

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. JUDICIAL DEPARTMENT.

Writ Petition No.2535/2016

(Moazzam Habib, etc. vs. Federation of Pakistan, etc.)

Petitioners by: Mr. Moazzam Habib, Advocate/Petitioner No.1 in person.
Mr. Muhammad Ilyas Sheikh, Advocate and
Ms. Robina Shaheen, Advocate for Petitioner No.3.
Mr. Saleem Ullah Khan, Advocate/Applicant in C.M. No.659/2017

Respondents by: Mr. Noubahar Ali, Advocate for respondent No.3.
Ch. Muhammad Haseeb, DAG.

Date of Hearing: 09.06.2017.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition the petitioners have prayed for the following relief:

"That this writ petition may kindly be allowed and section 1(2) of the Ordinance be declared void, illegal and ultra vires of Constitution of Islamic Republic of Pakistan 1973 consequently S.R.O. No.83(K)/2002 dated 01.08.2002 is void and it may be issued in accordance with law.

It is further prayed that respondent No.2 may kindly be directed to propose and present amendment to fill and correct the anomaly in Ordinance.

It is also prayed that respondent No.3 may also directed to prepare map of urban area and other areas according to current demography with regard to definition of sectoral area and in accordance with law.

Without prejudice to above, respondent No.1 may kindly be directed to rectify S.R.O. No.83(K)/2002 dated 01.08.2002 by including zone V of Islamabad Capital territory into the urban area."

2. Brief facts of the instant case are that, on 23.01.2001, the President of Islamic Republic of Pakistan promulgated the "Islamabad Rent Restriction Ordinance, 2001" (VI of 2001) (hereinafter "*the Ordinance*") to regulate the relations between landlords and tenants of rented premises in the Islamabad

Capital Territory (hereinafter "ICT"). Whereas, the preamble of the Ordinance extends its purpose to whole of ICT while Section 1(2) of the Ordinance restricts its scope to urban area of ICT and also empowers the Federal Government to issue a notification in the Official Gazette for application of the said Ordinance. As a result, SRO No.83(K)/2002 was issued on 01.08.2002 (hereinafter "*the SRO*") defining an area for the enforcement of the Ordinance.

3. The SRO referred above excludes 60% of area of ICT as numbers of residential, institutional and industrial areas have been excluded from the purview of the Ordinance, even Capital Development Authority (hereinafter "*CDA*") developed certain areas, which are not included in the said notification. Hence, the petitioners, who are advocates of this Court, and being afflicted of the SRO, filed this writ petition as *pro bono publico* to safeguard the interest of general public with reference to landlords/tenants relations in ICT.

4. Petitioner No.1 in person and learned counsel for petitioners No.3 contended that Federal Government neither stated any specific reason to include a particular area in the SRO nor justified in any manner the non-inclusion of other areas of similar nature; that Ministry of Interior issued the SRO without due application of law as Zone-V of the ICT is an urban area with reference to the ICT (Zoning) Regulations, 1992, even Clause 5(H) of the said Regulations, the Islamabad Building Regulations, 1963 and the Islamabad Residential Sectors Zoning Regulation, 1985 are extended to Zone-V, therefore, Ministry of Interior committed an illegality by excluding Zone-V; that the areas, such as DHA Phase-II, Shahzad Town, Gulberg Town, Pakistan Town, Korang Town, Police Colony, Civilian Colony, Industrial Triangle Kahuta Road and High Rise Building "World Trade Centre" were sanctioned and approved by the CDA, but the same have not been included

in the notification; that afterwards the areas and the ambiguity for the application of the territorial limits have been defined in a judgment passed by this Court in W.P. No.753/2016 reported as 2017 YLR 1224 (Saleem Ullah Khan vs. FOP), which further creates a vacuum in the legal rights of landlords and tenants.

5. Conversely, learned Deputy Attorney General after receiving the notice under Order XXVII(A) of CPC argued the case while respondent No.1/Ministry of Interior conceded the stance of the petitioners through an interim reply dated 30.11.2016, though initially the officials of Ministry of Interior showed no intention to resist the instant writ petition. Similarly, Ministry of Law/Respondent No.2 also filed a report and requested that they may be removed from the array of respondents and asserted that Ministry of Interior and Capital Administration Development Division shall be held responsible for determining the contents of any legislation to include the entire Islamabad territory under the SRO for the purposes of landlords and tenants. Furthermore, Chief Commissioner, Islamabad also filed a detailed report taking a stance that rural areas of Islamabad today are entirely different from the period when IRRO, 2001 was promulgated and the SRO was issued; that DHA, Bahria Town, different housing projects and cooperative housing societies are situated in Zoning/Rural areas of ICT, where all modern facilities and high rise buildings/commercial plazas exist and majority of buildings have been rented out after development of these areas, but IRRO, 2001 is not applicable in those areas, therefore, they have suggested the amendment/modification in the SRO considering the prevailing ground realities for the facilitation of concerned people to access to justice under IRRO, 2001.

6. Arguments heard, record perused.

7. From the perusal of record, it has been observed that IRRO, 2001 was promulgated on 23.01.2001 to regulate the affairs between landlords and tenants of rented premises in ICT, and the preamble of the Ordinance plays an important role while determining the intention of the legislature, which is reproduced as under:

"An Ordinance to regulate the relations between the landlords and tenants of rented premises in the Islamabad Capital Territory; whereas it is expedient to regulate the relations between the landlords and tenants of rented premises in the Islamabad Capital Territory and to provide for matters ancillary thereto or connected therewith."

The preamble of the Ordinance apparently carries extent and its purpose to entire ICT, while Section 1 of the Ordinance states that:

"1. Short title, extent, application and commencement.

(1). This Ordinance may be called the Islamabad Rent Restriction Ordinance, 2001.

(2). It shall extend to such urban area of Islamabad Capital Territory and apply to such buildings and rented lands as the Federal Government may, by Notification in the Official Gazette, specify.

(3). It shall come into force at once."

The above referred provisions of IRRO, 2001 clearly restrict its scope to the urban area of ICT unless the same is notified by the Federal Government.

8. In pursuance of Section 1(2) of the Ordinance, the Federal Government through respondent No.1 issued the SRO and defined an area for the enforcement of the Ordinance, which has duly been explained in a recent judgment of this Court passed in W.P. No.753/2016 reported as 2017 YLR 1224 (Saleem Ullah Khan vs. FOP).

9. The SRO explains the area starting from near Mandla Village at map reference 231-660 up to the Margalla Hills slopes till joining starting point at map reference 231-660 near Mandla Village, whereas the Surveyor General of Pakistan provided detailed descriptions of landmarks, whereupon a

judgment was passed by this Court and in view of the said clarification, the SRO includes the following:

“Besides abovementioned boundary line, said notification covers all Sectors of Islamabad up till last boundary line, falls within the jurisdiction of IRRO, 2001. Sectors included in IRRO, 2001 are herein under:-

<i>From</i>	<i>To</i>
<i>I-8</i>	<i>I-17</i>
<i>H-8</i>	<i>H-17</i>
<i>G-5</i>	<i>G-17</i>
<i>F-5</i>	<i>F-17</i>
<i>E-7</i>	<i>E-17</i>
<i>D-12</i>	<i>D-17</i>
<i>C-17</i>	
<i>B-17</i>	

10. Pursuant to the supra judgment referred as 2017 YLR 1224, the learned Rent Controllers have clearly marked the territorial limits, which resulted into exclusion of majority of the areas, which were previously considered under IRRO, 2001 and the present petitioners being the advocates of this Court, filed the instant *pro bono publico* case to resolve this controversy.

11. It is a settled proposition of law that any person, for protection of fundamental rights of citizens, can challenge the *vires* of law or initiate the process. Reliance in this regard is placed upon 1999 SCMR 2883 (Ardesher Gowsesjee vs. Karachi Building Control Authority), PLD 2009 SC 507 (Human Rights Commission of Pakistan vs. Government of Pakistan) and PLD 2016 Pesh. 57 (Yousaf Ayub Khan vs. Government through Chief Secretary, Peshawar and two others.).

12. In view of above authoritative judgments, I am of the view that petitioners, being advocates of this Court, have no personal interest in the instant petition rather they filed the same with intent to protect the rights of all those individuals, whom properties fall under the ICT, especially of Zone-V, but their rights have not been considered by the respondents while issuing the impugned SRO, hence, instant writ petition is maintainable.

13. In essence, Islamabad was established as Capital of the country under CDA Ordinance, 1960, whereas the main objective of the ordinance is to provide planning and proper development of the Capital and CDA is to perform functions of the Municipal Committee to ensure sanitation, health and education of the inhabitants as well as supplies of diverse goods. Even the provisions of the CDA Ordinance, 1960 are extended to specified areas, whereas Section 3 of the Ordinance relates to declaration of capital site, wherein Federal Government may, by notification in the Official Gazette, declare any part or parts of the specified areas to be included in the capital. Similarly, other related laws, such as, the Islamabad (Preservation of Landscape) Ordinance, 1966 and the Islamabad Buildings Regulations, 1963 are also applicable to the capital site as defined in the said Ordinance, whereas all buildings works are subject to ICT (Zoning) Regulation, 1992, even the Capital of the Republic (Determination of Area) Ordinance, 1963 defines the territory of the capital by referring it in the schedule.

14. The record further divulges that the preamble of the enactment gives purpose, scope and object of the statute and the same clearly depicts that it applies to the properties of ICT, but Section 1(2) of the Ordinance restricts its scope to the urban areas only. Even the boundary of the ICT for the purposes of application of the Ordinance has been described in arbitrary and whimsical fashion. This Court, during the proceedings of the instant writ petition, heard the learned Deputy Attorney General as well as different senior officials of Ministry of Interior, but they could not give any valid reason, justification or basis regarding issuance of the SRO, wherein certain areas have been excluded, even they could not demonstrate from any document on record as to why the other Zones or specifically Zone-V have been excluded from the application of the IRRO, 2001. However, in order to

understand the concept of Zones, it is necessary to go through the provisions of Islamabad Capital Territory (Zoning) Regulations, 1992.

15. Bearing in mind the above referred laws, it is reckoned that the areas could be considered with reference to ICT (Zoning) Regulations, 1992, wherein Section 2(13) discloses that "ICT" means Islamabad Capital Territory as defined under the Capital Territory Local Government Ordinance, 1979 and Section 2(23) provides the "Sectoral Area" means the urban body of the ICT comprising residential, institutional, industrial and other such sectors, whereas the ICT consists of five zones and the status of Zone-V, which is the subject matter of the instant writ petition, has been defined as under:-

"In this Zone,

- (a) the existing urban sprawl will be organized into a planned urban development and housing scheme will be encouraged;*
- (b) a broad outline development plan shall be prepared by the Authority in whose context the schemes shall be considered for approval. The minimum area of such a scheme shall not be less than 100 acres;*
- (c) the detailed lay-out plan and development specifications of the scheme shall be subject to the approval of the Authority;*
- (d) the schemes shall have their independent accesses and roads, water supply and primary sewerage treatment systems to be developed by the sponsors at their own cost and expense;*
- (e) the possession of individual plots in the scheme shall not be handed over to allottees until the land is fully developed by the sponsors and completion certificate in this regard obtained from the Authority.*
- (f) all land reservations made for roads and utilities in such schemes shall belong to the Authority: (g) the sponsors shall deposit with the Authority as security hundred percent (100%) estimated total cost of development of the scheme or shall mortgage thirty percent (30%) of the saleable area in lieu thereof till a completion certificate is obtained by the sponsors from the Authority in respect of the scheme:*
- (h) all the buildings to be constructed in the zone shall be subject to the Islamabad Building Regulation, 1963, and Islamabad Residential sectors Zoning Regulation, 1985.*

(i) *After completion and allotment, the scheme shall be maintained by the sponsors or by an association of the allottees, as the case may be till such time the scheme is taken over by the Authority.*

(j) *all such permission shall be subject to payment of Scrutiny Fee/Service charges as determined and levied by the Authority from time to time, and without prejudice to the right of the Authority to acquire the land in public interest.*

(k) *Individual construction not falling within the scheme approved by the Authority will not be permissible. However, repair of old houses and expansion of existing houses may be allowed once by the Authority to the native residents subject to the conditions that the site is located within the limits of the main body of the village. The covered area of such construction shall not exceed 1000 sq. feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property wherever needed in the public interest, such requests shall be routed through the concerned Union council."*

16. In view of the ICT (Zoning) Regulations, 1992, Zone-V is established for the future development of Islamabad with a joint-venture of different Communities/Societies. CDA Authorities have issued certain guidelines to individuals as well as different companies, who want to develop a society, to obtain land more than 100 acres, whereas the terms and conditions of Zone-V imposes restrictions upon the concerned sponsors/associations of the allottees and the scheme, after its completion, shall be maintained by the sponsors/associations. However, it has been observed that the population growth rate since 2001 is comparatively higher than the present time and majority of the areas have been excluded, even though the same were allowed and sanctioned by the CDA in Zone-V. Whereas, other laws, such as, the Punjab Rented Premises Act, 2009, the Cantonments Rent Restriction Act, 1963 and the Sindh Rented Premises Ordinance, 1979 provide the application of the said rent restrictions laws to the entire city, and IRRO, 2001 is also applicable to entire ICT, but the area has to be defined by the Federal Government, whereas the Federal Government vide notification SRO No.83 dated 01.08.2002 restricted the application of the IRRO, 2001 to particular

areas by excluding majority of the areas of ICT, although representatives of the Ministry of Interior appeared before this Court, could not justify as to why certain areas were excluded, even till date, they have not considered the growing needs of ICT by excluding the general public in Zone-V and other Zones.

17. Section 1(2) of IRRO, 2001 as well as impugned SRO are not in consonance with the preamble of the Ordinance, as the same are restrictive in nature and defeat the very purpose and object laid down in the preamble of the Ordinance, as such, it defeats the very spirit of legislation. Even the Federal Government materially defeated the intent of legislature by issuing the SRO. Reliance is placed upon PLD 2010 Kar 236 (Mst. Ummatullah vs. Province of Sindh and 6 others). By implementing the Ordinance, the demarcation in map to the extent of urban area deprives the public-at-large from equal protection of law. It is the duty of the government to exhibit structure discretion and explain as to why certain areas in Islamabad have been granted special benefit, whereas other less privileged areas have been left without similar protection of law. Since the promulgation of the Ordinance in 2001, many areas have been converted into urban by definition of Sec.2(23) of ICT (Zoning) Regulations, 1992 for the purpose of residential, institutional and industrial activities. But the Federal Government has not taken care of the growing needs of those areas, hence when the Federal Government is not in a position to justify the reasons of excluding the newly developed areas of Zone-V, it amounts to violation of Articles 4, 9, 24 and 25 of the Constitution of Pakistan, 1973. Moreover, it is a settled proposition of law that when general public is deprived of from right of equal protection of law, the Court has to rescue and protect the rights of an individual, which are enshrined in the Constitution of Pakistan, 1973. All the stakeholders, i.e. Ministry of Interior, Chief Commissioner, Islamabad as well as CDA are in

consensus that recent societies, that have been developed in Zone-V in accordance with ICT (Zoning) Regulations, 1992, fall within the concept of modern urbanization and fulfill the requirements of law as besieged in the ICT (Zoning) Regulations, 1992 although the application of IRRO, 2001 is only with reference to relationships between landlords and tenants and it has nothing to do with ICT (Zoning) Regulations, 1992.

18. Considering the foregoing grounds, the Constitution provides equal access to justice to all as it is an inviolable right, which is equally found in doctrine of law. Essentially, right to access to justice includes right to be equally treated in accordance with law. The record further surmised that respondents have failed to perform their legal duty as non-inclusion of areas of Zone-V, amounts to infringement of the fundamental rights of the petitioners as well as of general public living in Zone-V, whereas the remedy under prevailing situation is a writ of mandamus and this Court can issue a writ of mandamus, where a command is required for the performance of particular duty. It has further been observed from the record that on 15.11.2016, Secretary, Ministry of Interior was directed to decide the pending application of the petitioners regarding the anomaly in Islamabad Rent Restriction Ordinance, 2001 before 29.11.2016 and to submit report. Similarly, learned Deputy Attorney General also provided different situations and guidelines to Ministry of Interior to resolve the controversy and all the concerned i.e. Secretary Ministry of Interior, Chief Commissioner, Islamabad and Chairman CDA were directed to pass an order, keeping in view the developments/expansion of urban areas of Islamabad, while considering the parameters under the Interior Division's SRO No.83(k)/2002 dated 15.07.2002, whereby the urban areas of Islamabad were notified, however the Committee was not in a position to give any reason for exclusion of those developed schemes sanctioned by the CDA in entire Islamabad. However,

the Ministry of Interior also placed a copy of proposed draft for amendment in the SRO, wherein they have included the words "the whole of the Islamabad" which can only be issued with the legislative tools, whereas the inclusion of Zone-V can only be made through an amendment in SRO No.83/2002.

