

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 2391/2019.

Street 1 Café # 2, Kohsar Market, Islamabad, etc.

Versus

Capital Development Authority through its Chairman, etc.

Petitioner by: Malik Qamar Afzal, Advocate.

Respondents by: Mr. Adil Aziz Qazi, Advocate.

Date of Decision: 01.07.2019.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioners have assailed the actions of respondents for removal of installed generators, beautification, plantation and gas cylinders placed outside the restaurants.

2. Learned counsel for the petitioners contends that CDA as well as MCI have issued different licenses and permissions for usage of open spaces near the restaurants for the purposes of beautification and outdoor seating and respondents authorities without issuance of notices removed the plantation, seating area and have also initiated actions against the petitioners restaurant business without giving due opportunity of hearing.

3. Notices were issued to the respondents, whereby learned counsel for the CDA as well as MCI put appearance and contends that in compliance of directions passed by the Apex Court in **C.P No.4500/2017 titled Pak Gulf Construction Pvt. Ltd. Vs. CDA** any place which has been used in violation of CDA bye-laws or master plan has to be checked and actions have to be taken against the delinquent whether any license in this regard has been issued or otherwise. It has further been argued that permission granted to the petitioners is in shape of license for the purpose of using of open spaces for outdoor seating,

beautification and plantation in front of restaurants purely on temporary basis and same has been withdrawn; that petitioners have no right to claim the permanent benefits under the said licenses.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioners are owners of different restaurants situated in different areas of Islamabad and have been granted permission by way of license to use open space for seating, beautification and plantation in front of café/restaurants, however, said permission is purely on temporary basis subject to payment of license fee and CDA has started actions against the petitioners who have installed different generators on the CDA land and also installed gas cylinders on open space. Whereas the Apex Court in C.P No.4500/2017 titled Pak Gulf Construction Pvt. Ltd. (Centaurus Mall, Islamabad) Vs. CDA passed detailed directions vide order dated 11.06.2019 in which CDA and MCI authorities were directed to take corrective measures against the illegal construction and encroachment all over Islamabad and particularly in Sectors F-6 to F-12, G-6 to G-12, H-8, H-9 and I-8 to I-12, etc.

6. While considering the above background, learned counsel for the petitioners has been confronted regarding the maintainability of instant writ petition especially when the matter is pending before the Apex Court and all the questions raised by the petitioners in the instant writ petition could only be settled by the Apex Court. Learned counsel for the petitioners contends that the questions raised before the Apex Court are entirely different although petitioners have no objections and they are planning to join the proceedings before the Apex Court by way of civil miscellaneous application in the proceedings of C.P No.4500/2017 titled Pak Gulf Construction Pvt. Ltd. Vs. CDA.

7. Keeping in view the above background, the licenses which were given to the petitioners are purely on temporary basis and questions raised by the petitioners could not be settled during the pendency of proceedings before the

Apex Court, especially when the matter is fixed before the Apex Court for 04.07.2019. Hence, instant petition stands disposed of with direction to the petitioners to approach the Apex Court in C.P No.4500/2017 titled Pak Gulf Construction Pvt. Ltd. Vs. CDA for settlement of their rights, if so advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid