Committee of respondent No.1 was held. By this date the number of registered employees had risen to 9,000 and the amount deposited by them was more than Rs.200 million. The clarifications discussed and approved in this meeting included the aforementioned clarifications contained in the working paper. Respondent No.1 prepared another working paper for the Executive Committee which shows that on 01.04.2009, respondent No.1 had executed an agreement with a private limited company for purchase of 3,000 kanals of land in Revenue Estates Sakreela, Phulgran and Bobari, near Bharakahu, Islamabad. 1,650 kanals had been transferred to respondent No.1 on 10.04.2009, and subsequently another 960 kanals were transferred to it. According to this working paper, 17,581 FGEs had been registered under the membership drive; and that respondent No.1's scheme in Bharakahu was the first available project where developed plots would be offered to the registered FGEs.

16. Annexed to the writ petition is an undated letter from respondent No.1 and its joint venture partner, M/s EHFPRO (Pvt.) Limited, to the registered members of respondent No.1, informing them about the project called “Lifestyle Residency” for building apartments. The inventory (i.e. the apartments) was said to be limited and available to members registered with respondent No.1 on ‘first-come-first-served’ basis, where precedence was set on the basis of the date of joining the membership drive.

17. The petitioner has brought on record the “questions for oral answers and their replies” to be asked at Session of the Senate of Pakistan to be held on 23.08.2013. In this Session, the government’s position was explained by Senator Mr.Usman Ibrahim, Minister for State for Housing and Works, in the following terms:-

- “(a). Federal Government Employees Foundation announced Membership Drive on 28th August 2009 with the approval of the Prime Minister of Pakistan. Membership requires one time registration fee for entitlement of plot/apartment in all future schemes of FGE Housing Foundation. Askari Commercial Bank is authorized to collect the Membership Drive Fee.*
- (b). there are two projects in pipe-line:-*
 - (i). proposed Housing Scheme at Bara Kahu, Zone-Iv, Islamabad. The project will be completed in 30 months after issuance of NOC from CDA. The exact, date of launching could however not be instantly given as the project is subjudice before the Honorable Supreme Court under Suo-Moto.”*
 - (ii). G+14 storey apartments scheme in Sector G-13, Islamabad. The project will be completed in 48 months after launch. The tentative date of launching is August 2013. The Housing Foundation is, instantly, pursuing CDA for issuance of NOC for the project.*
- (c). Registration /Seniority of members is based on the date of deposit of fee on first come first serve basis. Only the registered employees would be entertained for allotment in all future scheme.”*

18. On 30.08.2013, the 127th Meeting of the Executive Committee of respondent No.1 was held. The minutes of this meeting show that Membership Drive-I came under criticism. The following is an extract from the minutes:-

“5. ...The Chairman of the Executive Committee further ordered to submit a copy of “The summary to Prime Minister” to his office to have fair assessment of the procedure for allotment of plot, allocation of quota (52% quota on first come first serve basis) and allotment of plots to the senior civil government employees under 20% quota. Allotment policy on “first come first serve” essentially deprive the senior government officers of their genuine right of having a plot at the fag end of their career. Further, those senior officers posted in far flung areas like in Gilgit Baltistan, Balochistan, FATA and Sindh who did not apply in time, will be

deprived to have a plot. But they could have one, had it been announced as per Housing Foundation's standard policy of allotment on seniority basis."

19. The Executive Committee of respondent No.1 in its 131st Meeting held on 25.06.2014, observed that the criteria of allotment on the basis of 'age wise seniority' was more appropriate and reasonable *viz-a-viz* the criteria of 'first-come-first-served'. In this meeting, it was decided that the criteria for allotment based on 'first-come-first-served' should be reviewed and a summary be moved to the Prime Minister for the restoration of the criteria based on 'age wise seniority' for Bharakahu (Phase-VI) and for all future schemes, including Bharakahu Extension. In this very meeting, it was *inter alia*, decided to take up the matter regarding allocation of land at Kuri Road and Sector F-14, Islamabad, by respondent No.1 with the Capital Development Authority.

