

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

I.C.A. No.206/2015

Safdar Zaman, etc. vs. Federation of Pakistan, etc.

Appellants by: Mr. Ali Nawaz Kharraal, Advocate.

Ms. Hadiya Aziz, Advocate in CM
No.4759/2017

Mr. Muhammad Ali, Advocate in CM
No.2191/2018 & No.2192/2018

Hafiz Ali Asghar, Advocate in CM
No.4168/2018

Mr. Shahid Kamal Khan, Advocate in CM
No.3125/2018

Mr. Jan Muhammad, Advocate in Diary
No.12859/2018

Respondents by: Mrs. Misbah Gulnar Sharif, Mr. Muhammad
Nazir Jawad and Mr. Kashif Ali Malik,
Advocates for CDA.

Date of Hearing: 17.10.2018.

I.C.A. No.208/2015

Shahid Saleem Butt vs. Federation of Pakistan, etc.

Appellant by: Mr. Ali Nawaz Kharraal, Advocate.

Respondents by: Mrs. Misbah Gulnar Sharif, Mr. Muhammad
Nazir Jawad and Mr. Kashif Ali Malik,
Advocates for CDA.

Date of Hearing: 17.10.2018.

W.P. No.3721/2012

Seema Illahi Baloch vs. Capital Development Authority

Petitioner by: Mr. Naeem Bukhari, Advocate.

Respondent by: Mrs. Misbah Gulnar Sharif, Advocate.

Date of Hearing: 17.10.2018.

W.P. No.2047/2014

Hoor Kamal Khan & another vs. Capital Development Authority, etc.

Petitioners by: Nemo

Respondents by: Mr. Muhammad Nazir Jawad and Mr. Kashif Ali Malikk, Advocates for CDA.
Mr. Muhammad Ilyas Sheikh, Advocate for Respondent No.3

Date of Hearing: 11.10.2018.

W.P. No.1192/2015

Shoukat Faruqui, etc. vs. Capital Development Authority, etc.

Petitioners by: Mr. Muhammad Wajid Hussain Mughal, Advocate.

Respondents by: Mr. Muhammad Nazir Jawad and Mr. Kashif Ali Malik, Advocates for CDA.
Mr. Shamshad Ullah Cheema, D.A.G.

Date of Hearing: 11.10.2018.

W.P. No.1791/2015

Mrs. Soraya Safdar vs. Capital Development Authority, etc.

Petitioner by: Mr. Muhammad Wajid Hussain Mughal, Advocate.

Respondents by: Mr. Muhammad Nazir Jawad and Mr. Kashif Ali Malik, Advocates for CDA.
Mr. Shamshad Ullah Cheema, D.A.G.

Date of Hearing: 11.10.2018.

Crl. Org. No.20/2016

Shahid Saleem Butt vs. Capital Development Authority, etc.

Applicant by: Mr. Ali Nawaz Kharral, Advocate.

Respondents by: Mrs. Misbah Gulnar Sharif, Mr. Muhammad Nazir Jawad and Mr. Kashif Ali Malikk, Advocates for CDA.

Date of Hearing: 17.10.2018.

Crl. Org. No.182/2016

Khalida Parveen vs. Hoor Kamal Khan & another

Applicant by: Mr. Talha Ilyas Sheikh, Advocate.

Respondents by: nemo.

Date of Hearing: 17.10.2018.

*and***I.C.A. No.305/2016**

CDA & another vs. Sheraz Khanzada, etc.

Appellant by: Mr. Muhammad Nazir Jawad and Mr. Kashif Ali Malik, Advocates along with Ejaz-ul-Hassan, Deputy Director (UP), CDA.

Respondent No.3 by: Mr. Tajammal Hussain Latti, Advocate and Mr. Asad Iqbal Siddique, Advocate.

Date of Hearing: 19.12.2018.

MOHSIN AKHTAR KAYANI, J: Through this single judgment, we intend to decide the captioned intra court appeals, writ petitions, and contempt petitions as the same have common questions of law and involved similar facts.

2. Brief facts referred in the captioned ICA No.206/2015 (Safdar Zaman, etc. vs. Federation of Pakistan, etc.) and ICA No.208/2015 (Shahid Saleem Butt vs. Federation of Pakistan, etc.) are that appellants are bonafide residents of Street No.112 and Street No.23 of Sector I-10/4, Islamabad, which are closed end streets and there is a green area/incidental open space at its end along with cul-de-sac area usually used for moving around and parking of vehicles of the residents, whereas the CDA authorities intended to carve out plots on the green area/incidental open space. The appellants feeling aggrieved with the inactions of CDA filed W.P. No.4318/2012 (Safdar Zaman & another vs. Federation of Pakistan, etc.) and W.P. No.76/2013 (Shahid Saleem Butt vs. Federation of Pakistan, etc.), which were dismissed by

learned Single Judge in Chambers vide impugned judgment dated 22.04.2015.

Hence, the captioned ICA No.206/2015 and ICA No.208/2015.

3. Brief facts referred in the captioned W.P. No.3721/2012 (Seema Illahi Baloch vs. CDA) are that petitioner is owner of corner Plot No.40 (old 316), Khayaban-e-Iqbal, F-7/2, Islamabad, which is adjacent to green area, and the CDA converted the green belt area into plots, which inaction devalued the petitioner's corner plot by making it a non-corner plot. Hence, the captioned W.P. No.3721/2012.

4. Brief facts referred in the captioned W.P. No.2047/2014 (Hoor Kamal Khan, etc. vs. CDA, etc.) are that petitioners against premium consideration purchased a corner plot in Sector F-11/1, Islamabad with an adjacent open space/green area, however the CDA carved out two new plots from the green area. Hence, the captioned W.P. No.2047/2014.

5. Brief facts referred in the captioned W.P. No.1192/2015 (Shoukat Faruqui, etc. vs. CDA, etc.) are that petitioners are lawful owners of Plot No.12, Street No.14, Sector F-7/2, Islamabad, which is an end corner plot with green belt, however the CDA in violation of statutory law and rules converted the green area into residential plots. Hence, the captioned W.P. No.1192/2015.

6. Brief facts referred in the captioned W.P. No.1791/2015 (Mrs. Soraya Safdar vs. CDA, etc.) are that the petitioner is lawful allottee of Plot No.7, Street No.14, Sector F-7/2, Islamabad, which is an end corner plot having green belt and being used as cul-de-sac by the petitioner and other inhabitants, however the CDA authorities in violation of laws carved out residential plots over the green belt area, which could potentially devalue the petitioner's plot. Hence, the captioned W.P. No.1791/2015.

