Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

I.C.A. No.527/2016

Federal Government Employees Housing Foundation & another

Versus

Ednan Syed & 10 others

Appellant/FGEHA by	:	Mr Muhammad Akram Sheikh, Sr. ASC. Mr Muhammad Munir Paracha, Sr. ASC. Mr Muhammad Nazir Jawad, ASC. Mr Mansoor Ahmd, ASC. Malik Javaid Iqbal Wains, AHC. Hafiz Arfat Ahmed Chaudhry, ASC. Ms Kashifa Niaz Awan, AHC. Mr Tariq Zaman Ch., AHC. Ms Sitwat Jahangir, AHC.
Petitioners by	:	Mr Shah Khawar, ASC. Mr M. Ali Raza, ASC. Mr Taimoor Aslam Khan, AHC. Mr Asad Iqbal Siddique, AHC. Syed Mujtaba Haider Sherazi, ASC. Raja Zahoorul Hassan, AHC. Mr Yasir Rathore, AHC. Mr Shahid Mehmood Khokhar, ASC. Raja Muhammad Farooq, ASC. Mr Zulfiqar Khalid Maluka, ASC. Ms Samina Khan, ASC. Mr Naseer AnjumAwan, ASC. Mr Shair Bahadur Khan, AHC. Sardar M. Ghazi, AHC. Ms Zainab Janjua, AHC. Mr Atif Khokhar, AHC.
Federation by	:	Mr Qasim Wadud, Additional Attorney General. Syed Muhammad Tayyab, Dy. Attorney General. Mr Imran Farooq, Assistant Attorney General.
Officials/representatives in attendance	:	Dr Imran Zaib, Secretary, Ministry of Housing and Works. Mr Tariq Rasheed, Director General, FGEHA. Mr Muhammad Irfan Chaudhry, Director (Law), FGEHA. Dr Sataish Sharyar, Deputy Commissioner (LAC), FGEHA. Mr Kazim Abbas, Director (Estate), FGEHA. Mr Khan Zaib, Dy. Director (Law), FGEHA.

Mr Rehan Cheema, Dy. Director (Estate), FGEHA.
Mr Mohsin Pasha, Asstt. Director (Legal), FGEHA.

Dates of Hearings : 13-09-2021, 14-10-2021, 22-11-2021.

ATHAR MINALLAH, C.J.- Through this consolidated judgment we will decide the Intra Court Appeal and the constitutional petitions listed in **"Annexure-A,"** attached hereto.

2. The Intra Court Appeal was preferred by the Federal Government Employees Housing Foundation (*hereinafter referred to as the* ***"FGEHF"***). The Federal Government has also been arrayed as an appellant. However, there is nothing on record to show that the Federal Government had authorized the filing of the Intra Court Appeal. The constitutional petitions listed in Annexure A have been filed by employees of the Federal Government or autonomous/constitutional entities. Through the Intra Court Appeal, FGEHF, the predecessor-in-interest of FGEHA, had challenged the judgment, dated 28-09-2016, passed by the learned single judge of this Court, in writ petition no.2233/2016 titled *"Ednan Syed and others v. Federal Government Employees Housing Foundation and another"*. The petitioners in the latter petition, who are also respondents in the Intra Court Appeal, had challenged the policy adopted by the FGEHF and the Federal Government regarding allotment of plots in the acquired sectors of F-14/F-15. The petitioners in the constitutional petitions before us have also challenged the same policy.

A. The Relevant Facts and the Dispute.

3. The facts are crucial in order to properly appreciate the dispute that has been brought before us for adjudication. The controversy was regarding the policy of the Federal Government and the FGEHF/FGEHA relating to allotment of plots in the scheme launched in sectors F-14/F-15.

(i) FGEHF

The FGEHF was incorporated as a welfare organization under section 42 of the Companies Ordinance, 1984. According to its stance before the learned single judge, it was an entity that operated on a 'no profit no loss' basis. It was mandated to evolve housing schemes for employees of the Federal Government and those of certain other specified groups. Its object was to resolve the problem of 'shelterlessness' of the eligible employees. At the time when the petition was argued before the learned single judge, according to the stance of the FGEHF, six housing schemes had been launched and the latter did not have the land bank to provide a plot to each and every eligible employee. Reliance was placed on the judgment of the august Supreme Court, reported as 2008 SCMR 531 *(Human Rights Case No.5818 of 2006 in Re: action on Press Clipping),* in support of the contention that the Federal Government employees do not have a right to claim or get a plot. It was further stated that the housing schemes were

established on self finance/contributory basis. It is noted that most of the housing schemes established by the FGEHF were on land which had been acquired pursuant to the exercise of the most intrusive power of the State and a fundamental attribute of its sovereignty; the inherent power of 'eminent domain'. In not more than few cases, the FGEHF had also established schemes through the purchase of land from its owners at the prevalent market rate. The FGEHF was succeeded by the FGEHA, as would be discussed later. The controversy before us is regarding the policy formulated by FGEHF and the Federal Government regarding the distribution of the available land bank amongst the members of the FGEHF and now its successor the FGEHA. The latter has changed its policy, which has given rise to the controversy involved in the appeal and the petitions in hand.

(ii) Membership Drive-I

The FGEHF, through an advertisement published in a widely circulated newspaper on 30-09-2009, invited applications from eligible employees for registration as members. The membership drive was launched to register eligible employees of the Federal Government and other specified groups in order to determine their seniority regarding allotment of plots in the schemes launched by FGEHF. The membership drive and the representations made to induce registration, unambiguously contemplated that seniority would be determined on the date of registration. The membership drive was based on the principle of

'first come first served'. The membership drive was for allotment of plots or housing offered in all the schemes launched or likely to be launched by the FGEHF/FGEHA. The membership was definitely not confined to a particular project or scheme nor was such a caveat included in the unequivocal representations (*hereinafter referred to as* ***'Membership Drive-I'***). The respondents in the Intra Court Appeal and the petitioners in the constitutional petitions in hand were amongst thousands of employees who had responded to the advertisement by getting themselves registered. They had fulfilled the requisite conditions, including payment of the registration fees and consequently their respective seniority was determined. Perusal of the summary placed before the Federal Cabinet shows that 35,932 members were registered in the Membership Drive-1 out of which 7,074 were allotted plots in the then existing land bank or schemes of the FGEHF i.e Green Enclave-I and Sky Garden. 28,858 members were sent offer letters, out of which 11,182 gave their acceptance and, simultaneously, deposited down payments. While they were awaiting their turn to be offered a plot in the next scheme, the policy was abruptly changed to their detriment upon the launching of the scheme in sectors F-14/F-15. It is noted that the scheme launched in F-14/F-15 was sought after because of its higher value, location and the fact that land was acquired through them exercise of the power of eminent domain.

(iii) Membership Drive-II

In 2015, the then Prime Minister approved launching of the scheme by FGEHF in sectors F-14/F-15. Approval was also given to acquire the land in the two sectors through the intrusive power of the State of eminent domain or land acquisition. According to the Master Plan of the Capital and the scheme of law governing its planning and development, both the sectors were to the acquired and developed by the Capital Development Authority (*hereinafter referred to as '**CDA**'*) and thereafter, offer the plots for sale to the general public through auction. The FGEHF, instead of accommodating the already awaiting eligible members who were registered in Membership Drive-I and their seniority stood determined on the principle of 'first come first serve', revised its policy. The revised policy approved for distribution of the acquired land in sectors F-14/F-15 was premised on fresh registration on the basis of 'age-wise seniority'. The employees who had applied for registration in Membership Drive II for allotment of plots in sectors F-14/F-15 had not responded to the earlier invitation and representations made to induce registration in Membership Drive-I. Those who had registered themselves in the Membership Drive-I and were awaiting their turn on the basis of the promised principle of 'first come first serve' were ignored, rather, excluded from being considered for allotment of plots in sectors F-14/F-15. The record, particularly minutes of the meeting of the Executive Committee of the FGEHF, shows that the object was to allot plots to senior officials of occupational groups and judges of the august

Supreme Court. The membership was launched in April, 2015 on the basis of age-wise seniority and length of service. (*hereinafter referred to as* ***'Membership Drive-II'***). According to the summary placed before the Federal Cabinet, 135,000 employees had registered themselves in Membership Drive II. Only 8,363 employees were selected for allotment of plots in sectors F-14/F-15 and in another scheme established on Park Road. According to the summary placed before the Federal Cabinet, 126,637 registered members could not be accommodated and thus they are awaiting to be considered for allotment of a plot/housing. There is nothing on record to show how selection was made from amongst 135,000 registered employees for the purpose of allotment of plots in sectors F-14/F-15 nor is there a plausible lawful justification for bypassing thousands of members who had registered themselves in the Membership Drive I pursuant to unambiguous representations and promises made to them.

(iv) <u>The judgment, dated 28-09-2016, impugned in the Intra Court Appeal</u>.