20. On 15.12.2015, another advertisement was published by respondent No.1 informing the general public about the launch of Phase-II of the membership drive i.e. Membership Drive-II. The essential feature of this membership drive was that the seniority of members was to be determined on the basis of the applicants' age. However, the seniority of the members already registered on 'first-come-first-served' basis under the early membership drive (i.e. Membership Drive-I) was to remain intact.

21. The Executive Committee of respondent No.1 in its 133rd meeting held on 17.06.2015, was informed that some of the successful applicants in Membership Drive-I were not interested in getting a plot in respondent No.1's housing scheme at Bharakahu, and that they had declined to accept the offer made by respondent No.1. The Executive Committee of respondent No.1 decided that such applicants should be deemed to have forfeited their seniority as well as their entitlement to a plot in respondent No.1's housing scheme at Bharakahu. It was also decided that such an applicant may be considered for fresh registration in Membership Drive-II, which has an age wise seniority criteria.

22. On 27.04.2016, respondent No.1 sent letters to the petitioners, who were registered as members under Membership Drive-I, informing them about the progress in the acquisition of land

for respondent No.1's housing scheme at Bharakahu, and that funds were required for the purchase of land. Furthermore, the petitioners were offered plots in respondent No.1's housing scheme at Bharakahu (Phase-IV) on 'first-come-first-served' basis. The petitioners were required to pay Rs.600,000/- as down payment for the cost of land to respondent No.1 within a period of thirty days, if the said offer was acceptable to them. In the event, the petitioners did not deposit the said amount, it was to be presumed that they were not interested in the said housing scheme, and their candidature was to be passed on to the next senior most member on the waiting list of the scheme.

23. At page-119 of the petition is annexed the membership form for Membership Drive-I. This form does not restrict the membership of an applicant for any specific housing scheme. However, respondent No.1 subsequently issued the registration form for Membership Drive-I which was restricted to respondent No.1's housing scheme at Bharakahu. On 31.05.2016, it was reported in the Daily Express Tribune that a meeting of the Senate Standing Committee on Housing and Works had taken place on Monday, 30.05.2016 on issues related to respondent No.1's housing project at Bharakahu. Furthermore, it was reported that the Committee was informed that the Minister of Interior had cancelled the process of acquiring land for the said project.

24. Subsequently, respondent No.1 published a public notice, which reads as follows:-

"All registered members of Phase-I&II of the FGE Housing Foundation hereby informed and affirmed that their membership with Housing Foundation is safe and fully refundable. Further, Housing Foundation is going for open competitive bidding for land procurement for which a bid shall float in national dailies and the rates will be communicated with potential allottees before the purchase of the land. The registered members of Phase-I shall also be given choice for allotment between Barakahu and another scheme near Islamabad Airport. Housing Foundation strongly suggests its members of Phase-I to deposit their money in order to retain their seniority and avail the options accordingly."

25. The Executive Committee of respondent No.1 in its 139th meeting held on 04.05.2016, unanimously decided that consent letters would be issued to the members and that in addition to the acquisition of land through the Land Acquisition Collector, the

purchase of land through open bidding would also be considered.

26. The minutes of this meeting reveal that respondent No.1 was making efforts with the CDA for the allocation of land at Kuri Road as well as Sector F-14, Islamabad. The Executive Committee of respondent No.1 also decided to take up the matter with the CDA for the allocation of land in the said areas so as to *inter alia* remove the backlog of registered members of respondent No.1. The Executive Committee also accorded an 'in-principle' approval for the resumption of the membership drive after the consolidation of land bank after the allocation of land at Kuri road and Sector F-14, Islamabad.

27. The minutes of the said meeting further show that the Executive Committee was briefed about the decision to give plots measuring 500 square yards to members of the occupational groups and Judges of the Supreme Court. In order to implement this scheme, land measuring 10,628 kanals in Sectors F-14 and F-15, Islamabad, needed to be acquired for which at least Rs.16,000,000,000/- was required. The Land Acquisition Collector, after issuing notifications under Sections 4 & 17 (4) and (6) of the Land Acquisition Act, had demanded an enormous amount from respondent No.1.

28. In Barakahu (Green Enclave-I), an agreement was executed between respondent No.1 and M/s Green Trees, under which 3,200 plots were to be created. Under Membership Drive-I, there are more than 37,000 registered members. On respondent No.1's application, the Land Acquisition Collector had issued a notification under Section 4 of the Land Acquisition Act for the acquisition of 6,931 Kanals of land. In addition to this, the issuance of the notification for the acquisition of 14,611 kanals of land was also under consideration. For the acquisition of this land, again an enormous amount would be required by respondent No.1. The Executive Committee was informed by the management of respondent No.1 that notices had been issued to the candidates/FGEs who had been selected on 'first-come-first-served' basis for the Barakahu Scheme. These were 1,716 in number. Respondent No.1 was in the process of obtaining the service details of the candidates/federal government employees to whom the said notice had been issued.

Till then, 1,300 files had been received and provisional allotment letters were to be issued after the CDA's approved layout plan.

29. Now, there is no dispute that there exists no contract between the petitioners and respondent No.1 for the allotment of plots in a housing scheme of the petitioners' choice. It is not even the petitioners' case that respondent No.1 is contractually bound not to discontinue Membership Drive-I or to give a plot to a registered member under Membership Drive-I in a housing scheme of his choice. The petitioners' case, essentially, is that respondent No.1, as a public sector entity, is estopped from resiling from its promise give a plot to a member in Membership Drive-I, in accordance with his seniority established on 'first-come-first-served' basis in a housing scheme of his choice.

30. There is, however, no denying the fact that respondent No.1 made a promise/representation through advertisements not just regarding the launch of Membership Drive-I, but lured/encouraged FGEs to apply for membership. In paragraph 5 of respondent No.2's written comments, it is *inter-alia* pleaded as follows:-

5. That the respondents merely extended assurance vide advertisement dated 3rd September 2009 that the petitioners and other members who get themselves registered and became members of FGEHF by depositing a nominal membership fee @ Rs.5000, 15000 etc per head, would be facilitated strictly in their order of seniority based on First Come First Serve criteria, in getting a residential plot according to their order of seniority based on First Come First Serve criteria..."

31. Membership could be obtained by qualified persons by paying a registration fees. The most significant feature of Membership Drive-I was that "*Seniority of a member would be based on the date of deposit of fee.*" The undisputed and uncontroverted documents on the record show that respondent No.1 had clarified that "*seniority would be determined on "First-Come-First-Served" based on date of deposit in the relevant category.*" Furthermore, it was clarified that "*Government Servants would not be allowed to apply directly to FGE Housing Foundation for any scheme whenever launched in future. Only the registered employees would be entertained for the future schemes.*"

32. It is well settled that where the government functionaries make promises / representations to any one who believes them and

acts under them, then those functionaries are precluded from acting to the detriment of such persons / citizens. In such situations, the doctrine of promissory estoppel would be applicable. A reference to some treaties and case law at this stage would be apposite:-

- (i) Justice (Retd.) Fazl Karim, in his book, to “Judicial Review of Public Actions” at Page 1365, has explained that the doctrine of “legitimate expectation” and “promissory estoppel” has its roots in “fairness”. The relevant passage reads like this:-

“The justification for treating ‘legitimate expectation’ and ‘promissory estoppel’ together as grounds for judicial review is, one, that they both fall under the general head ‘fairness’; and too, that ‘legitimate expectation’ is akin to an estoppel. As was explained by Simon Brown LJ in R v. Devon CC, the various authorities show “that the claimant's right will only be found established when there is a clear and unambiguous representation upon which it was reasonable for him to rely. Then the administrator or the other body will be held bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it”. The relationship between them is more clearly brought out by what Bingham LJ stated in R v. IRC ex p IMK.”

“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of legitimate expectation is rooted in fairness.”

- ii) The doctrine of legitimate expectation has been described in Halsbury's Laws of England, 4th Edition in the following words:-

“A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.”

- iii) In the case of Pakistan through Ministry of Finance Economic Affairs and another Vs. Fecto Belarus Tractors Limited (PLD 2002 SC 208), promissory estoppel and its applicability was defined in the following terms:-

“23. It will be necessary to touch the true concept of the realm of doctrine of promissory estoppel. Before

proceeding further this doctrine has been variously called 'promissory estoppel' 'requisite estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel', it is neither in the realm of contract nor in the estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the C strict sense of the term. It is an equitable principle evolved by, the Courts for doing justice and there is no reasons why it should be given only a limited application by way of defence. There is no reasons in logic or principle why promissory estoppel should also not be available as a cause of action."