19. The object of the said law can be achieved by way of amendment in the SRO as the Federal Government is empowered to issue the notification in this regard. Even otherwise, it is the mandatory duty of the Government to provide equal protection of law, while it is a settled proposition of law that High Courts have jurisdiction under Article 199 of the Constitution to examine the validity of any act of the parliament or delegated legislation, including the notifications, and in case any law, act or notification violates any provision of the Constitution, including the fundamental rights, the same can be struck down as held in PLD 2016 Islamabad 141 (Education Services (Pvt.) Ltd. and 4 others vs. FOP and another). However, there is presumption in favour of constitutionality and law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two and whether there are two interpretations, the one in favour of constitutionality must be adopted. Whereas, the instant petition has been treated as a writ of mandamus as petitioners fulfill all the requirements and respondents/Government require a command to perform a public and quasi public legal duty, which they have refused to perform as held in 2005 SCMR 534 (Secretary Finance vs. Ghulam Safdar). Similarly, the equality of citizens and reasonable classification principles have to be given real meaning in accordance with the Constitutional guarantees, whereas all citizens are equal before the law and entitled for equal protection of law under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, whereas the Constitution does not prohibit treatment of citizens by a State on

the basis of reasonable classification and the High Court, in exercise of its extra-ordinary constitutional jurisdiction under Article 199 of the Constitution, enjoys very wide and immense powers to correct errors, issue any order on discretion and direction in the interest of justice and to safeguard the fundamental rights of the citizens guaranteed by the Constitution. This Court has power to declare or strike down any law, which is found to be contrary to or in conflict with the provisions of the Constitution as held in PLD 2003 Peshawar 14 (Amanullah vs. Secretary to Government of N.W.F.P., Local Government Department, Civil Secretariat, Peshawar).

20. Furthermore, it is a settled proposition of law that constitutional jurisdiction being discretionary and extra-ordinary is to be exercised in cases of grave injustice but in routine cases, whereas the Constitution unambiguously shows that State, its organs and functionaries, besides owing duty of care towards its citizen, have constitutional obligations to provide them an independent and impartial forum of inexpensive and expeditious justice, whereas when no adequate remedy is available, it amounts to denial of justice and vivid violation of constitutional command as the right to access to justice is the fundamental right and a High Court under Article 199 of the Constitution can provide a remedial measure for enforcement of rights of individual.

21. In view of above reasons, this Court is convinced that Federal Government has not given any valid reason regarding exclusion of Zone-V areas and other territories of ICT for the application of the Islamabad Rent Restriction Ordinance, 2001 in the notification SRO No.83(k) dated 01.08.2002 as citizens of Islamabad have a right to lease out their properties and the relationships between landlords and tenants do exist in such eventuality, but they are excluded without any basis or valid ground.

22. It is a settled proposition of law that if there is any illegality or error on the part of any public office in relation to the affairs of the State, writ of mandamus could be issued to the concerned office, reliance in this regard is placed upon PLD 2016 Lah 491 (Karamat Hussain vs. ECP, etc.) and 2013 SCMR 1676 (Muhammad Aslam Abro vs. Samar Muhammad Mukeem Khosa and others). Similarly, it has also been held in a recent judgment cited as 2017 PLC (CS) 350 Kar (Hassan Bux vs. BISE Hyderabad), that a writ of mandamus is competent when one who is legally bound to perform an act but avoids where, *prima facie*, right is in existence and no other efficacious remedy is available than the exceptional circumstances can be relaxed, whereas it appears from the entire record of present case that rights of citizens of Islamabad qua the leased properties are in existence, but majority of them are without remedies, especially when the Islamabad Rent Restriction Ordinance, 2001 is in field, but they have been deprived of from their legitimate right of remedy, which is enshrined under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which provides equal protection of law to every citizen.

23. It is a also settled proposition of law that the authority, which can pass an order, is entitled to vary, amend, add, or to rescind that order in terms of Sec.21 of General Clauses Act, 1897, whereas the said section reads as under:

"21. Power to issue, to include power to add, amend, vary or rescind, notifications, orders, rules, or by-laws – Where, by any (Central Act) or Regulations, a power to (issue notifications) orders, rules, or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any) to add to, amend, vary or rescind any (notifications), orders, rules or by-laws so (issued)."

In view of above, the powers of amendment in any SRO is available to Federal Government in terms of Sec.21 of General Clauses Act, 1897. In this regard reliance is placed upon PLD 1992 SC 207 (The Engineer in Chief Branch through M/o Defence, Rawalpindi vs. Jalal Uddin) and 2009 SCMR 973 (M/s Fazal

Din and Sons Pvt. Ltd. vs. FBR, Islamabad and others) as the Courts are sanctuaries of justice, and in exercise of authority to do *ex debito justitiae*, they could remedy a wrong or suppress a mischief, to which a litigant was entitled to as held in 2017 SCMR 56 (Muhammad Akram vs. DCO Rahim Yar Khan and others). Even otherwise, the intention of the legislature under the Islamabad Rent Restriction Ordinance, 2001 is clear from its preamble, wherein the terms used demonstrate the protection of legal rights of "*landlords and tenants of rented premises in ICT*", whereas Section 1(2) of the said Ordinance extends the authority to the Federal Government to notify the urban area, whereas the notification issued by the Federal Government gives details of the urban areas for the purposes of the Ordinance, but if the details of the coordinates could be seen in the real context as explained in 2017 YLR 1224 (Saleem Ullah Khan vs. FOP), the wisdom to place the boundary line referred along with Eastern side of the Islamabad Highway up to the Toll Plaza at Islamabad Highway at G.T. Junction at map reference 259-353 as well as boundary crosses over to Western side of the Islamabad Highway at map reference 252-356, which were shown as boundary pillar on the map as BP-6 and BP-7, have no nexus with the urban area as it starts from Faizabad junction up to the toll plaza of Islamabad entry at the G.T. Road crossing and it covers only the highway, which does not include any building and even no building was constructed on the highway, therefore, it can safely be concluded that Federal Government has not placed the wisdom while issuing the notification SRO No.83(KE)/2002 as the urban areas developed in Zone-V, which includes the housing societies, were not included without giving any justification. I am of the view that Federal Government, while issuing the notification in question, had not considered the real locations notified by the Surveyor General of Pakistan, who are the custodian of all maps in Pakistan or can identify the areas accordingly.

24. I have gone through similar Rent Restrictions Laws, i.e. the Sindh Rented Premises Ordinance, 1979, which provides the protection to the landlords and tenants in respect of rented premises within the urban areas, whereas Section 2(k) of ibid Ordinance provides the definition of the urban area, which includes the areas within the jurisdiction of Town Committee, Municipal Committee, Municipal Cooperation or Metropolitan Cooperation. Even otherwise, Section 3 of the said Ordinance provides the application of the said law to the urban areas except those which have been excluded by the Federal Government or Provincial Government. I have also gone through the West Pakistan Urban Rent Restrictions Ordinance, 1959, which also applies to urban areas in the province of West Pakistan, except tribal areas and definition of urban areas has been referred in Sec.2(j) of ibid Ordinance, as referred in the Sindh Rented Premises Ordinance, 1979 and similar exemption provisions have been referred in the said law. Similarly, the Punjab Rented Premises Act, 2009 applies to the entire Punjab province to regulate the relationships of landlord and tenants in respect of rented premises, whereas the concept of urban area is not available in the said law, rather it applies to the entire province. However, Section 3 provides the powers of exemption to the Government for non-application of the said law to any specified area. All these similar laws have provided the exemption provisions for non-inclusion of any area unless the said notification was issued, the rent law will apply to the entire province of Punjab, Sindh, West Pakistan, whereas the Islamabad Rent Restriction Ordinance, 2001 is reciprocal to the above concept and it provides an application clause through a notification upon urban areas. The powers of the Federal Government should be exercised in a reasonable fashion to protect the fundamental rights of landlords and tenants, whereas

in present case, no such exercise has been seen, even the due diligence, while issuing the notification, is absent by the issuing authority.

25. During the course of hearing of the instant Writ Petition, the representatives of Federal Government, Ministry of Interior, Ministry of Law, CDA and Chief Commissioner Office submitted different documents and they have been confronted with this question as to what are the reasons for exclusion or non-exclusion of certain areas from ICT in the impugned SRO, but they were not able to provide any valid or justified reason for the said exclusion, hence, I am of the view that all such factors lead to an irresistible conclusion that Federal Government has not observed the Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, which state that every individual is to be dealt in accordance with law and is given equal protection of law, which is the inalienable right of the citizen, and the State is responsible to provide such kind of protection where no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law, whereas the questioned SRO is discriminatory in its nature and the powers exercised by the Federal Government are unreasonable, arbitrary and without application of mind as the notification is unjust, unfair and against the command of the Constitution, whereas Constitution is the supreme law of the country, which does not allow any authority to make departure from any provisions of law in its true perspective, even every executive of the country is bound to obey every command mentioned therein and the Constitutional Courts, in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, are vested with the powers to pass a direction or an order to the Federation to do a certain act, for which the federation is legally bound to do, and this Court is satisfied that no adequate remedy is provided in such like situation.

26. Article 25 of Constitution of Islamic Republic of Pakistan, 1973 stipulates that all persons are equal before the law and entitled without any discrimination to the equal protection of law and this Court, while enforcing the fundamental rights, can declare a law to be void, if it is inconsistent with the fundamental rights guaranteed by the Constitution, as envisaged in Article 25 thereof. But equal protection of law, as envisaged under Article 25 of the Constitution, does not imply that every citizen is treated alike in all circumstances, but it contemplates that persons, similarly situated or similarly placed, are to be treated alike, as such reasonable classification has been permitted by this Court as well as by the Apex Court and it should be on intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and the differentia, must have rationale nexus to the objects sought to be achieved by such classification. Even, a geographical distinction/classification is permissible, provided that it is based on particular interest of the geographical areas, which is distinct as compare to remaining i.e. those who have been excluded or differentiated. Hence, it can safely be concluded that when the intelligible differentia has not been given or referred while excluding the other parts of the ICT, the same is called as violation of fundamental rights, and the Federal Government being the authority is fully empowered to make amendment in any SRO for the protection of the rights of the citizens in terms of Sec.21 of General Clauses Act, 1897. Reliance is placed upon 2009 CLC 173 Lah (M/s A.N. Pesticide vs. Pakistan through Secretary M/o Food and Agriculture), PLD 2003 SC 163 (Abdul Baki and others vs. Muhammad Ikram and others) and 1997 SCMR 1804 (Government of NWFP vs. Meiji Flour and General Mills Pvt. Ltd., Mardan).

27. In view of above detailed discussion, it is apparent on record that SRO No.83(k)/2002 dated 01.08.2002 issued by the Ministry of Interior, Government of Pakistan, in which urban areas of Islamabad were notified for the purpose of the Islamabad Rent Restriction Ordinance, 2001, was neither issued on justified reasons nor structured on the intelligible differentia, which is discriminatory, as the said notification excludes the urban areas of Islamabad in violation of rights of citizens of ICT. Therefore, instant writ petition is allowed and the Federal Government is directed to amend SRO No.83(k) dated 01.08.2002 within a period of 30 days, from the date of announcement of the instant judgment, for inclusion of areas specified in Zone-V (*with details of all housing schemes and areas with clear demarcation and reference*) of ICT (Zoning) Regulations, 1992 for the purpose of application of the Islamabad Rent Restriction Ordinance, 2001 as those areas have been declared as urban areas by the CDA with the approval of the Federal Government in terms of Sec.11 read with Sec.51 of the CDA Ordinance, 1960.

28. Office is directed to convey the judgment to the respondents No. 1 to 3 i.e. Ministry of Interior, Ministry of Law and CDA, for their compliance.

(MOHSIN AKHTAR KAYANI)

JUDGE

Announced in open Court on: 12th July, 2017.

JUDGE

Approved for reporting.