The respondents in the Intra Court Appeal were registered in Membership Drive-1. They were awaiting their turn on the basis of the principle of 'first come first served'. They had invoked the constitutional jurisdiction of this Court because they were aggrieved on account of the allegedly arbitrary, non transparent and illegal decision of the FGEHF and the Federal Government to change the policy regarding distribution of the acquired land in

sectors F-14/F-15. They were aggrieved because, according to their stance, the change of policy was to the detriment of their accrued vested rights and contrary to the unambiguous representations made to them. The writ petition was allowed vide the impugned judgment, dated 28-09-2016. The learned single judge, after carefully perusing the record, has concluded that the most significant feature of the Membership Drive-I was that seniority of a member would be determined from the date of deposit of registration fee. The undisputed and uncontroverted documents placed on record had clearly established that the FGEHF had unambiguously represented to the applicants of Membership Drive-1 that seniority would be determined on a 'first come first served' basis relatable to the date of deposit of fee for registration in the relevant category. It was clearly represented that eligible employees would not apply directly to the FGEHF regarding any particular scheme launched in the future. It was explicitly decided that only those who were registered in Membership Drive-1 and who had obtained seniority on the principle of the 'first come first serve basis' will be considered for allotment of plots in the schemes launched in the future because the membership was not confined to a particular scheme. This fact has been affirmed and acknowledged by the Federal Government and the FGEHA in its recently approved policy, which will be discussed in detail later. The learned single judge has rightly held that the conditions for applying the doctrine of promissory estoppel were satisfied. The representations and promises made by the FGEHF through the advertisement and

otherwise, at the time when the Membership Drive-I was launched in 2009, were unambiguous and definitely not in violation of the law. The launching of Membership Drive-II and confining the members registered under Membership Drive-I to the housing scheme in Barakahu was in violation of the earlier representations i.e. seniority of members would be based on the date of registration and plots will be allotted on the principle of 'first come first served' basis. Moreover, it was an arbitrary and gross deviation from the unequivocal commitment and representation that registered employees in Membership Drive-1 would be considered and allotted plots in the future schemes as per their determined seniority. Those who had obtained registration in Membership Drive-I had not only paid the fee but many had also deposited down payments. The FGEHF had collected an enormous amount pursuant to representations made to induce eligible applicants to get themselves registered in Membership Drive-1.

It was held by the learned single judge that those who had registered themselves under Membership Drive-I and had placed themselves in a queue, with the legitimate expectation to be considered for the allotment of a plot in one of the housing schemes launched by the FGEHF, could not have been ignored and bypassed arbitrarily. The learned single judge concluded that the FGEHF had acted unfairly, unreasonably and illegally by abandoning the criteria of ‘first come first served’ and had arbitrarily introduced the Membership Drive-II. It has been held

that the launching of Membership Drive-II by the FGEHF and reversion to age-wise seniority for allotment of a plot could not operate retrospectively and thus such a policy could only have taken effect after exhausting the rights that had accrued in favor of those members who had registered themselves in the Membership Drive-I. Their rights could not have been taken away or destroyed arbitrarily and in violation of the representations and promises made to them. The registered members of Membership Drive-I had the first and superior right to be offered a plot in the housing schemes launched by the FGEHF, which in this case was the scheme in sectors F-14/F-15. It was, therefore, unequivocally held by the learned single judge that plots in sectors F-14/F-15 could not have been lawfully offered to those who had obtained registration in the Membership Drive-II unless and until the rights accrued in favor of members registered in Membership Drive-I had been enforced. The learned single judge has also referred to the stance which was taken by the Federal Government before the Majlis-e-Shoora (Parliament) i.e. only the registered employees in Membership Drive-I were entitled to be considered and entertained for allotment of plots in the future schemes. On the basis of the admitted documents placed by the FGEHF on the record, the learned single judge has held that there was no justification, nor was it reasonable and fair to confine the registered employees in Membership Drive-I to a particular scheme e.g the Barakahu scheme. As noted above, those who had registered themselves in the Membership Drive-II had not responded to the offer of the FGEHF when Membership Drive-Iwas

launched and, therefore, they had virtually jumped the long queue of already registered members who had legitimately expected to be dealt with in accordance with the representations and promises made to them.

The FGEHF has preferred the Intra Court Appeal in hand, assailing the judgment dated 28-09-2016. The Division Bench, vide order dated 28-11-2016, had suspended the operation of the impugned judgment, dated 28-09-2016, to the extent of the observations made in paragraph 36 thereof.

(v) FGEHA Judgment

It would be beneficial for the adjudication of the matter in hand to refer to the distinct but relevant litigation brought before this Court by the land owners of sectors F-14/F-15 against the acquisition of their properties for launching the scheme by FGEHF. The constitutional petition was allowed vide judgment reported as PLD 2018 Islamabad 68 titled *Malik Bashir Ahmed, etc. v. The Federal Government of Pakistan, through Secretary Cabinet Division, Pak Secretariat, Islamabad, etc."* The said judgment was subsequently upheld by a learned Division Bench vide judgment, dated 25-09-2018, titled *"Federal Government Employees Housing Foundation v. Malik Bashir Ahmed, etc."*[ICA No.365/2017].The aforementioned judgments were challenged before the august Supreme Court and they were unanimously set aside by a larger Bench consisting of four Hon'ble Judges vide

judgment titled *"Federal Government Employees Housing Foundation (FGEHF), Islamabad and others v. Malik Ghulam Mustafa and others"*[2021 SCMR 201] (*hereinafter referred to as the* ***"FGEHA Judgment"***]. The august Supreme Court has declared that land acquired for developing housing schemes launched by the Federal Government Employees Housing Authority (*hereinafter referred to as the* ***"FGEHA"***)was for a 'public purpose'. The Federal Government Employees Housing Authority Act 2020 (*hereinafter referred to as the* ***"FGEHA Act"***) was promulgated during the pendency of the appeals. The apex Court examined its provisions and declared it to be intra vires the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the* ***"Constitution"***). The operative part of the judgment is reproduced as follows.-

> *"For the foregoing reasons, the first and second question regarding the jurisdiction of the CDA to acquire land to the exclusion of the Land Acquisition Act, 1894 has been answered in the negative in paragraph 62-63. The third question regarding the acquisition for a housing scheme constituting a valid public purpose has been answered in the affirmative in paragraphs 98-107. The fourth question regarding the Acquisition under the LAA, 1894 becoming a State Largesse under Article 173 of the Constitution have been answered in the negative as in paragraph 75. The fifth question regarding the constitutional petitions not being maintainable, was not argued by any of the parties, very fact that contentious matters has been argued and dilated by the High court as well*

attended to by this Court, we do not deem appropriate to delve into such controversy and leave it to be addressed in some appropriate proceedings."

(vi) Distribution of plots in sectors F-14/F-15.

The FGEHA conducted a purported balloting on 17-08-2021 for allotting plots in sectors F-14/F15 amongst already selected members registered in Membership Drive-II. The members who were registered in Membership Drive-I were not only ignored but, rather, without any lawful justification they were excluded from being considered. Even the selection made from about 135,000 registered members in Membership Drive-II lacked transparency. As noted above, according to information placed by the FGEHA before the Federal Cabinet, out of 135,000 employees who were registered in Membership Drive-II, 126,637 could not be accommodated. There is nothing on record to show how the selection was made for allotment of plots to a few out of 135,000 registered members. The Federal Government and the FGEHA, though aware that they had appealed against the judgment, dated 28-09-2016, preferred to proceed with the allotments in the scheme launched in sectors F-14/F-15. The grievances of the registered members who had responded to the Membership Drive-I were also ignored. Surprisingly, the list of successful beneficiaries posted on the web site included senior members of the bureaucracy and serving and retired judges of the superior judiciary. Virtually every judge of the District Judiciary of

Islamabad was amongst the beneficiaries. Ironically, they included judicial officers who were kept under observation either for incompetence or having questionable repute. It also included those judicial officers who were dismissed from service pursuant to disciplinary proceedings or who had opted to resign. A judicial officer who had confessed to accepting illegal gratification and was dismissed from service was also a recipient of the grace of the Federal Government. The judicial officer who had been convicted and sentenced by this Court vide judgment titled *"The State v. Maheen Zafar and another"* [2018 PCrLJ [Islamabad] 841]and whose guilt was later upheld by the august Supreme Court, was also fortunate to have been named as a beneficiary. It had become obvious that the policy formulated by the FGEHA and the Federal Government, rather than serving the public interest, was in violation of the fundamental rights of the people at large. This appeared to be the tip of the iceberg.

(vii) Annulment of balloting and the purported allotment of plots in sectors F-14/F-15

After the list was posted on the website of the FGEHA pursuant to the balloting, this Court was inundated with petitions challenging the policy approved for distribution of plots in sectors F-14/F-15. Most of the aggrieved petitioners were those who were registered in the Membership Drive-I. In one of the petitions i.e writ petition no. 3573/2021, the petitioners had, inter alia,

challenged the decision taken in the 16th meeting of the Executive Board, whereby the latter had fixed a quota for its own members and, pursuant thereto, plots were also allotted to them in sectors F-14/F-15. The petitioners have challenged the decision, inter alia, on the ground of conflict of interest. In a nutshell, all the aggrieved petitioners had challenged the policy whereby acquired land in sectors F-14/F-15 was distributed amongst registered members of FGEHA. The grievances and questions of law were similar to those raised in the Intra Court Appeal in hand. The petitions were, therefore, heard along with the Intra Court Appeal. After hearing the learned counsels for the parties, particularly the counsels for the FGEHA, we were not able to persuade ourselves that the impugned judgment, dated 28-09-2016, suffered from any legal infirmity. It also appeared to us that, prima facie, the policy relating to distribution of State acquired land was in derogation of the fundamental rights of the public at large and definitely did not serve the public interest. The inclusion of officials who were dismissed on charges of misconduct, corruption or convicted and sentenced by competent courts was sufficient to establish that the policy was not in the public interest.

We, therefore, recalled the injunctive order, dated 28-11-2016, vide order dated 13-09-2021. Consequently, the balloting held by the FGEHA and the list of the purported allotments posted on the website became redundant and of no legal effect. Since the question before us was regarding the legality of the policy

formulated by the Federal Government, therefore, we deemed it appropriate to exercise restraint and refer the matter to the Federal Cabinet i.e the worthy Prime Minister and its members. On 14-10-2021, a joint request was made on behalf of the FGEHA and the Federal Government to adjourn the matter so as to enable the Federal Cabinet to complete its proceedings.

(viii) The Approved "Revised Policy"

When the Intra Court Appeal and the connected petitions were taken up today, Mr Qasim Wadud, the learned Additional Attorney General, appeared along with the Secretary, Ministry of Housing and Works, Government of Pakistan. The Director General of FGEHA also appeared along with a duly authorized learned counsel. We were informed that a revised policy was approved by the Federal Cabinet. The summary, dated 29-10-2021, placed before the Federal Cabinet was approved. Copies of the summary and the Cabinet's decision were submitted before us by the learned Additional Attorney General (*hereinafter referred to as the "**Revised Policy**"*). The Revised Policy has been attached with this judgment as **"Annexure-B"** and it shall be read as an integral part thereof. The salient features of the Revised Policy are as follows.-

(a) The primary policy for allotment will be age-wise seniority instead of the earlier principle of 'first come first served'.

(b) 20% quota on age-wise seniority basis was allocated for the retired employees.

(c) It was unequivocally decided that the FGEHA will not acquire land under the Land Acquisition Act 1894 nor under any other law. Instead, the FGEHA will execute schemes under approved JV policy, land sharing and land purchasing.

(d) All allotment of plots will be made through the FGEHA as per approved laid down policy and criteria followed by the Executive Board till such a policy is revised.

(e) No discretionary quota/powers will be exercised for the allotment of plot, apartment, grey structure.

(f) A minimum 10 years' service will be the eligibility criteria.

(g) The policy of allotment of second plot to BS-22 officers and superior judiciary shall be discontinued under the Prime Minister's Package.

(h) Nomination of Supreme Court judges/employees will be provided by the Registrar of the apex Court after approval and allotment shall be

made as per approved laid down criteria of FGEHA on age-wise seniority basis.

(i) Nomination of Islamabad High Court judges/employees and lower judiciary will be provided by the Registrar of the Islamabad High Court after approval and allotment shall be made as per approved laid down criteria of FGEHA on age-wise seniority basis.

(j) An employee would not be eligible if disciplinary proceedings are pending.

(k) 11,182 registered members of membership Drive-II who had deposited down payments shall be accommodated in schemes other than F-14/F-15. 3,300 registered members shall be accommodated in G-12 and F-12, whereas the remaining 7,982 will be accommodated through the merit list in other schemes.

It is obvious that the policy of allotting a second plot to Federal secretaries and judges of the Supreme Court has been recalled. It has also been decided that land bank for schemes of the FGEHA will not be created pursuant to the exercise of the power of eminent domain. The proposal to constitute a committee to examine formulation of a policy 'as per Army/Defence model' was also approved by the Federal Government but there is no explanation regarding such a policy or its constitutionality. A plain reading of the summary shows that the FGEHA and the Ministry of

Housing Works had unambiguously acknowledged that the members registered in Membership Drive-1 were not confined to a particular scheme. It is obvious that the summary did not disclose to the Federal Cabinet the judgment, dated 28-09-2016, nor the fact that the Intra Court Appeal was pending and the injunctive order had been vacated. The most crucial aspect was that the Federal Cabinet chose to ignore the question of conflict of interest and its duty to ensure that the policy served public interest. Surprisingly, two additional prime sectors of the Islamabad Capital Territory, which had already been acquired by the CDA under the Capital Development Authority Ordinance, 1960 (*hereinafter referred to as the* ***"CDA Ordinance")*** i.e sectors F-12 and G-12, were also allocated to the FGEHA in order to accommodate its members.

Four prime sectors of the Master Plan of the Capital i.e F-12, G-12, F-14 and F-15 were, therefore, allocated exclusively for members of the FGEHA. It is noted that these four prime sectors were required to be developed and offered for sale to the general public through open auction. The implications of allocating the four prime sectors for the propose of distribution of prime land amongst the members of FGEHA and its effect vis a vis the fundamental rights of the public at large would be discussed in more detail later. The notable aspect of the Revised Policy is the exclusion of certain categories as "specified groups", such as journalists and lawyers. Likewise, from amongst the judiciary, the grace of inclusion as one of the "specified groups" was confined to

judges and staff of the Supreme Court, Islamabad High Court and the District courts of Islamabad. It is noted that the FGEHA is a major litigation party before these three judicial branches. There is no explanation why the Islamabad High Court and the District courts of Islamabad have been included because no such request was made to the FGEHA nor the Federal Government in this regard. It is implicit from the Revised Policy that the real estate development and distribution of the land bank of the FGEHA is not a vested right, rather, it is dependent on voluntary registration and membership obtained by employees of the Federal Government or the approved specified groups. Only those members have been excluded against whom disciplinary proceedings are pending. As a corollary, those who may have been superseded on account of lack of performance or contributed to decades of bad governance were eligible to enrich themselves at the State expense. Was it appropriate for the Federal Government to have included this Court, the Supreme Court and the District courts knowing that FGEHA is one of the major litigation parties? Is the Revised Policy contrary to public interest and in derogation of the guaranteed rights of the people at large? These crucial questions will be discussed and answered later.

B. Stance of the Federal Government and the FGEHA

4. Dr Imran Zaib, Secretary, Ministry of Housing and Works, has appeared. He has explained that the Revised Policy was proposed to and approved by the Federal Cabinet pursuant to the direction of this

Court and the grave anomalies highlighted in various orders. He has informed that some categories such as journalists, lawyers etc have been excluded from the 'specified groups' category. He was not able to give a plausible explanation for excluding the registered members of Membership Drive I from allotment in sectors F-14/F-15. In response to our query, he candidly conceded that allotment of a plot was not one of the terms and conditions of service of a civil servant nor of any other employee of autonomous or constitutional entities. He was asked regarding the loss to the exchequer on account of enforcing the Revised Policy. He could not give any justification nor explanation for the enormous loss to the exchequer merely to benefit a few members of FGEHA. It is also not the case of the FGEHA nor the Federal Government that the distribution of the land bank of the FGEHA is based on services rendered by public functionaries beyond the call of duty e.g sacrificing lives or suffering disabilities by officials and soldiers of the police, the Armed Forces or other state institutions. It is also not the stance of the Federal Government nor a fundamental criterion of the Revised Policy that the object is to address the question of 'sheterlessness' of Federal Government employees or employees of other specified groups. However, it has been argued that the inclusion of allotment of plot as one of the terms and conditions of service has been proposed but not approved as yet by the Federal Cabinet.

Mr Muhammad Akram Sheikh, Sr. ASC, has appeared alongwithMr Tariq Rasheed, Director General, FGEHA. The latter has stated that the former would argue on behalf of the FGEHA. A power of attorney has also been submitted and placed on record. Mr Muhammad

Akram Sheikh, learned Sr. ASC, has argued that the august Supreme Court has settled all the matters raised in the appeal and the petitions in hand in the FGEHA Judgment. He has argued that the Court, by raising unnecessary issues, was scandalizing the judiciary. However, he was not able to explain how the judiciary was likely to be scandalized on account of adjudication of grievances brought before this constitutional Court by several aggrieved persons. The learned counsel has stressed that the questions raised are regarding policy formulated by the Federal Government and they are not justiciable while exercising jurisdiction under Article 199 of the Constitution. He has argued that the Revised Policy does not suffer from any legal infirmity nor could the learned single judge have interfered with the policy formulated by the competent authority. He has argued that the Court, by questioning the allotments made pursuant to holding balloting, has exercised suomoto power.