- iv) In the case of Omer Ismail Khalid Vs. Pakistan Medical and Dental Council (PLD 2015 Islamabad 65), it has been held as follows:-

"Promissory estoppel is an equitable doctrine with the object of pre-empting the suffering of any loss arising out of a promise made, and is invoked so as to prevent violation of and to safeguard rights accrued pursuant to such a promise. It is essential that the promise be made by a person competent to represent the authority, on behalf of which a promise is being made, and the person to whom the representation has been made changes his position to his detriment, takes a decisive step and enters into a binding contract or incurs a liability. Simultaneously, it is settled law that there can be no estoppel against a Statute."

- v) In the case of New Shaheen Trading Company Vs. Government of Pakistan (2008 SCMR 17), it has been held that Principles of promissory estoppel do not apply to legislative power of the Government to amend the law and change its policy.
- vi) In the case of Azra Riffat Rana Vs. Secretary, Ministry of Housing and Works (PLD 2008 SC 476), it has been held that the doctrine of promissory estoppel does not extend

to legislative and sovereign functions yet, executive orders are not excluded from its operation.

- vii) In the case of Nishat Mills Limited Vs. Federation of Pakistan (2005 PTD 495), the Division Bench of the Hon'ble High Court of Sindh has held that the executive is bound by representation it makes under the doctrine of a promissory estoppel but there could be no estoppel against exercise of legislative power.
- viii) In the case of Motilal Padampat Sugar Mills Vs. State of Uttar Pradesh (AIR 1979 SC 621), a two-Judge Bench of the Supreme Court of India discussed the doctrine of promissory estoppel in great detail and laid down various propositions including the following:-

“The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.”

“The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.”

- ix) In the case of Union of India Vs. Godfrey Philips (AIR 1986 SC 806), it has been held by the Supreme Court of India, as follows:-

“Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the inter position of equity which has always, true to its form, stepped in to

mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in Central London property Trust Limited v. High Trees House Limited, (1956) 1 All E. R. 256-. The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Sugar Mills v. State of Uttar Pradesh, [1979] 2 S.C.R. 641, it is now well-settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action.”

- x) In the case of Sethi Auto Service Station Vs. DDA (2009) 1 SCC 180, the Indian Supreme Court referred to various precedents and observed:-

“...the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfil unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.”

33. All the conditions for invoking the doctrine of promissory estoppel against respondent No.1 appear to be satisfied in the instant case. The representations and promises made by respondent No.1, through advertisements and otherwise when Membership Drive-I was launched in 2009, were representations

and promises not in violation of the law; by launching Membership Drive-II and confining the members registered under Membership Drive-I to respondent No.1's housing scheme at Bhara Kahu, and making the members registered under Membership Drive-II (with seniority based on age and seniority in government service) eligible for allotment of plots in Sectors F-14 &15, Islamabad, respondent No.1 had contradicted its earlier representation vis "*Seniority of a member would be based on the date of deposit of fee.*" And that "*[o]nly the registered employees would be entertained for the future schemes.*"; such earlier representation, addressed to FGEs and eligible persons, was of a nature to induce and encourage FGEs to apply for registration under Membership Drive-I and to alter their position to their detriment by paying the registration fees, no matter how little; thousands of FGEs got registered under Membership Drive-I and millions were collected by respondent No.1; and such registered members altered their position on the faith of respondent No.1's original representation and promise. The petitioners are not invoking the doctrine of promissory estoppel against the Legislature or the laws framed by it; the petitioners are not invoking the said doctrine for directing respondent No.1 to do a thing that was against law when the representation was made or the promise held out. The respondents do not dispute that the representations and promises made by respondent No.1 when Membership Drive-I was launched, were lawfully extended or given. The doctrine of promissory estoppel would not have applied had the petitioners and/or members registered under Membership Drive-I not taken a step as a consequence of the representation or inducement by paying a registration fee and finding their place in the queue/seniority list for the allotment of a plot in any housing scheme of respondent No.1. In paragraph 6 of respondent No.2's written comments, it is *inter-alia* pleaded as follows:-

"6. That under Membership Drive Phase-I, 36914 applicants got themselves registered by depositing nominal membership amounting to Rs.5000/-, 15000/-, 25000/-, 50000/- and 100000/- in accordance with their categories of entitlement of plots based on their service scales..."