7. Brief facts referred in the captioned CrI. Org. No.20/2016 (Shahid Saleem Butt vs. Chairman CDA, etc.) are that the applicant filed ICA

No.208/2015 seeking direction to restrain the CDA authorities from creating plots out of green area, whereby this Hon'ble Court vide order dated 16.06.2015 granted status quo but the allottee of the plot/respondent No.3, in violation of the status quo order, continued with the construction work over the disputed plot. Hence, the captioned Crl. Org. No.20/2016.

8. Brief facts referred in the captioned Crl. Org. No.182/2018 (Mrs. Khalida Parveen vs. Hoor Kamal Khan & another) are that respondents, who filed W.P. No.2047/2014 before this Hon'ble Court, whereby this Hon'ble Court vide order dated 29.04.2014 directed the respondents of writ petition to restrain from cutting down the trees out of suit area till next date of hearing, however the respondents/writ petitioners themselves started cutting trees from the newly carved out plot of present applicant i.e. Plot No.239-A. Hence, the captioned Crl. Org. No.182/2018.

9. Brief facts referred in the captioned ICA No.305/2016 (CDA, etc. vs. Sheraz Khanzada, etc.) are that the CDA decided to auction some plots in Sector F-7/2, Islamabad, against which the respondents through W.P. No.2611/2014 have been granted status quo order on 27.05.2014, whereas the allottees, who are claiming to have been allotted corner plots, have not been allotted corner plots as per record of the CDA, but the learned Single Judge in Chambers passed the impugned judgment dated 05.05.2016 without giving any weight to the submissions of the CDA, therefore, the same demands to be set-aside.

10. Learned counsel for petitioner in captioned W.P. No.3721/2012 contended that petitioner cannot be denied the position which existed at the time of allotment of plot; that the green areas cannot be destroyed; that the strip of land was sold out to the petitioner for consideration and with clear stipulation that petitioner could not construct a structure on it for being green area but the CDA intends to carve out residential plots on the said green area.

11. Learned counsel for appellants in captioned ICA No.206/2015 and ICA No.208/2015 contended that impugned judgment dated 22.04.2015 passed by learned Single Judge in Chambers is devoid of any reasoning qua the various legal assertions; that the learned Single Judge in Chambers on mere assertion of private respondent held that appellants have been encroaching upon the said area; that the conversion of green area/incidental open spaces into plots by the CDA authorities is against the provisions of CDA Ordinance, 1960 and dictum laid down by the Supreme Court of Pakistan.

12. Learned counsel for petitioners in W.P. No.2047/2014 (Hoor Kamal Khan, etc. vs. CDA, etc.) contended that CDA in violation of approved master plan of Sector F-11 carved out two new plots as there is no provision for creation of plots in open/green spaces; that the actions of CDA have serious environmental repercussions for the beauty of Islamabad; that the actions of CDA are violating the fundamental rights of the petitioners.

13. Learned counsel for petitioners in W.P. No.1192/2015 (Shoukat Faruqui, etc. vs. CDA, etc.) contended that the CDA has no right to change the Master Plan and to convert any park or public to a commercial or residential area; that it is the fundamental right of the petitioners to have the same status of their house which was at the time of its purchase; that the petitioners also requested the CDA authorities to desist from auctioning the newly created plots over green area but to no use.

14. Learned counsel for petitioner in W.P. No.1791/2015 (Mrs. Soraya Safdar vs. CDA, etc.) contended that according to Section 49-C of the CDA Ordinance, 1960, no land can be used for any other purpose other than for which it was authorized; that Section 4 of the Islamabad (Preservation of Landscape) Ordinance, 1966 prohibits destruction, damage or alteration of

landscape; that the superior Courts have time and again directed the CDA authorities not to convert the green belts, public parks and other amenities plots to residential or commercial plots; that the additional creation of plots will affect the market value of the house of petitioner; that if the CDA authorities not restrained from converting the disputed green belt into residential plots, the petitioner as well as other inhabitants of the street will suffer irreparable loss.

15. Learned counsel for applicant Crl. Org. No.20/2016 (Shahid Saleem Butt vs. Chairman CDA, etc.) contended that this Hon'ble Court vide order dated 16.06.2015 restrained the CDA authorities and respondent No.3/allottee of the disputed plot from further construction, however respondent No.3, in violation of the said status quo order, continued with the construction on the disputed plot, which is violation of the status quo order; that the respondents are guilty of contempt of Court against whom contempt proceedings shall be initiated.

16. Learned counsel for applicant in Crl. Org. No.182/2018 (Mrs. Khalida Parveen vs. Hoor Kamal Khan & another) contended that this Hon'ble Court vide order dated 29.04.2014 restrained the parties from cutting down the trees out the suit area/newly carved plots, but the respondents, in violation of the said status quo order, removed the trees/plants from the applicant's plot; that the respondents are not only interfering into the peaceful possession of applicant over the plot but they have illegally removed the trees and plants belonged to applicant; that the acts of respondents are in flagrant disobedience and violation of this Hon'ble Court order dated 29.04.2014

17. Learned counsel for the CDA contended that authority has every right to re-plan the plots and leftover areas, however proper drainage system of the

area has been planned when new plots were created and the CDA can change the layout plan at any time subject to law; that the appellants/petitioners have no authority to claim against the CDA that CDA should not create new plots as the CDA never violated any rule, master plan, regulations or policy decisions of the Board; that at the time of establishing the sectors, the CDA authorities left over different areas and plots for future purposes and every inch of land in Islamabad is a property of CDA and CDA is the best judge to consider its utilization; that master plan of Islamabad city was prepared in 1960 and subsequent to that layout plan of different sectors is being prepared and the areas were developed accordingly and as such, the CDA authorities are not changing the residential character of any sector without the approval of the Government as it will consider a change in the master plan of Islamabad, but they are only changing the layout plan of different sectors of Islamabad as Sections 12, 13, 15, & 19 of the CDA Ordinance, 1960 authorize the CDA for preparation of layout plan of sectors and amendments therein.

18. Arguments heard, record perused.

19. From the perusal of record, it has been observed that all these cases referred above are arising out of same question as to whether the plots allotted by the CDA authorities to individuals by way of transfer/auction along with its locations, amenities, parks, open spaces and leftover areas are to be considered complete in all respects and CDA authorities could not change the leftover areas or open space in every sector of Islamabad? The appellants, petitioners and applicants are aggrieved mainly due to creation of new plots in the leftover areas of different sectors of Islamabad i.e. Sector F-11, Sector I-10, and Sector F-7.

20. In order to understand the proposition, it is necessary to go through provisions and terminologies of law used in the CDA Ordinance, 1960 as well as in other regulations. The CDA Ordinance, 1960 created an authority called the Capital Development Authority and in terms of Section 2(o), *Scheme* means a planning scheme or development scheme made under the Ordinance and the administration of the CDA along with its affairs shall vest in the Board which will exercise all powers and do all acts which may be exercised or done by the authority in terms of Section 5 of the Ordinance. However, the question of policy regarding development, town planning and housing shall be guided by the direction of the Federal Government in terms of Section 5(2) of the Ordinance and any question arises as to whether any matter is a matter of policy or not, the decision of the Federal Government shall be considered final in terms of Section 5(3) of the Ordinance.