34. Once an FGE registers himself in Membership Drive-I, he gets entitled to an allotment of a plot in the future housing schemes of respondent No.1. The petitioners' registration in Membership Drive-I places them in a queue for the allotment of a plot in respondent No.1's housing schemes. Membership Drive-I was not just advertised by respondent No.1, but the FGEs were encouraged to apply by submitting forms and paying the registration fees. The FGEs who got themselves registered in the said membership drive altered their position to their detriment by paying the registration fees. Thereafter, they were marking time for the turn to come for the allotment of a plot. Over the time, the members in the Membership Drive-I swelled and respondent No.1 collected an enormous amount. Could the legitimate rights and expectations of such registered members be brought to a naught by respondent No.1 by relegating them to a housing scheme in Bharakahu? Could respondent No.1 take steps to launch another housing scheme in an expensive area of Islamabad and make the plots available to members under Membership Drive-II by abandoning the criteria of 'first-come-first-served'? I would think not. To ask the members registered under Membership Drive-I to apply under Membership Drive-II and get a refund of the registration fee is hardly any consolation or compensation.

35. The principle of promissory estoppel is applicable against the Government, but in case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. However, the Court must satisfy itself that such a public interest exists. The rationale put forth by respondent No.1 in launching Membership Drive-II, in which seniority of a member is determined on the basis of his age or seniority in government service, was to accommodate several senior FGEs who were approaching retirement, and who had not applied under Membership Drive-I. This can hardly be termed as a "supervening public equity". The question that crops up in the

mind is that why did such senior FGEs not apply under Membership Drive-I, especially when it was widely advertised by respondent No.1 and the membership forms were available on respondent No.1's website as well as branches of Askari Bank Limited. Why is it that a premium is being added to the lethargy of such senior FGEs. How are such senior FGEs in any way more privileged than the ones who are already in the queue having registered themselves under Membership Drive-I.

36. The launch of Membership Drive-II by respondent No.1 and the reversion to age-wise seniority as a criteria for the allotment of a plot is, in my view, not unlawful so long as it is given prospective effect and does not operate to the detriment of the members registered under Membership Drive-I. Furthermore, the registered members under Membership Drive-I have a first and superior right to be accommodated in respondent No.1's housing schemes – a scheme is a present reality and not a distant illusion. Since respondent No.1 has taken steps to acquire land in Sectors F-14 & 15, Islamabad, for the development of a housing scheme, plots in the said scheme cannot to be offered to members registered under Membership Drive-II, unless and until the members registered under Membership Drive-I are exhausted. After the launch of Membership Drive-I, respondent No.1 had taken a firm and categorical position that “[o]nly the registered employees would be entertained for the future schemes.” Even in Parliament, the position taken by the Government was that “Only the registered employees would be entertained for allotment in all future scheme”. This was with reference to Membership Drive-I, and well before the launch of Membership Drive-II. Having taken this position, respondent No.1 is estopped from allotting plots in Sectors F-14 & 15 or any other future housing scheme of respondent No.1 to persons other than the members registered under Membership Drive-I, unless such members are all accommodated or they refuse an offer for an allotment in an existing housing scheme of respondent No.1. It is not disputed that all the members registered under Membership Drive-I

cannot be accommodated in respondent No.1's housing scheme in Bharakahu.

37. Now if a registered member under Membership Drive-I is given an offer of an allotment in respondent No.1's housing scheme, and he refuses that offer (because he wants to be offered a plot in another future housing scheme) forfeits his right to be offered a plot. There is nothing preventing such a member from applying for getting himself registered under Membership Drive-II. Respondent No.1, did not, at any material stage held out a representation or made a promise that a member registered under Membership Drive-I would be given a choice as to which housing scheme he should be offered a plot in.

38. In view of the above, the instant petition is partly allowed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2016

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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