21. Chapter 3 of the Ordinance deals with the powers and duties of the authority and under Section 11, the authority shall prepare a master plan and phased master programme for the development of the capital site and may also prepare a similar plan and programme for specified areas and all such plans and programmes shall be submitted to the Federal Government for approval, whereas the authority in pursuant to the master plan and master programme may prepare a scheme related to land use, land reservation, zoning, public buildings, transportation, roads, streets, industry, utilization of water, power, natural resources, community planning, housing slums clearance, community facilities, drainage, sewerage disposal, etc. and such kinds of schemes are initially prepared when any sector is developed and as such, the authority vested with the powers to prepare a scheme in terms of Section 13 of the Ordinance regarding the subjects given above and all such

schemes shall be prepared in such a manner and form as the Federal Government may specifies, however the schemes must contain the information regarding description and manner of its execution, estimate of costs and benefits, and allocation of costs to various purposes to be served by the scheme. In order to implement the scheme, the CDA in terms of Section 15 can exercise the powers for acquisition, surveys, research, pass orders, restrict or prohibit any change in the use of land, removal of works and obstructions, or seek assistance for many other authorities, however all such actions must be supported by the Federal Government.

22. The learned counsel for CDA has heavily relied upon the powers conferred to CDA in terms of Section 19 of the CDA Ordinance, 1960 and contended that the CDA authorities can amend or modify any scheme and the only restriction in this case is to the extent of its financial limits, therefore, in order to understand the proposition, Section 19 is hereby reproduced as under:

19. Amendment of schemes:- Any scheme prepared under section 12 or section 13 may at any time be amended or modified:-

- a) In cases where the amended or modified scheme should exceed the financial powers of the Authority, by the Authority with previous approval in writing of the Federal Government, and*
- b) In other cases, by the Authority.*

23. While considering the above referred provision, which refers Sections 12 and 13, in which the CDA authorities were permitted to prepare a scheme and such scheme could be amended and modified, but in our humble view, Section 19 was incorporated by the legislature with reference to financial limits of the Authority as every scheme prepared in terms of Sections 12 and 13 by the Authority pursuant to the master program in the public interest requires the approval of expenditure incurred on preparation of any such scheme in terms of Section 12(4) of the CDA Ordinance, 1960, any difference

could only be resolved by the Federal Government. The legislative intent behind the incorporation of Section 19 has to be seen in the light of entire scheme referred in CDA Ordinance, 1960 which deals with the planning and development of Islamabad within framework of regional development plan whereafter the master plan and master programme was prepared in terms of Section 11 of the Ordinance. Similarly, Section 12 was incorporated for preparation of scheme by the local bodies or agencies but those schemes within the bounds of Section 12(2)(a) to (i) and no other matter could be incorporated or taken into consideration beyond the subject referred in Section 12. The expenditure of preparation of scheme has been referred in Section 12(4). The power of authority in terms of Section 15 for acquisition of any land or any expenditure, machinery, instruments or material was with the Authority, however when certain amendments in schemes require extra expenditure beyond the financial limit of the authority or which falls within the domain of Federal Government, the said matter could only be resolved in terms of Section 19 of the Ordinance, hence, we are of the view that Section 19 could not be used to rectify, alter, amend, any scheme already approved in the master plan or in a layout plan by using the said provision by the CDA authorities, therefore, the arguments advanced by the learned counsel for CDA are misplaced and not justified in any manner.

24. Besides the CDA Ordinance, 1960, there are also certain other laws promulgated to protect the rights of individuals and the CDA authorities shall proceed in a structural manner which includes the Islamabad Capital Territory (Zoning) Regulations, 1992 in which Islamabad Capital Territory has been divided into five zones, and the land within the said zones can only be regulated in a manner referred in the said regulations and no change is permissible in the said zones as the master plan of Islamabad has been

defined in the said regulations. Similarly, the Islamabad Land Disposal Regulations, 2005 was also promulgated with reference to the powers conferred under Section 49 of the CDA Ordinance, 1960 in which plots have been specified as residential, commercial and business, community buildings and facilities, administrative and public sector, industrial, diplomatic, public parks, playing fields, agro-farming and agro-industry, graveyards, and incidental open spaces, etc. However, the concept of public parks as defined in Section 11 of the Islamabad Land Disposal Regulations, 2005 is under:

“11. Public Parks. (1) Public Parks, playing fields and graveyards, shall be planned, developed and maintained by the Authority. However, the Authority may license/rent out some sites or the portions of public parks, playing fields or open spaces to private sector on agreed terms and conditions for recreational purposes, sports facilities and ancillary usages.

(2) Playing fields and open spaces may be categorized for sports purposes as under:---

- (a) Cricket, hockey, football.*
- (b) Basket ball, Volley ball, badminton, tennis and open gymnasiums.*
- (c) Adventure sports:-*
 - (i) Rock climbing, dirt bike tracks, mountain bike cycling, horse riding, etc.*
 - (ii) Entertainment projects like Go Carts, Archery, Waters ports and amusement parks, etc.*

(3) Category (a) and (b) of (2) above will be managed as follows:---

- (i) Grounds managed by professional sports organizations.*
- (ii) Multi-purpose sectoral grounds managed by Directorate of Sports and Culture through Sector Management Committees.*

(4) The allotment for category (c) of (2) above will be considered on following criteria:---

- (a) Type of project.*
- (b) The best offer received in terms of rent;*
- (c) The Size of Investment;*
- (d) Commercial potential; and*
- (e) Area, location and specific land use.*

25. Keeping in view the above regulations, we have gone through each and every case and we are fortified with the views given by the apex Court as well as other superior Courts on subjects of open spaces, common properties,

public parks, etc., therefore, it is appropriate to place the relevant extract of those judgments, which is as under:

- **2010 YLR 1866 Lahore (Mst. Bashiran. vs. Government of Punjab)**
".....A vacant land lying for some useful purpose cannot be utilized for another purpose. Such land even if left unused by inaction for decades or even for centuries would be utilized by the succeeding generation. An open space, once lost, cannot be recreated. It is like a page of History which if once torn away, cannot be replaced. If the respondents are allowed to exploit this space, the noble purpose of gift as well as the sentiments that motivate the people to part with their own land for such sacred cause will die forever. Neither the new land can be created nor can the dead sentiments of sacrifice be reanimated."
- **2010 CLC 1663 Lahore (Residents' Welfare Society, Sector G-13 Islamabad vs. FGEHF, etc.)**
"Art. 199---Constitutional jurisdiction---Scope---Conversion of public utility areas of Housing Society into commercial plots---Registered welfare Society of residents challenged the conversion of public utility areas and open spaces into commercial and residential plots ---Society contended that the petitioner should have had recourse to arbitrator before seeking remedy through constitutional jurisdiction of High Court---Validity---Residential and commercial plots were admittedly carved out for public utility areas including school, parks and open spaces which could only be used for specified purposes---Open spaces were the common property of the residents and a heritage for the posterity, therefore, conversion of open spaces amounted to obliterate history---Reducing the size of 'Nullah' which worked as a drain during rainy season was not admissible under law---Earth-filling of the depressions that served as the natural outlets of rain water had always brought havoc by inundation of the localities during rainy season---Conversion of land, in the present case, thus was illegal---Where an Authority had acted in a manner not warranted by law, remedies provided under the law need not be necessarily exhausted before seeking interference of High Court through constitutional jurisdiction--- People decide to choose a particular housing scheme for living in view of the provision of public utility areas, parks, schools, open spaces and topography of such housing scheme, petitioners, therefore, could not be deprived of such public utility areas which they had in their minds while they subscribed for the such housing scheme---Constitutional petition was accepted---Authorities were perpetually restrained from converting the public utility areas into residential or commercial places."
- **2013 CLC 1095 (Syed Waqar Hussain Gillani vs. CDA)**
10. Playgrounds, Parks, Green Belts and other places of public use belong to all citizens of the country, whether belonging to urban areas or coming from rural background, more particularly residents of that vicinity and the city, where such places are located. These places come in the joint ownership and constructive possession of all citizens, which is a constitutionally guaranteed right. It appears that Planning Department of CDA, without caring about the Master/Sector Plans, conspired to carve out plots, at the most valuable and significant places, which under no stretch of imagination can be described as bona fide act and lawful device. During the course of arguments one amazing, rather ridiculous explanation came forward from the officials of CDA that, plots carved out are not in the area of cricket ground, rather outside the playing area of it. It is a matter of common knowledge that ground of any sport, more particularly cricket is not reduced to pitch and playing area inside boundary line, rather facilities like gym, tennis/squash courts, swimming

pool, pavilion, dressing room, spectators place are essential. CDA is bound to add these facilities instead of shrinking the areas of playground by carving out plots in it. Places belonging to public at large are like "TRUST" which cast upon delicate duty upon the civic body to protect and preserve such properties.

11. *It is important to note that value of residential plots in all sectors is not equal, difference in prices enhances further, when comparison comes between the plots of developed and under developed sectors. One can easily understand and trace the reasons of undue favour extended to respondent Nos.5-A to 5-C as such type of benefits can only be extended with cryptic approach, lucrative influence and dubious dealings. I have no hesitation in observing that this act of the CDA officials is not less than offence, like criminal breach of trust, cheating and fraud. It is for the civic body to initiate criminal proceedings and take disciplinary action against the culprits, who for personal benefit, gain and interests, sold the assets of Nation. The Court of apex in the case of Pervaiz Oliver, reported as PLD 1999 SC 26 held authoritatively, about the Public Property in the following words of command:---*

"Disposal of--No public property, big or small, tangible or intangible, can be disposed of except in accordance with law--- Functionaries who transgress, expose themselves to the severest or penalties under law, the cardinal principle being that the higher the functionary, the higher the responsibility and, for that reason, the stricter the punishment".

Superior Courts have always disapproved such type of arbitrary decisions, polluted acts and corrupt practices. It has been held time and again that places like parks and playgrounds are necessary for healthy life and to convert such places to commercial use and residential purposes is an infringement to fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan, more particularly Article 9. There are numerous authoritative pronouncement on the issue but following judgments are lightship for times to come, "New Murree Project's case (2010 SCMR 361), Moulvi Iqbal Haider Case (PLD 2006 SC 394) Ardeshir Cowasjee's case (1999 SCMR 2883), Shehla Zia's case (PLD 1994 SC 693) and Manzoor Bhatti's case (PLD 2002 Lahore 412).

12. *Thus, for the foregoing reasons both the connected petitions are allowed with the declaration that act of carving out of four plots in the playground of Sector F-11/2 Islamabad is unconstitutional, illegal, arbitrary, result of colorable exercise of authority, tainted with mala fide, for ulterior motives, outcome of irrelevant consideration, rarity, sham and besides the dictums laid down by the superior courts of the country. Allotments made in favour of respondents Nos.5-A to 5-C are hereby cancelled and set aside. It is directed that playground be restored to its original position, CDA may allot plots to respondents Nos.5-A to 5-C in any other Sector in accordance with their entitlement, which may also be verified. It is also directed that petitioner shall not change the nature of area adjacent to his house by raising any sort of structure or making part of his house.*

- **2007 SCMR 953 (Province of Punjab, etc. vs. Muhammad Akhtar)**
Plaintiff purchased plot in question, in open auction, at higher price because in master plan, there was an open space in front of it--- Subsequently, authorities intended to auction the open space by converting same in commercial plot---Action of authorities was assailed in civil suit, which was dismissed by Trial Court but Lower Appellate Court allowed the appeal and decreed the suit in favour of plaintiff--- Judgment and decree passed by Lower Appellate Court was maintained

by High Court in exercise of revisional jurisdiction---Validity---Both the courts below had given concurrent findings of fact that plot in question was auctioned in accordance with law in open space to plaintiff, whose bid was the highest, which was accepted and approved along with open space in front of plot in question---Authorities had no lawful authority to change master plan subsequently on the principle of estoppel and wavier.

26. Besides the above referred position, now the question arises as to whether the CDA is allowed to change and convert the master plan and layout plan of sectors which have already been developed and as to whether the CDA authorities are competent to convert open land spaces or leftover spaces in developed sectors for its future use, if decided by the CDA Board? The answer to these questions, in the light of above referred authoritative judgments, is negative and the CDA authorities in preparing their schemes in terms of Sections 12 and 13 of the CDA Ordinance, 1960 have detailed discussion, planning, and research while considering the land use, public buildings, utilization of water and power, natural resources, sewerage disposal and preservation of historical buildings prepared and then finalized the scheme within the master plan and master programme referred in Section 11 of the Ordinance and as such, when the master plan was finalized, the schemes were properly prepared and implemented without any specification of future incentives or creation of plots, therefore, CDA is not permitted to create a new interest in such a manner to deprive and damage the benefits and rights accrued to individuals, who are enjoying the landscape, green belts and parks in their sectors, even the trees, streams, and as such, their affiliation to the nature or topography, and the scheme in which every street, gali, and houses were planned and erected.

27. It is trite law that no public property, whether big or small, or tangible or intangible, can be disposed of except in accordance with the law as held in PLD 1999 SC 26 (Pervaiz Oliver vs. St. Gabriel School). We are also fortified

with the view opined in the authoritative pronouncements of 2010 SCMR 361 (Suo Moto Case No.10 of 2005), PLD 2006 SC 394 (Moulvi Iqbal Haider vs. CDA), 1999 SCMR 2883 (Ardeshir Cowasjee vs. Karachi Building Control Authority, Karachi), PLD 1994 SC 693 (Shehla Zia vs. WAPDA), PLD 2002 Lahore 412 (Manzoor Bhatti vs. Executive Officer, Cantonment Board, Multan), and 2010 CLC 1663 Lahore (Residents' Welfare Society, Sector G-13 Islamabad vs. FGEHF, etc.).

28. We have gone through the CDA By-laws and observed the terms "master plan" and "layout plan" as referred in Islamabad Capital Territory (Zoning) Regulations, 1992, whereby the term "master plan" as defined in Section 2(16) means "*a detailed land use plan*" and as per National Reference Manual on Planning and Infrastructure Standards, "*layout plan is specifically applied to area development/sub-division schemes drawn to a scale giving precise proposals for plot demarcation and location of service networks, enabling commencement of engineering designs and physical implementation*". Similarly, Section 2(19) of the Regulations, 1992 defines the term "master plan" as "*the master plan of Islamabad Capital Territory*", and as such, the master plan of Islamabad is a comprehensive document, wherein policies and guidelines have been mentioned in broader context for development of Capital in the form of various land uses, separate areas have been mentioned for specific land use. As per National Reference Manual on Planning and Infrastructure Standard, master plan is defined as "*the traditional method for presenting a set of land use allocation and control measures in the form a map, this essentially, graphical form is supported by a written statement of goals and objectives, strategies and financial implications.*"

29. The above referred definitions, if seen in the light of Chapter-3 (Development and Control of Zones) of the Islamabad Capital Territory (Zoning) Regulations, 1992 with reference to National Reference Manual on

Planning and Infrastructure Standards, the CDA has to plan out the entire scheme while considering each and every aspect as they were holding capacity for town planning, future needs, and requirements of the area when the schemes were prepared and layout plan was made of different sectors which shows that they are the best judge to set out the land use allocation while considering the topographic structure of the area and they prepared the layout plan with reference to the land use in the sectors in terms of engineering designs while considering the requirements of schools, mosques, parks, playgrounds, open spaces, markets, hospitals, etc.

30. Keeping in view the above background, we are of the view that when any layout plan was prepared, the technical experts of CDA, planning division, architects, town planners, engineers, surveyors, and officials of CDA, they all considered each and every aspect of on ground situation and utilized the maximum land and on the basis of their layout plan, the plots were allotted to individuals, who started raising their construction and after considerable period a community emerged in a particular area who developed their affiliation and affection with the landscape, trees, streams, parks, streets, locations, and the open spaces which were considered in public rights of particular locality and individuals starting establishing a sense of belonging to all such benefits provided in the layout plan. However, when CDA started converting the open spaces of leftover land after the period of 20/30 years, it shows that there is some motive behind the new phase of amendment in the layout plan, although in these cases the CDA has taken the stance that they can use the waste land or undeveloped land as they required being the master regulator but in our humble view, after the complete development of a sector, when the inhabitants are enjoying the facilities, they have been settled while considering the location and nature of the area, their easement rights come into existence, then the CDA could not take a

somersault and claims that any leftover area of open space or a park could be converted. Such kind of actions are based on malafide and on personal whims of the individuals, officials and political high ups in order to facilitate and transfer the benefits at the cost of inhabitants of such sectors, which is an illegal exercise. Undoubtedly, the CDA authorities are the best judge for the settlement of land use but this does not mean to give a blanket authority to CDA to convert any land after complete settlement in the layout plan. In terms of Section 11 of the CDA Ordinance, 1960, if any scheme was prepared with future needs and at the time of preparation of layout plan, it has been specified in the layout plan that particular portion of land will be utilized for future development for residential purposes or for any other purpose and same was notified, then individuals have no legal right to challenge in the future times, but if the CDA authorities despite their best planning have not mentioned the specification and future utilization of unutilized open spaces, then CDA authorities are precluded to create a third party interest in future as the citizens of Pakistan, individuals, who are living in any sector, have already established their affiliation with nature, open spaces, streams, parks, etc. with its infrastructure, which falls within their easement rights and such rights could not be taken away at the whims of CDA authorities.

31. We have also gone through different decisions of CDA Board, in which they have permitted revision of layout plan entailing major changes but such kind of changes could only be made after study of environmental impact assessment and objections of the public of the particular area, but the CDA Regulations to that effect require time limitation that any layout plan should not be amended after a specific timeline from its promulgation. It is not an unfettered powers available to CDA authorities to change any layout plan after two to three decades of its creation as such kind of revision, amendment or rectification in layout plan requires a major policy decision of Federal

Government in terms of Sections 11, 14 & 21 of the CDA Ordinance, 1960 and such kind of amendments, revision or rectification in the layout plan which affects the community at large will be considered an interference in the property rights of individuals which is reciprocal to right to life in terms of Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, the concept of right to life explained in *PLD 1994 SC 693 (Shehla Zia vs. WAPDA)* has to be considered in its wider scope. The CDA authorities have taken a particular stance in their pleadings that land use analysis of Sectors D-12, F-7, F-11, G-13, and I-10 depicts that percentage of residential use in these sectors is still below than that of maximum range of 55%, including additionally planned plots, as a result of amendments/re-planning. They have also taken stance that minimum percentage of opened spaces, parks, playground including nallas are more than 8%, which is minimum requirement and they have planned additional plots during 2004-2017, which were approved by the CDA Board, and in this regard, they submitted details of additionally planned/created plots, which are reproduced as under:

<i>Sr. No.</i>	<i>Sector</i>	<i>Number of Plots</i>
1.	D-12	655
2.	F-6	2
3.	F-7	42
4.	F-8	7
5.	F-10	7
6.	F-11	127
7.	G-6	13
8.	G-7	21
9.	G-8	13
10.	G-9	2
11.	G-10	247
12.	G-11	165
13.	G-13	11
14.	G-14	38
15.	I-8	85
16.	I-10	696

32. The above referred stance taken by the CDA authorities is based upon CDA Board decision dated 20.07.2010, therefore, it is necessary to discuss the same at the first instance, which is reproduce as under:-

Decision

The Board approved the following proposals:-

- *Approval of layout plan of Sector would be approved by the CDA Board.*
- *Revision of layout plan entailing major changes would be approved by the CDA Board.*
- *Addition of sites 3-4 sites/relocation of sites within the same sector would be approved by Member (P&D).*
- *Sub-division of residential plots would be finalized at the level of Member (P&D).*

Keeping in view the above decision of the CDA Board, we have confronted the CDA officials as well as learned counsel for CDA to provide the history of the said Board decision though which CDA is exercising its powers for the change in layout plan. The CDA officials tried to convince this Court on the basis of their record, whereby it reveals that the CDA Board decision referred above was based upon a complaint submitted before the Federal Ombudsman in which a BTS Tower of a mobile company was installed in a children park in Sector G-7/2, Islamabad and as such question of violation of master plan was raised, in response to said proceedings, the Federal Ombudsman passed the direction to the CDA for redressal of the issue whereupon the CDA authorities after obtaining the opinion from the planning wing in which it was recommended to place layout plan of the CDA Sectors before the CDA Board for approval and as such the recommendations referred by Deputy DG Planning - II in the summary dated 19.06.2009 as of policy for approval in the summary is as follows:-

SUMMARY FOR THE BOARD.

Subject:- POLICY ON VARIOUS APPROVALS IN PLANNING WING.

Additional Secretary Cabinet during a meeting on 04-05-2009 in his office desired to get a comprehensive policy drafted on approvals of various issues in the Planning Wing.

2. *In pursuance to the recommendations of Wafaqi Mohtasib, proposed level of approval of various issues is given as option:-*

- i. *Layout plan of CDA sectors shall be submitted to the CDA Board for approval.*
- ii. *Major changes in the layout plan utilizing the waste areas/creation of plots, parks or any use in the sector shall be approved by the Chairman CDA.*
- iii. *Minor changes in the layout plain i.e. addition/elimination of three/four sites for any land use shall be approved by Member (P&D).*
- iv. *Permission for beautification of incidental open space, opening of windows, roof projections and wicket gate shall be approved by Member (P&D) keeping in view the provisions of layout plan.*
- v. *Sub-division of plots shall be approved by Member (P&D), presently being done at Dy. D.G (Planning) level.*
- vi. *Layout plan of the housing schemes in Zone-II, V and Sector E-11 shall be approved by Member (Planning & Design).*
- vii. *Change in the layout plan of the housing scheme in private sector shall be approved by Member (Planning & Design).*
- viii. *Permission of sites for BTS Towers and car parking shall be approved by Member (Planning & Design) as per prevailing policy of the Authority.*
- ix. *Change of trade of plot within the given bye-laws/parameters shall be approved by Member (P&D).*
- x. *Cases of additional storey within the given bye-laws/parameters shall be approved by Member (P&D).*
- xi. *Major changes in F.A.R, ground coverage, number of stories shall be approved by Board.*

33. The above referred summary was a key document used by the CDA authorities for CDA Board decision dated 20.07.2010 but in our humble view

the entire background of the case is based upon failure to take action regarding illegal installation of mobile tower in the park as a news item published in Daily Nation dated 22.11.2006 was also available on record with the title "STEALING OUR PLAYGROUNDS". The entire record reflects that the CDA authorities have based their decision on dispute of illegal installation of BTS Tower in Sector G-7/2, Islamabad and subsequently used the same as a key to every rectification and amendment in the layout plan although the decision of the Board is silent qua the reasoning of rectification even there is not a single provision referred in any document through which the CDA authorities can exercise their powers to rectify or amend any layout plan, which was specifically approved with specification given in the planning parameters and even the community at large while considering the layout plan after observing the amenities, developed their easement rights with reference to facilities, location, environments, streets, roads, schools, hospitals, post-office, Masjids, market, etc., therefore, in order to understand the powers of rectification as claimed by CDA authorities, we have confronted the CDA officials present in the Court to explain such powers through their bye-laws and regulations which they failed, however, in order to understand the proposition the term rectification used by the CDA authorities has to be considered in the light of its dictionary meaning under the principles of interpretation as it is settled law that any term or word if not explained in any statute then its meaning should be considered as explained in the dictionary, hence term rectify means "make right, put to rights, sort out, deal with, amend, revise, remedy, repair, fix, cure, heal, make good, reform, harmonize, retrieve, improve, better, ameliorate, adjust, resolve, settle, redress" as given in Oxford Thesaurus of English and similarly, the term rectification has been used for the purposes of correction of any mistake, which was wrongly been made in record or in any order as referred

by Black's law dictionary, therefore, by considering the simple meaning referred above, this Court comes to conclusion that any layout plan if already approved by the CDA Authorities under their bye-laws, it could be rectified if any mistake has been observed later on, but this does not mean under the garb of correction of mistake entire parameters would be changed and all those amendments, substitutions were permitted, which were/are in conflict with the principal layout plan at the time of its approval.

34. The CDA officials placed reliance upon the second Board decision dated 28.04.2016, which deals with the auktion of residential plots (re-planning in the layout plans of sector F-7, F-8 & F-10, Islamabad), wherein the decision rendered by the Board in the said meeting is as under:-

A) Decision:

The Board after due deliberation approved re-planning of the subject sectors as proposed in para 3 to 5 on the condition that present status of corner plots is not effected. However, these plots will be placed for auction to generate revenue for the development of the city.

Similarly, the CDA officials also placed reliance upon third Board decision dated 17.06.2016 related to auktion of residential plots dated 30th June, 2016.

B) Decision:

The Board observed that the list had not been prepared after due scrutiny and information put up in prior meetings were not correct. Therefore, following actions must be taken immediately:-

- *DDG (L&E) and Director UP shall personally inspect all the proposed plots and shall prepare a final list with brochure for auction and shall submit to the Board on forth coming meeting scheduled on Monday, June 20, 2016.*
- *The following plots stand cleared for inclusion in the auction list:-*

Plot No.	20-A
Plot No.	9-B
Plot No.	9-C
Plot No.	5-A
Plot No.	5-B
- *All other sites may be revisited as now removal exercise will consume time therefore, the same may be taken up under the law following due process subsequently. However, immediately replacement plots may be identified*

within three days for forthcoming auction that are free from all encumbrances.

- *Simultaneously, all such plots be identified in all sectors of Islamabad and a comprehensive list be prepared for approval of the Board for future auction. Moreover in future auctions, a combination of plots from different Sectors be considered for auction, so that expensive land bank is not exhausted earlier than other plots.*

Fourth Board decision dated 20.06.2016 related to **auction of residential plots dated 30th June, 2016.**

C: Decision:

In continuation of 7th Board meeting held on 17th June, 2016, Director Urban Planning revisited the proposed list of plots for auction in accordance with the directions of the Board and submitted an amended list as follows:-

S.No.	Plot No.	Sector	Street No.	Category	Dimension/ Size Status quo. Yds
1.	18-A	F-7/1	35	Residential	80x150 (1333.33)
2.	10-A	F-7/1	36	Residential	60x100 (666.66)
3.	24-B	F-7/1	37	Residential	60x100 (666.66)
4.	26-A	F-7/1	37	Residential	60x100 (666.66)
5.	14-A	F-7/1	42	Residential	100x170 (1888.88)
6.	17-A	F-7/1	42	Residential	70x120 (933.33)
7.	19-A	F-7/1	43	Residential	70x100 (777.77)
8.	20-A	F-7/1	44	Residential	70x100 (777.77)
9.	9-B	F-7/3	67	Residential	80x120 (1066.66)
10.	9-C	F-7/3	67	Residential	80x120 (1066.66)
11.	30-A	F-8/1	28	Residential	50x90 (500)
12.	30-B	F-8/1	28	Residential	50x90 (500)
13.	5-A	F-8/3	17	Residential	50x90 (500)
14.	5-B	F-8/3	17	Residential	50x90 (500)
15.	297-A	F-10/4	52	Residential	60x120 (800.00)
16.	297-B	F-10/4	52	Residential	60x120 (800.00)
17.	297-C	F-10/4	52	Residential	60x120 (800.00)

2. *The Board after due deliberations, approved the list as above with following directions:*

- *Compliance on the directions vide 7th Board meeting decisions be ensure.*
- *Auction to take place on 13th & 14th of July, 2016.*
- *A well designed advertisement may be published immediately in leading news papers.*

3. *The Board also approved next auction of residential plots of sector I-11/2 as proposed and directed to prepare the list after thoughtful scrutiny of each plot.*

4. *The Board further desired that for subsequent auctions, a combination of plots from all sectors be put up to create a wide spectrum of auction and more chances for the bidders to participate.*

35. Keeping in view the above decisions of the Board regarding re-planning, creation of plots in different sectors of Islamabad and thereafter its auctions is based upon the following reasons as submitted by the Deputy D.G. Planning in the CDA record:-

- a. It would help avoid encroachment of precious land by the neighboring allottees.*
- b. It would be the source of revenue generation.*
- c. Funds so generated will be spent on the development of the Capital.*

36. All the above referred Board decisions were based upon three grounds mentioned in the preceding paragraph in the CDA record but we have already explained at length the concept of rectification which is not permissible by any stretch of imagination even the reasoning rendered in the basic Board decision dated 20.07.2010 does not fulfill the criteria under any stretch of imagination, similarly the CDA authorities have failed to substantiate any of their justified reason to amend the layout plan, even otherwise, there is no provision, law quoted by the CDA to justify their actions based upon the above referred decision and as such all these board decision does not qualify the test of reasonableness rather amounts to violate the fundamental rights of the individuals in terms of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 i.e. right to life. Even

otherwise, The CDA is a statutory organization and has to act in the public interest as held in 2015 SCMR 294 (Muhammad Ikhlaq Memon vs. CDA) and the main objective of the Ordinance is planning and development of capital (Islamabad), compelling or authorizing CDA to perform functions of municipal committee and to provide cleanliness, health, education of inhabitants, supply of goods, and articles of food and milk to promote interest of different sections of public and as such, all provisions are of advancing interest and public good as held in PLD 1985 FST 221 (In re-Islamization of laws). Similarly, the CDA being statutory body is expected to deal with the citizen fairly and to conduct all actions transparently as held in 2003 CLC 1684 (CDA vs. Muhammad Hanif Khan). The main function of CDA is not only to make arrangements for planning and development of the capital city but to cater for different sections of society, including the taxpayer, and any act which is not transparent or goes against the general interest of public is violation of Article 9 of the Constitution, which guarantees right to life to all persons, and such act shall be considered against the public interest as held in PLD 2011 SC 619 (Suo Motu Case No. 13 of 2009).

37. The entire conduct of CDA authorities shows their lack of planning, capabilities and violation of the sacred trust given to them under CDA Ordinance, 1960 and as such, any additional plot, if created on any leftover area on the instructions of any individual, the same amounts to a criminal misconduct as no one has any authority in his individual capacity to pass such an order, especially after the *Mustafa Impex case (PLD 2016 SC 808)* in which such kind of actions should have been approved and required to be given sanction by the Cabinet, including Prime Minister of Pakistan. The individuals, who have developed the entire sector by putting their hard earned money after construction of their houses from scrape to complete

sector, will be deprived of their sense of belonging. The concept of life, in a larger term, means free, proper, comfortable and clean life and all such rights are personal in nature with reference to individuals and State has to ensure the protection of personal rights from any encroachment and interference by the authorities, especially if any action taken by the authorities which create hazards to life and affects the normal living of those individuals who were enjoying their right to life in particular sector by investing their entire life, is called the negation of their rights under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

38. The above referred background of the case persuaded us to declare the actions of the CDA authorities as not based on the scheme of law and all the Board decision in this regard are not based upon valid reasons, therefore, the Board decisions are patently not in accordance with law and have been passed on personal whims as well as on wrong interpretation. However, at this stage, some plots stand already allotted and the allottees have raised their constructions, therefore, those allottees who are bona fide claimants are not aware of legal implication of CDA's proposed actions of carving out of plots in the settled sectors, therefore, they could not be burdened with any loss or damage to their earned right of property as the Courts are the guardians of rights of individuals, although the creation of plots has been declared without legal authority, but in our humble view, the rights which have already been accrued to different individuals fall within the concept of closed and past transactions, and it is settled law that when certain rights are created in favour of individuals, the same could not be withdrawn at later stage as such individuals are not held responsible for the illegal acts on the part of CDA. The concept of past and closed transaction was evolved to protect and safeguard accrued and vested rights of the parties under statute which subsequently found and declared *ultra vires*, for the simple reason that such

declaration was always prospective unless the Court specifically gave a retrospective effect to such declaration, by declaring the statute as *non est* i.e it never existed in the eyes of law. Reliance is placed upon 2017 SCMR 1787 (Muhammad Moizuddin vs. Mansoor Khalil), 1986 SCMR 1917 (Al-Samrez Enterprise vs. FOP), 1993 SCMR 1905 (Molasses Trading & Exports (Pvt.) Ltd. vs. FOP), PLD 1998 SC 1449 (Mehram Ali vs. FOP), PLD 2006 SC 602 (Muhammad Mubeen us Salam vs. FOP), and 2017 SCMR 673 (Al-Tech Engineers and Manufacturers vs. FOP). However, at the same, a Five Members Bench of the Hon'ble Supreme Court vide recent judgment reported as 2017 SCMR 206 (Sahid Pervaiz vs. Ejaz Ahmad) has differently dealt with the proposition and has held as under:

"However, when a statute (whether existing or repealed) is found to be ultra vires to the constitution, the Court is empowered--indeed, mandated---to examine whether any person continues to enjoy the benefits of the ultra vires statute, or any states of affairs continue to exist as a result, and if it found so, the court is mandated to undo the same, provided that the benefit or a state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the fundamental rights, who now stand retired and or died, it would constitute a past and closed transaction inasmuch as it would be a futile exercise to reopen a case of a such a employee. On the other hand, employees who were so promoted under such a statute and who continued to remain in service would be liable to be restored to the position that existed prior to the benefit conferred under the statute inconsistent with the fundamental rights. Indeed, once a statute has been declared as been unconstitutional for any reasons, or direct benefits continuing to flow from the same are to be stopped."

39. Hence, Keeping in view the above principles it is held that:

- i. the newly created plots which have already been allotted to different individuals by way of auction or through direct allotment under any other eligibility whether construction thereupon has been done or otherwise, the rights of third party

have been created, therefore, they are given protection under the principle of past and closed transaction.

- ii. The CDA authorities are not permitted to carve out any new plot in the name of re-planning, rectification of layout plan or under any circumstance in any Sector of Islamabad save in accordance with law.
- iii. The green areas situated in Sectors G-6, G-7, G-10, G-11, G-13, G-14, F-6, F-7, F-11, I-8, I-10, F-10, F-8, D-12, which are vacant or not yet allotted but plots have been created and are not part of original layout plan are held to be illegal.
- iv. The CDA authorities can suggest amendment in the regulations before the competent forum for rectification, amendment or any relevant change in the layout plan, subject to inviting objections from general public.

40. In view of above details, the fate of the captioned intra court appeals, writ petitions and contempt applications is decided in the following manner:

- (i) I.C.A. No.206/2015 (Safdar Zaman, etc. vs. Federation of Pakistan, etc.) is ALLOWED to the extent that in future the CDA shall not carve out plots save in accordance with law and more appropriately by amending the regulations, accordingly the consolidated judgment passed in W.P. No 4318/2012 (Safdar Zaman, etc. vs. FOP, etc.) and W.P. No.76/2013 (Shahid Saleem vs. FOP, etc.) is modified accordingly. As noted above, the plots already created are saved under the principle of past and closed transaction.
- (ii) W.P. No.1791/2015 (Mrs. Soraya Safdar vs. CDA, etc.) are ALLOWED and proposed action of creation of residential plots

from 12-A and 12-H in Street No.14-B, in green area and Street No.14, Sector F-7/2, Islamabad are declared illegal, if allotment has not already been made and third party rights have been created, the same are saved under the principle of past and closed transaction.

- (iii) W.P. No.2047 /2014 (Hoor Kamal Khan & another vs. CDA, etc.) is ALLOWED in the terms noted above, however, creation of Plot Nos.239-A and 239-B in Street No.76, Sector F-11/1, Islamabad is protected under the principle of past and closed transaction.
- (iv) I.C.A. No.305/2016 (CDA & another vs. Sheraz Khanzada, etc.) is hereby DISMISSED.
- (v) I.C.A. No.208/2015 (Shahid Saleem Butt vs. FOP, etc.) is ALLOWED, hence the prayer made in W.P. No 4318/2012 (Safdar Zaman, etc. vs. FOP, etc.) is also ALLOWED to the extent noted above that in future any such creation/conversion has to be within the scheme of law.
- (vi) W.P. No.3721/2012 (Seema Illahi Baloch vs. CDA) is ALLOWED to the extent noted above that in future any such creation/conversion has to be within the scheme of law.
- (vii) W.P. No.1192/2015 (Shoukat Faruqui, etc. vs. CDA, etc.) is ALLOWED to the extent noted above that in future any such creation/conversion has to be within the scheme of law.
- (viii) CrI. Org. No.20/2016 (Shahid Saleem Butt vs. CDA, etc.) is DISPOSED OF with the direction that CDA authorities to initiate necessary action in accordance with law, however, if the plot was allotted to the party before 16.06.2015 no action in this regard should be taken.

- (ix) Crl. Org. No.182/2016 (Khalida Parveen vs. Hoor Kamal Khan & another) stands disposed of while taking the lenient view with direction to concerned CDA official/Senior Special Magistrate to inquire.

41. On the other hand, in the captioned ICA No.206/2015 (Safdar Zaman vs. FOP, etc.), some civil miscellaneous applications have been filed by several applicants, fate of which should also be decided at this stage, the facts whereof are as under:

- (i) C.M.A. No.4759/2017 has been filed by Waqar Ahmad Paracha, who is an affectee of newly carved out plots i.e. Plot No.441-A, Sector I-10/4, Islamabad and Plot No.441-D, Sector I-10/4, Islamabad, prayed for impleadment in the appeal wherein status quo order has been passed with respect to the said two plots.
- (ii) C.M.A. No.2191/2018 has been filed by Malik PW-6 Malik Tahir Mehmood Mehmood, Farooq-ul-Hassan, Bashira Bibi, and Muhammad Asad Ullah Khan, who are residents of Street No.9, Sector I-10/2, Islamabad, wherein the CDA is in the process of creating new plots out of green area/incidental open spaces, and prayed for impleadment in the appeal with the intention to assist the Court by providing more and proper facts with regard to the said street.
- (iii) C.M.A. No.3125/2018 has been filed by Mst. Shazia Iram, who is an affectee of newly carved out plot i.e. Plot No.282-B, Street No.55, Sector F-11/4, Islamabad, prayed for impleadment in the appeal wherein status quo order has been passed with respect to the said plot.
- (iv) C.M.A. No.3517/2018 has been filed by Sajjad Ahmad and Qasim Gul, who are affectees of newly carved out plots i.e. Plot

No.732-G, Sector D-12/4, Islamabad and Plot No.123-E, Sector G-11/3, Islamabad, prayed for their impleadment in the appeal wherein status quo order has been passed with respect to the said plots over which they are unable to raise construction.

- (v) Diary No.12859/2018, filed by Khurram Ahmed Shahzada, Amjad Iqbal, Aqeela PW-6 Malik Tahir Mehmood and Abdul Muneeb, who are allottees of newly carved out plots in Sector D-12, Islamabad, prayed for clarification/vacation of restraining order dated 21.12.2017 passed in the appeal.
- (vi) C.M.A. No.4168/2018, filed by Muhammad Shiraz/respondent No.4 in the appeal, prayed for deletion of his name from the array of respondents with respect to Plot No.441-C, Sector I-10/4, Islamabad, which was allotted to him in the year 2012 and over which he has raised construction of double storey house in which he is living since then.

42. The above referred CMs are **DISPOSED OF** with the observation that rights of the applicants/claimants have already been considered in the judgment hereinabove.

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **17th January, 2019.**

APPROVED FOR REPORTING.

Khalid Z.