The attention of the Secretary, Ministry of Housing and Works was drawn to the grievance raised in one of the petitions whereby the decision of the Executive Board to allot plots to its own members has been challenged on the ground of conflict of interest. He was asked whether the factor of conflict of interest was not considered by the Federal Cabinet. He explained that there was no conflict of interest because the members of the Executive Board were otherwise entitled as registered members of the FGEHA. He was of the view that there was no illegality, conflict of interest or impropriety in allotting plots to members of the Executive Board of the FGEHA in sectors F-14/F-15.

In a nutshell, the controversy is regarding the validity of the policies, particularly the Revised Policy regarding distribution of acquired land amongst registered members of the FGEHA. The Federal Government, by revising its earlier policy, has acknowledged that it was illegal.

C. Opinion of the Court

5. The controversy before us is regarding the policy relating to creating the land bank and its distribution amongst the members of the FGEHA. The admitted facts are that allotment of a plot is not one of the terms and conditions of service of a civil servant nor that of employees of the Federal Government or the specified groups approved under the FGEHA Act. No civil servant, judge nor employees of other entities can claim, as of right, the allotment of state land at lower than the prevailing market price. Most of the land bank of the FGEHA has been acquired through the exercise of the most intrusive inherent power of the State, the 'eminent domain'. The scheme of the FGEHA, as would be discussed in more detail later, is in the nature of an exclusive club comprising of persons belonging to selected classes. They invest in the FGEHA for the purpose of establishing a housing or commercial scheme through the use of the power of the State. The benefits are restricted to such persons who voluntarily obtain membership offered by the FGEHA. It gives the members of the FGEHA an opportunity to enrich themselves instantly upon the allotment of a plot and to make windfall gains at the cost of enormous loss to the exchequer. This phenomenon in the

context of the Revised Policy will be discussed in more detail later.The august Supreme Court, in the FGEHA Judgment, has declared that acquisition of land for schemes launched by the FGEHA through exercise of the state power of eminent domain was for a public purpose. But by no stretch of the imagination can the FGEHA Judgment be construed or interpreted in such a manner which would grant a license to the Federal Government to use the acquired land bank of the FGEHA in derogation of public interest or the fundamental rights of the public at large. The controversy before us, raised in the Intra Court Appeal and the connected petitions, was definitely not raised before nor adjudicated by the apex Court in the FGEHA Judgment. The Membership Drive-1 and the representations made to induce registration and payment of fee and down payments are not disputed, rather, it is implicit in the Revised Policy that the rights of the registered members were not confined to any particular scheme launched by the FGEHA. The Membership Drive-II was introduced when the scheme in sectors F-14/15 was launched. The registered members in Membership Drive-I had challenged the change in policy and their petition was allowed through judgment, dated 28-09-2016, against which the FGEHF/FGEHA had filed the Intra Court Appeal in hand. In disregard to its own appeal, the FGEHA conducted a purported balloting amongst preselected members who had registered themselves in the Membership Drive-II. The superior rights of the members who were registered in Membership Drive-I, the non transparency and arbitrariness while conducting balloting for distribution of state acquired land in sectors F-14/-F15 and, above all, the grave violation of public interest had raised paramount questions. The controversy and grievances were regarding the policy adopted by

the Federal Government and the FGEHA to distribute state acquired land amongst a few privileged classes.

The Federal Cabinet, rather than taking into consideration the factors highlighted in our orders, approved the summary prepared by the employees who had their own vested interests. The questions required to be considered and adjudicated by us in order to decide the Intra Court Appeal and the petitions in hand are; whether the scheme launched by the FGEHA and the policy for distribution of plots amongst its members was fair, legal, equitable and in accordance with law; whether the Revised Policy serves public interest; whether it is susceptible to judicial review while exercising jurisdiction under Article 199 of the Constitution; if the answer is in the affirmative then whether it can be interfered with; whether the Revised Policy prejudices and is likely to operate detrimentally in the context of the interest of the public at large and their guaranteed constitutional rights; whether the question of conflict of interest is relevant and, if so, then its ensuing consequences; whether the land acquired for a public purpose can be subsequently put to use in a manner that adversely affects the interests and rights of the public at large; whether examining the legality and constitutionality of the policy formulated by the Federal Government regarding schemes launched by the FGEHA amount to exercising suo motu powers under Article 199 of the Constitution.

The facts leading to approval of the Revised Policy have already been discussed above. However, in order to answer the aforementioned questions it would be beneficial to examine the statute

governing the FGEHA and, thereafter, the effect and consequences of enforcing the Revised Policy.

(i) <u>The FGEHA Act.</u>

The FGEHA Act was promulgated and notified in the official gazette on 15-01-2020. It was promulgated with the object to establish the FGEHA for the purpose of planning and developing of housing schemes for serving and retired Federal Government employees and other specified groups and matters connected therewith and ancillary thereto. The expression 'specified groups' has been defined in section 2(o) as meaning any group as decided by the Executive Board from time to time. The composition of the Executive Board has been described in section 4(1) as follows.-

(a)	Minister for the Division, concerned with affairs of the Authority	*Chairman*
(b)	Secretary of the Division concerned	*Member*
(c)	Draftsman Law and Justice Division	*Member*
(d)	Additional Secretary of the Division, concerned with the affairs of the Authority	*Member*
(e)	Managing Director, Pakistan Housing Authority Foundation	*Member*
(f)	Director General, Pakistan Public Works Department	*Member*

(g) Chief Commissioner, Islamabad Capital Territory — *Member*

(h) Chairman, Capital Development Authority — *Member*

(i) Joint Secretary Expenditure Ministry of Finance — *Member*

(j) Chief (Physical Planning and Housing) Planning Commission, Islamabad — *Member*

(k) Chief Engineer of the Authority — *Member*

The powers and functions of the Executive Board have been enumerated in section 5. Section 12 explicitly provides that acquisition of any land or any interest in land for the purposes of the FGEHA shall be deemed to be an acquisition for public purpose within the meaning of the applicable Land Acquisition Act 1894 or any other prevailing law 'as per policy' of the Federal Government. Sections 13, 14, 15 and 16 describe the powers and manner for acquisition of land by the FGEHA. Section 19 explicitly provides for a right of appeal and review to the Executive Board. Likewise, section 25 provides for a statutory right of appeal against an order/decision of the Director General to the Executive Board. The FGEHA was the successor statutory entity of the FGEHF. The land, now comprising sectors F-14 and F-15, were acquired by the FGEHF through the Land Acquisition Collector in exercise of powers conferred under the Land Acquisition Act1894. However, the land for developing sectors G-12 and F-12 was

acquired by the CDA in exercise of powers conferred under the CDA Ordinance. The awards relating to acquisition of land for establishing sectors G-12 and F-12 were announced in 1985.

The FGEHA Act is a self-contained comprehensive statute. A plain reading of the statute as a whole shows that the FGEHA has been established for the specific purposes of planning and developing housing schemes for serving and retired Federal Government employees and other specified groups. Its existence and jurisdiction is confined to establishing housing schemes primarily for Federal Government employees. Its functions are obviously subject to compliance with the Master Plan prepared for developing and planning of the Islamabad Capital Territory as the Capital of the Islamic Republic Pakistan. It is noted that the Master Plan has a statutory backing under the CDA Ordinance. The expression 'scheme' has been defined in section 2(m). The said expression does not describe the nature of the undertaking except that it is restricted to Federal Government employees and the specified groups approved under the FGEHA Act. The FGEHA is empowered to acquire land for its schemes through the inherent power of the state i.e eminent domain. Section 5(2)(c) and section 12, when read together, unambiguously shows that forcible acquisition of land and its use are subject to an approved policy of the Federal Government.

The legislature obviously could not have intended to empower the FGEHA nor the Federal Government to exercise the power of forcible acquisition of land and thereafter give a license for its use contrary to public interest. It has been held by the august Supreme Court in the FGEHA judgment that the acquisition of land by the FGEHA for a scheme was for a public purpose. The apex Court judgment cannot be interpreted by the FGEHA in order to arrogate to itself the authority and power to use the scheme established on acquired land in derogation of public purpose or to violate public interest. The allotment and use of acquired land to benefit incompetent, corrupt or convicted employees of the Federal Government or the specified groups at the expense of the national exchequer would definitely not be legal, constitutionally permissible nor serve any public purpose. As an illustration, the initial distribution of state acquired land and its use in sectors of F-14/F-15, pursuant to the balloting, was in breach of and did not serve public interest. No doubt that the legislature is empowered to enact laws and to determine what is best for the public good. It is the duty of the Court to discover the legislative intent and interpret laws promulgated by the legislature. It is settled law that while interpreting a statute or discovering the legislative intent, it is presumed by the Court that mistake or absurdity cannot be attributed to the Majlis-e-Shoora (Parliament).

No legislation can be interpreted in such a manner which has the effect of defeating public interest or protects the personal interests of a few in disregard or derogation of the interests of the public at large. The FGEHA Act, therefore, can only be interpreted to advance the interests of the public at large. Any interpretation against public interest and for the benefit of a few will amount to attributing mistake or absurdity to the legislature. It would be unconstitutional and contrary to the principles of interpretation. As already noted, the august Supreme Court in the FGEHA judgment has held that land could be acquired for a scheme of the FGEHA for a valid public purpose. It is obvious, therefore, that the use of such a scheme also has to meet the threshold of public purpose and serve public interest. As an illustration, a scheme launched for the benefit of family members of police officials or Armed Forces personnel who lay down their lives in the line of duty or to encourage and reward Federal Government employees, declared through a transparent selection process, to have performed extraordinarily and acted beyond the call of duty, would definitely advance public interest. But the legislature could never have intended that the schemes launched under the FGEHA Act could be used to promote or reward incompetence, contribution to bad governance, injustice, average performances or corruption and corrupt practices, nor to provide opportunities to individuals to enrich themselves at the expense of the exchequer. The FGEHA Act, therefore, can only be interpreted and construed by declaring that the legislature had unambiguously intended that the policy formulated regarding a scheme launched

by FGEHA and distribution of the acquired land can withstand the test of legality and constitutionality if it was not in derogation of public interest nor the constitutionally guaranteed rights of the public at large. It is settled law that the interest of the public at large always prevails over the interests of a class or few individuals. Any other interpretation of the FGEHA Act would be violative of the Constitution. Every policy and action of the State, the Federal Government and public functionaries can solely be tested on the threshold of public interest. The policy formulated under the FGEHA Act by the Federal Government or the FGEHA, as the case may be. if found to operate against public interest or detrimental to the constitutionally guaranteed rights of the citizens, would definitely be void, illegal, unconstitutional and thus without lawful authority and jurisdiction.

As already noted above, a Federal Government employee does not have any vested right to claim allotment of a plot nor to compel the FGEHA to maintain its land bank so as to provide benefits to each registered member. Allotment of a plot is, admittedly, not a term or condition of service of any employee and definitely not a right. The statute does not create an independent right or entitlement in favour of the registered members of the FGEHA to claim allotment of a plot at the expense of the interest of the public at large. The basis of allotment under the FGEHA Act is membership of the FGEHA on a voluntary basis while acquisition of land, launching a scheme and distribution of the acquired land are solely governed and regulated under an

approved policy of the Federal Government. Such a policy inevitably has to meet the threshold of public purpose and has to serve and be in conformity with public interest. It cannot operate in derogation of the fundamental rights of the public at large.

There is another crucial aspect of the FGEHA Act. Its primary beneficiaries are the Federal Government employees. However, other specified groups can also be included as beneficiaries of the scheme. The expression 'specified group' has been defined in section 2(o) as meaning any group as decided by the Executive Board. It is, therefore, within the power and jurisdiction of the latter to decide which entity or constitutional body may be declared as a specified group for the purposes of the FGEHA Act. It is obvious, therefore, that other than Federal Government employees, public office holders or employees of entities and constitutional bodies have to be declared as 'specified groups' to become eligible for membership or benefits in a scheme launched under the FGEHA Act. As a corollary, members and employees of other entities and constitutional bodies have no vested right nor are they entitled to benefit from a scheme launched by the FGEHA unless explicitly included amongst the specified groups. The FGEHA and the Federal Government, through the Revised Policy, has declared judges and employees of the Supreme Court, Islamabad High Court and District judiciary of the Islamabad Capital Territory as specified groups. The other specified groups such as journalists, lawyers, judges and employees of other High Courts, Federal Shariat Court etc have

now been excluded, as is evident from the "Revised Policy". The power to include or exclude a specified group for the purpose of benefiting from the schemes launched under the FGEHA Act exclusively vests in the Federal Government and FGEHA.

D. <u>The legal status of the policies, particularly the "Revised Policy"; Do they serve the public interest, or are in derogation thereof and violative of the guaranteed fundamental rights of the public at large?</u>

6. As we have already discussed and declared above that an approved policy regarding the execution of a scheme under the FGEHA Act can only be sustainable if it is not in derogation of the public interest nor violates the constitutionally guaranteed rights of the public at large. The policy regarding the scheme relating to sectors F-14 and F-15 was challenged and the constitutional petition was allowed by the learned single judge and the learned FGHEA counsels could not persuade us that the reasoning and findings suffered from any legal infirmity. We had highlighted the gross anomalies observed in the policy vide our order, dated 13-09-2021, because they appeared to be contrary to the public interest. The question of conflict of interest was also involved. We had also pointed out that the execution of the policy was likely to cause enormous loss to the exchequer. The policy also indicated that the decision regarding the development and planning of the capital was based on the model of 'elite capture' and that it was in disregard to the principle of providing equal opportunity to all citizens to

benefit from state assets. We had exercised restraint by referring the matter to the Federal Cabinet i.e the worthy Prime Minister and its members for reconsideration. We were expecting that, as chosen representatives of the people, they would approve a policy that would serve the public interest rather than providing an opportunity to a few of the powerful elite to instantly enrich themselves and simultaneously cause enormous loss to the exchequer.

We have carefully perused the 'Revised Policy'; regrettably it serves the interests of a few elites selected through a non transparent process. It enables a few individuals to make windfall gains in derogation to public interest and the constitutionally guaranteed rights of the public at large. The Revised Policy is in violation of the legislative intent behind the promulgation of the FGEHA Act, as has been discussed earlier. How the Revised Policy fails to meet the threshold of public interest and public policy and why it cannot sustain the constitutional scrutiny would become obvious from the discussion that follows. The salient features of the Revised Policy have been reproduced above. Before discussing the reasons that render the "Revised Policy" illegal and unconstitutional, it would be beneficial to define the expression 'Public Interest':

(i) <u>Public Interest</u>

Lord Denning M.R, in the case titled 'London Artists Limited versus Littler (1969) 2 All ER 193, explained the expression as a matter of such nature which affects people at large. The Black's

Law Dictionary, Sixth Edition has described the expression as something in which the public, the community at large, has some pecuniary interest by which their legal right or liabilities are affected. Moreover, it does not mean anything so narrow as mere curiosity. Interest shared by citizens generally in affairs of local, state or national government. Acting in public interest is a constitutional duty of every institution, public office holder and public functionary. The existence of the government and its institutions is for the people and to protect their rights. Their creation and the obligation of the public office holders is to serve the actual stakeholders of the governance system i.e the citizens. The expressions public good, common interest and public interest are synonymous. It refers to a decision or determination that is in the best interest of the well being and welfare of the community, society or the public. It is an antitheses of private interest or the interest of a few. It is, therefore, a constitutional duty of every institution, holder of public office and public functionaries to solely serve the people for whom they exist. The august Supreme Court, in the case titled *"Province of Sindh through Chief Secretary and 8 others v. Syed Kabir Bokhari"* [2016 SCMR 101], has held that it is the obligation of the government and its departments to act justly and fairly towards the citizens and if the latter suffers any loss or injury on account of illegal and unlawful conduct then there is a constitutional duty to compensate the citizen. In the case titled *"Habibullah Energy Limited and another v. WAPDA through Chairman and others"* [PLD 2014 SC 47] it has been observed that the basis of discretionary power of State

functionaries is the delegation of authority by the principal i.e. the people of Pakistan. It has been further observed that the legal authority is derived from such fiduciary relationship and when such fiduciary duty is breached, the authority of the State to administer and enforce the law is eroded. The State functionaries and instrumentalities stand in a fiduciary relationship to the people. In the case titled *"Muhammad Yasin v. Federation of Pakistan and others"* [PLD 2012 SC 132] it has been observed that public functionaries are first and foremost fiduciaries and trustees for the people of Pakistan and, while performing the functions of their office, they can have no interest other than the interest of the people of Pakistan. This fiduciary obligation and duty is breached when public functionaries abuse their power and exercise discretion in an arbitrary manner. Public interest is not served and the fiduciary duty towards the citizens is gravely breached when institutions and public functionaries give preference to their own interests, rather than performing their delegated functions in the best interest of the people at large. The Revised Policy regrettably demonstrates a disregard of the interests of the people and giving preference to the private interests of a few.

(ii) The effect of the Revised Policy and how it operates in derogation to public interest.

The initial policy was not in the public interest and, therefore, after its review the Revised Policy was approved by the

Federal Cabinet. As already noted, the summary was prepared and placed before the cabinet by those officials who had personal pecuniary interests. It appears that the grave anomalies highlighted by the Court were not brought to the attention of the worthy Prime Minister and members of the cabinet. It appears from the record that the policy was changed when the scheme for developing a housing scheme in sectors F-14 and F-15 was launched. It also appears that the object was to benefit senior officers of occupational groups and judges of the Supreme Court and other courts. The vested rights of those members who had responded and were registered in Membership Drive I could not have been destroyed. The FGEHA could not controvert the reasoning and findings of the learned single judge recorded in the judgment, dated 28-09-2016. The FGEHA and the Federal Government had implicitly acknowledged in the Revised Policy that the registered members in Membership Drive I were not confined to a particular scheme. In order to accommodate some of them, two additional sectors from the Master Plan, prepared for planning and developing the capital, were allocated for the exclusive use of the FGEHA. This had grave consequences for the exchequer and the constitutionally guaranteed rights of the people at large. The change of policy and giving preference to members who got themselves registered in Membership Drive II was illegal, arbitrary and without lawful authority.

Object of the Revised Policy; Did it serve the public interest

Without prejudice to the above, the membership in Membership Drive-II was on the basis of the changed policy i.e age wise seniority. The **object of the policy** was not to provide shelter to the shelter less nor to support families of employees or officials who laid down their lives. It was also not to support the employees who are injured or disabled while performing their duties. It was certainly not the object of the policy to encourage or reward such employees who may have acted or performed functions beyond the call of duty, nor to encourage those who may have demonstrably contributed to good governance. The sole object appears to have been to extend extraordinary pecuniary benefits to a few selected senior bureaucrats and judges of the Supreme Court, Islamabad High Court and the District courts of the Islamabad Capital territory. The membership is open regardless of performance, contribution to good governance or dispensation of justice. Even low performing or incompetent employees or judges are eligible to avail the extraordinary benefits. The object of the scheme was, therefore, not to advance public interest. There were no clearly defined objective or purpose of approving the Revised Policy except to benefit a few.

It appears from the record that the **object of the Revised Policy** was to benefit a newly created club of senior bureaucrats registered through the launching of Membership Drive II and serving/retired judges and Chief Justices of the Supreme Court, judges of the Islamabad High Court and District Courts Islamabad.

Enrichment of a few at the expense of loss to the exchequer and the people at large

The registered members, after paying the registration fee and the determined cost, are eligible upon selection by the FGEHA to allotment of a plot having a significantly higher market price. The allotment provides an allottee with an instant opportunity of substantial financial enrichment. The land vests in the state since it has been acquired through the intrusive inherent power of forcible land acquisition. A plot measuring 500 sq yds. costs a member less than Rs 5 million while its estimated market value is more than Rs 50 million. The difference should be earned by the exchequer but in this case it goes into the pockets of those with no vested right.

According to the Revised Policy, the preselected members who got themselves registered in the Membership Drive-II are entitled to be allocated plots in the most prized sectors of the Master Plan of the Capital i.e sectors F-14 and

F-15. More than 140,000 members registered in the two membership drives have yet to be accommodated. The Federal Government, through the Revised Policy, has also approved the allocation of two additional prime sectors i.e sectors G-12 and F-12 in order to accommodate some of the registered members. It is noted that the CDA had initiated the acquisition proceedings under the CDA Ordinance and awards were announced in April and June of 1985 respectively regarding both these sectors. They were to be developed by the CDA and offered for sale as plots to the general public through auction. We have been informed that, after deduction of the cost of acquisition of land and development, the exchequer earns an estimated revenue between Rs 250 to 300 billion per sector if the residential and commercial plots are sold to the general public through auction. It is mandatory under the CDA Ordinance and the applicable regulations to offer plots for sale to the general public through public auction. The enormous profit earned goes to the exchequer and is then spent on the welfare and well being of the general public. The four prime sectors, according to the Master Plan and the scheme of the CDA Ordinance, were required to be developed and sold through auction to the general public. The allocation of the aforementioned four prime sectors for the exclusive distribution amongst a few bureaucrats, judges and members of other specified groups for less than the market price has profound consequences for the actual stakeholders

i.e the people of Pakistan. It is estimated that it is likely to cause a loss of more than rupees one trillion to the exchequer. This loss to the exchequer is the personal enrichment and windfall gain of the few beneficiaries of the FGEHA. The general public will be forced to purchase plots from the beneficiaries of the FGEHA at market prices. The policy and the scheme of FGEHA, therefore, causes enormous loss to the exchequer and the people of Pakistan and is obviously in derogation of public interest. Moreover, the state has no commitment with the members of the FGEHA to provide a plot or to extend an opportunity of financial enrichment or of making windfall gains. When we asked the Secretary of Housing and Works and the Director General of the FGEHA to justify the enormous loss to the exchequer and the resultant personal enrichment of a few beneficiaries, they had no plausible explanation.

It is noted that, according to credible official sources and reports, the total debt and liabilities in September last year were Rs 50.5 trillion while the external debt was US $ 127 billion. The additional debt that is added per day is Rs 17 billion. The debt and liabilities per capita is Rs 227,000 per citizen. The percentage of population living below the poverty line is estimated to be 40 % which is about 90 million citizens. The population exposed to food insecurity is 38%. The percentage of stunted children under five is 38%. 32 % i.e 22.8 million children aged between 5 and 16

years are out of school. Health facilities are not available to a large section of the population. In such circumstances, can an enormous loss to the exchequer and the enrichment of a few powerful elite, through the execution of the Revised Policy, be justified or permitted constitutionally? We are afraid that the answer is an emphatic no. The Revised Policy and the scheme, as conceived from its inception, amounted to usurpation of the constitutionally guaranteed rights of the people, particularly those who are compelled to suffer the most because of bad governance and flawed policies of the state. The scheme and the Revised Policy is, therefore, in gross violation of the public interest and, thus, ultra vires the FGEHA Act and unconstitutional. The preamble of the Constitution promises each citizen that fundamental rights shall be guaranteed, including equal status, equal opportunity and equality before the law. It also promises social and economic justice. Article 3 commits that the State shall ensure elimination of exploitation and the gradual fulfillment of the fundamental principle, from each according to his/her ability to each according to work. Article 38 explicitly provides that the State shall secure the wellbeing of the people by preventing the concentration of wealth and distribution in the hands of a few. The assets made through exercising the power of forcible acquisition belong to the people and they cannot be deprived of their benefits through elite capture.

Elite Capture

The policy governing the scheme and the decisions of the Federal Cabinet appear to be in the nature of advancing **elite capture** and in disregard to the wellbeing and welfare of the people at large and their constitutionally guaranteed rights. The expression 'elite' has been defined in the literature of the World Bank as 'actors who have disproportionate influence in the development process as a result of their superior, social, political or economic status'. Likewise 'elite capture' has been defined as referring 'to a situation where elites shape development processes according to their own priorities and/or appropriate development resources for private gain". Exercising disproportionate control over policy decisions at the expense of the interests of the public at large is an essential attribute of the phenomenon of elite capture. The phenomenon deprives the people at large from equitable distribution of state assets and, consequently, a few elite enrich themselves at the expense of the welfare and wellbeing of the citizens. The scheme of FGEHA, its beneficiaries, the Revised Policy and the likely consequences of its execution have all the attributes of an elite capture. The other astonishing aspect of the Revised Policy is the approval given by the Federal Cabinet to evolve a system

similar to the Army/Defence model. There is no explanation regarding that model and how it is permissible in the light of the mandate of the Constitution. The manner in which the FGEHA Act is being enforced through the Revised Policy and the resultant scheme is a classic example of elite capture and is thus unconstitutional and illegal.

Conflict of Interest

The next question raised in one of the petitions is regarding **conflict of interest**. The Executive Board has approved the eligibility of its members and pursuant thereto they were also allotted plots in the scheme launched in sectors F-14 and F-15. The expression 'conflict of interest' has been defined in the Black's Law Dictionary, Eighth Edition as follows.-

> ***"Conflict of interest. 1.*** *A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.* ***2.*** *A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent. See Model Rules of Prof'1 Conduct 1.7(a). [Cases: Attorney and Client – 20.1.]"*

It would also be instructive to quote from the book 'Conflict of Interest in the Professions', edited by Michael Davis and Andrew Stark (New York: Oxford University Press, 2001). The relevant portions are as follows.-

> *"A conflict of interest is a situation in which some person P (whether an individual or corporate body) stands in a certain relation to one or more decisions. On the standard view, P has a conflict of interest if, and only if, (1) P is in a relationship with another requiring P to exercise judgment in the other's behalf and (2) P has a (special) interest tending to interfere with the proper exercise of judgment in that relationship. The crucial terms in the standard view are "relationship," "judgment," "Interest," and proper exercise."..... .....*"The relationship required must, however, be fiduciary; that is, it must involve one person trusting (or, at least, being entitled to trust) another to do something for her – exercise judgment in her service."*
>
> *"On the standard view, an interest is any influence, loyalty, concern, emotion, or other feature of a situation tending to make P's judgment (in that situation) less reliable than it would normally be, without tendering P incompetent."*

It is obvious from the definition of the expression 'conflict of interest' that the existence of actual pecuniary gain or pecuniary loss is not essential, nor actual proof in this regard would be required. It refers to a principle envisaging the prevention of a present or future or potential situation which may lead to extending a benefit to oneself or to another person. As has been explained above, the Revised Policy and the execution of the scheme offers enormous financial enrichment to the beneficiaries. This pecuniary interest disqualifies a person from becoming a beneficiary because of the existence of conflict of interest. Such a conflict of interest is obvious, particularly in the case of the members of the Executive Board because of their pivotal decision making power and status under the FGEHA Act. The Executive Board is also the appellate forum under the FGEHA Act. As will be discussed later, the issue of conflict of interest is not confined to the Executive Board.

Independence and impartiality of the judiciary; Has it been undermined?

The learned counsel for FGEHA, Mr Mohammad Akram Sheikh, Sr ASC, has laid great stress on the need for the Court to exercise restraint. He was of the opinion that by adjudicating the matter in hand, the Court was likely to scandalize the judiciary. We are afraid that this argument is

fallacious and misconceived.

The FGHEA is one of the major litigation parties before this Court and the District courts of the Islamabad Capital Territory. Its status as a litigation party before the august Supreme Court is also not denied. The nature of litigation by or against it is varied and, inter alia, involves disputes relating to the acquisition of land or grievances of registered members, contractors etc. It may be a coincidence that the Supreme Court, Islamabad High Court and the District Courts of Islamabad have been expressly included as one of the specified groups for the purposes of availing the benefits of a scheme under the FGEHA Act. But, as noted, the latter is one of the major litigation parties before these three categories of courts and it is likely to create a perception, though it may not be true, that inclusion of these three categories of courts as specified groups may not have been for bonafide reasons. Justice should not only be done but should manifestly appear to have been done. Like Federal Government servants or other employees, judges of the superior courts have no vested right to claim a plot in a scheme launched by the FGEHA because no such privilege or entitlement has been included in the Presidential Orders. The most grave violations of fundamental rights have been committed by public functionaries during land acquisition proceedings in the Islamabad Capital Territory. They have been highlighted by this Court in the judgment, dated 14-

06-2021, passed in Writ Petition No.244/2018 titled *"Noman Ahmad and 14 others v. Capital Development Authority, etc."*. The FGEHA is a major litigation party in land acquisition cases. The cases are dealt with by the aforementioned three categories of Courts. The pecuniary benefit and windfall gains of the beneficiaries of a scheme of the FGEHA and the loss caused to the exchequer has already been discussed. All these factors raise questions regarding conflict of interest for the judges and the courts when they accept becoming part of the exclusive club for enjoying the benefits of a scheme launched by the FGEHA. It has profound consequences in the context of the confidence of the people in the administration of justice and its impartiality.

The privileges and entitlements of judges of the Supreme Court and High Courts are described in the relevant Presidential Order. Like a civil servant or other Federal Government employee, a judge of the Supreme Court or High Court has no right nor entitlement to a plot costing less than its market value. The FGEHA Act does not entitle a judge of the Supreme Court or a High Court to become a beneficiary in a scheme unless the said constitutional bodies are declared and notified as one of the 'specified groups' by the Executive Board or the Federal Government.

A person holding the office of a judge, whether in the Supreme Court, High Court or even District courts, enjoys a very exalted status. The expectation of the people from them is much more than from any other office holder. They are not Federal Government employees nor employees of autonomous bodies. They cannot put themselves in a position of adversarial nature against the citizens. They hold an exalted office to serve the people. The FGEHA and the Federal Government, by including the three categories as specified groups, has relegated them to the status of members for claiming benefits as per the decisions of the Executive Board. They have been treated as registered members of Membership Drive-II. The registered members of Membership Drive-I are at loggerheads and litigating for their rights and, resultantly, judges have also become a party to the litigation. The extraordinary treatment extended to the Supreme Court, Islamabad High Court and the District Courts of Islamabad as specified groups in itself raises questions.

Article 10 of the Universal Declaration of Human Rights describes that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. The International Covenant on Civil Political Rights declares that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal. In order to maintain impartiality and independence, a judge

must not only be able but must also be seen to be acting without any restriction, influence, pressure, or interference, direct or indirect. Constitutional courts are guardians of the rights of the people. The confidence of the people in the independence and impartiality of the judges is of paramount importance. In the words of Lord Denning M.R, "Justice is rooted in confidence, and confidence is destroyed when right minded people go away thinking, the Judge was biased". Two most important principles are firmly embedded in our jurisprudence i.e no one can be a judge in his own cause and that justice should not only be done but should manifestly and undoubtedly appear to have been done. These principles are the cornerstones of impartiality and independence of the courts. It is even otherwise inappropriate for the executive organ of the State to lower the exalted status of the office of a judge by subjecting it to regulations of a housing scheme merely for its membership and the resultant benefits. Moreover, a judge or a Court cannot become part of any scheme that has profound consequences for the exchequer and is contrary to the public interest. It undermines the impartiality and independence of judges and the courts.

We are, therefore, of the opinion that in the light of the above discussion, participation of a Court or its judges in any scheme of the FGEHA or accepting its benefits are contrary to the public interest and not in conformity with

the impartiality and independence of the judiciary as an institution. The inclusion of the aforementioned courts and its judges by the FGEHA, and that too in the absence of a full court decision, was inappropriate and not in conformity with the constitutional status of these exalted courts. It was definitely not permissible under the Constitution for a judge or a court to be seen as usurping the fundamental rights of the people at large and become complacent to a policy formulated in breach of public interest.

E. Does judicial review of the Revised Policy amount to suo motu proceedings ?

7. Mr Mohammad Akram Sheikh, Sr ASC, has argued that by questioning the legality and constitutionality of the policies and the Revised Policy, we have transgressed our jurisdiction by acting suo motu. As already discussed, the sole question involved in the Intra Court Appeal and the petitions in hand was regarding the legality of the policy governing the scheme launched by the FGEHA in sectors F-14 and F-15. The Revised Policy implicitly acknowledged that the earlier policy was not in accordance with the dictates of public interest. The policy was challenged before us and, therefore, as a Constitutional Court we could not have turned a blind eye to the serious violations of constitutionally guaranteed rights of the public at large. The exercise of the power of judicial review was confined to examining the policy related to the proceedings before us. Moreover, as a Constitutional Court we are not barred from moulding the relief in appropriate cases.

We are sure that the learned counsel did not mean to suggest that, as a Constitutional Court, we ought to have turned a blind eye to gross violations of constitutional rights of the public at large and derogation of public interest when it had become obvious during the proceedings before us. The 40% population which lives below the poverty line does not have access to the courts. They suffer without recourse to a remedy. When their rights are involved in a matter before a constitutional court, it becomes the latter's duty to protect them.

F. Is the policy of the executive justiciable while exercising jurisdiction under the Constitution?

8. As noted above, the controversy is solely regarding the policy relating to the launching of a scheme under the FGEHA Act and, pursuant thereto, the distribution of plots amongst the registered members of the FGEHA. We have already discussed the policy in great detail and have concluded that, rather than serving the public interest, its execution will lead to grave violations of the fundamental rights of the public at large. It will enrich a few members of the powerful and privileged classes at the expense of enormous loss to the people and the exchequer. There is no cavil to the proposition that it is settled law that courts exercise restraint relating to policies of the executive except when it can be shown that fundamental rights have been violated. Policy making is definitely within the exclusive domain of the executive and interference in such domain is generally not the function of a Court. In the case titled *"Punjab Public Service Commission and another v.*

Mst. Aisha Nawaz and others" [2011 SCMR 1602] the august Supreme Court has held that the policy of the executive cannot be interfered with unless it is shown that such policy was violative of the fundamental rights. In the case titled *"Abdul Karim Nausherwani and another v. The State through Chief Ehtesab Commissioner"* [2015 SCMR 397] it has been observed and held as follows.-

> *"True that elected governments are required to follow the policy once formulated by it for the benefit of public at large but policy cannot be placed on high pedestal than a binding law more so, such policies are framed and formulated so that the public at large get the benefit of the same. If at any point of time the policy becomes neck breaker or absolute hurdle to manage the crises like situation where public at large is the victim of the policy in a newly emerged situation, then such government has a right and privilege to make a departure from the policy and even to suitably amend the same. "*

It is observed and held by the apex Court in the case titled *"OGRA through Secretary v. Messrs Midway II, CNG Station and others"* [2014 SCMR 220] that the courts exercise judicial restraint in matters of Government policy except where fundamental rights are violated. In the case titled *"Watan Party and another v. Federation of Pakistan and others"* [PLD 3012 SC 167] the apex Court has reiterated that a policy is not justiciable unless shown to be malafide or in violation of the fundamental rights guaranteed under the Constitution to the citizens of the country. In the case titled *"Government of Khyber Pakhtunkhwa through Secy. Agriculture and others v. Adnanullah"* [2017 PLC (CS) 307] the august Supreme Court has observed that the executive cannot

adopt a policy of cherry picking. In the case titled *"Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others"* [2012 SCMR 455] the august Supreme Court has observed and held that courts ordinarily exercise restraint from interfering with the policy making domain of the executive unless it smacks from arbitrariness, favouritism and in total disregard of the mandate of law. In the case titled *"Shahid Pervaiz v. Ejaz Ahmad and others"* [2017 SCMR 206] the apex Court has affirmed the earlier judgments wherein it was held that policy making is the domain of the executive and that the courts normally do not interfere in such matters but, when the policy is violative of the fundamental rights of individuals, the courts are obliged to examine such policy in judicial review. The judgments in the cases titled *"Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad and others"*[PLD 2015 SC 6], *"Dossani Travels Pvt. Ltd. and others v. Messrs Travels Shop (Pvt) Ltd and others"* [PLD 2014 SC 1], *"OGRA through Secretary v. Messrs Midway II, CNG Station and others"* [2014 PTD 243], *"OGRA through Secretary v. Messrs Midway II, CNG Station and others"* [2014 SCMR 220],*"Executive District Officer (Revenue), District Khushab at Jauharabad and others v. Ijaz Hussain and others"* [2011 SCMR 1864],*"Messrs Al-Raham Travels and Tours (Pvt.) Ltd. and others v. Ministry of Religious Affairs, Hajj, Zakat and Ushr through Secretary and others"* [2011 SCMR 1621], *"Suo Motu Case No. 10 of 2007"* [PLD 2008 SC 673] and *"Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others"* [PLD 2006 SC 697] were referred to. It is, therefore, obvious that a policy can be examined while

exercising judicial review and interfered with if it is found to be violative of fundamental rights or in derogation of public interest.

G. Conclusion;

9. The above discussion has made it obvious that the policies, particularly the Revised Policy and the nature of the scheme launched by the FGEHA, instead of serving the public interest, is violative of the constitutionally guaranteed rights of the public at large. The institutions and persons who are the intended beneficiaries, whether Federal Government employees or the judges, exist and hold offices solely to serve the actual stake holders i.e the people of Pakistan. They owe a fiduciary duty towards the people to serve them solely in their interest. Public office holders cannot create any interest in their own favour in derogation to the welfare and wellbeing of the people. Regrettably, the scheme discussed above and the Revised Policy governing it is contrary to the public interest and grossly in violation of the constitutionally guaranteed rights of the people at large. The attributes of elite capture and conflict of interest are obvious. The enrichment of a few powerful elite at the cost of enormous loss to the exchequer and the people of Pakistan is unimaginable in a society governed under the Constitution. The Prime Minister and his cabinet appear to have been kept in the dark regarding the profound consequences highlighted above. As elected and chosen representatives they are only empowered to frame and formulate policies in the best interest of the people at large and in the public interest, rather than providing opportunities to a few powerful

elite to make windfall gains in derogation to public interest. The scheme of the FGEHA, the Revised Policy and the consequences, if executed, are unconstitutional and bereft of jurisdiction. The executive authorities are not vested with jurisdiction to formulate or frame a policy that is contrary to public interest.

10. We, therefore, hold and declare as follows;

(i). The FGEHA nor the Federal Government is vested with power or jurisdiction under the FGEHA Act or the CDA Ordinance, as the case may be, to launch a scheme or frame a policy which is contrary to the public interest and violative of the constitutionally guaranteed rights of the people at large.

(ii). A scheme launched by the FGEHA, pursuant to a policy framed by the Federal Government, will withstand Constitutional scrutiny if it benefits the people at large rather than benefiting and enriching a few powerful classes.

(iii). The assets of the State acquired through the inherent intrusive power of eminent domain can only be used for the benefit of the people at large and in the public interest.

(iv). The Revised Policy and the scheme pursuant thereto, intended to be launched in sectors F-12, G-12, F-14 and F-15, are in derogation of public interest and violative of the constitutionally guaranteed rights of the people at large. Thus they are illegal, unconstitutional, void and without jurisdiction.

(v). The Secretary, Ministry of Housing and Works shall place this judgment before the Federal Cabinet i.e the worthy Prime Minister and its members within two weeks. They are expected to formulate and frame policies in future in the context of schemes launched under the FGEHA Act or the CDA Ordinance, as the case may be, having regard to the observations made herein.

(vi). The Federal Government is expected to formulate and frame policies for development of sectors F-12, G-12, F-14 and F-15 solely for the benefit of the general public and in public interest, rather than enriching a few elites at the expense of the exchequer.

(vii). This judgment shall not in any manner prejudice, interfere with or disturb the rights accrued in favour of property owners who were affected on account of the acquisition proceedings relating to sectors G-12, F-12, F-14 and F-15.

11. In the light of the above declarations, granting the prayers and writs sought in the Intra Court Appeal, petitions in hand as well as the petition of the respondents in the Intra Court Appeal, would be contrary to public interest, unconstitutional and violative of the rights of the public at large. Consequently, the Intra Court Appeal, petition filed by respondents arrayed therein and the petitions in hand are accordingly ***dismissed.***

(CHIEF JUSTICE)

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on **03-02-2022.**

(CHIEF JUSTICE)

JUDGE

Approved for reporting.

Luqman Khan/*

Annexure-A

Sr. No.	Case No. and title
1.	ICA No.527/2016 "Federal Government Employees Housing Foundation & another v. Ednan Syed and others"
2.	W.P. No.3573/2021 "Fazal Subhan & 46 others v. Federation of Pakistan and another"
3.	W.P. No.3427/2021 "Umar Farooq v. Federation of Pakistan and another"
4.	W.P. No.3428/2021 "Najeeb Ur Rehman v. Federation of Pakistan & another"
5.	W.P. No.3421/2021 "Naem Ullah Bhatti v. Federation of Pakistan and others"
6.	W.P. No.3222/2021 "Muhammad Abdul Basir v. Federation of Pakistan & another"
7.	W.P. No.3145/2021 "Shahid Anwar Khan v. Federation of Pakistan and another"
8.	W.P. No. 3237/2021 "Muhammad Tarik Saeed Hijazi and others v. Federation of Pakistan and another"
9.	W.P. No.3254/2021 "Mian Shabbir Anwer and another v. Federation of Pakistan and another"
10.	W.P. No.3893/2021 "Muhammad Aslam v. Executive Board and others"
11.	W.P. No.3647/2021 "Shair Bahadur Khan v. Federation of Pakistan and another"
12.	W.P. No.3756/2021 "Muhammad Siddique Sajid and another v. Federation of Pakistan and another"
13.	W.P. No.3422/2021 "Mst Razia Sultana Taher v. Federation of Pakistan and another"

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Annexure-B

Secret
Copy No.____

No.F.9(47)/2021/EVI
GOVERNMENT OF PAKISTAN
MINISTRY OF HOUSING & WORKS
<o>

SUMMARY FOR THE CABINET

Subject: ALLOTMENT AND QUOTA POLICY – FGEHA

In the case titled Asif Parvez, etc. Versus Land Acquisition Collector ICT, etc. W.P. No. 2949/2021, the Honorable Islamabad High Court directed "to seek instructions from the Federal Government i.e. the worthy Prime Minister and members of the Federal Cabinet regarding its policy and criterion pursuant whereof the State land is distributed amongst a few classes" (Annexure-I).

2. In compliance thereof, Allotment & Quota Policy of FGEHA was presented to the Federal Cabinet in its meeting held on 07-09-2021. Wherein the matter was referred to the Committee already constituted for consideration of the case titled "Directions of the Hon'able Islamabad High Court in Writ Petition No.244 of 2018 titled Noman Ahmed s/o Zulfiqar Ahmed and others Vs Capital Development Authority, Islamabad (Annexure-II).

3. In the light of decision of the Federal Cabinet, the Committee after thorough deliberations has given recommendations on Allotment Policy for approval of the Federal Cabinet (Annexure-III).

4. Approval of the Federal Cabinet is solicited to policy recommendations of the Committee on Allotment and Quota of FGEHA as per (Annexure-III).

5. The Minister for Housing and Works has seen and authorized submission of this Summary to the Federal Cabinet.

(DR. IMRAN ZEB KHAN)
Secretary

Islamabad, 29th October, 2021.

SECRET

Case No. 1060/36/2021 Dated: 02.11.2021	**Allotment and Quota Policy – FGEHA.**
Presented by: Housing and Works Division	

DECISION

The Cabinet considered the summary titled '**Allotment and Quota Policy – FGEHA**' dated 29th October, 2021, submitted by the Housing and Works Division, and approved the proposal contained in para 4 thereof including the way forward given in the annex mentioned in the said para with the stipulation that FGEHA Act 2020, section 12 and CDA Ordinance 1960, section 2(k) to be amended to exclude housing as a public purpose.

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CABINET DIVISION
CABINET DECISIONS
GOVERNMENT OF PAKISTAN

GOVERNMENT OF PAKISTAN
MINISTRY OF HOUSING & WORKS
<<>>

RECOMMENDATIONS OF THE COMMITTEE TO THE FEDERAL CABINET ON ALLOTMENT AND QUOTA POLICY OF FGEHA

MEMBERSHIP DRIVE 1

Membership Drive-I was launched in Aug-2009 on "**First Come First Serve**" basis with the approval of the then Prime Minister of Pakistan. Out of the 35,932 members who registered, 7,074 members were allocated plots in Green Enclave-I and Sky Garden. 28,858 were sent offer letters, out of which 11,182 members accepted offers and deposited down payments.

MEMBERSHIP DRIVE 2

2. Membership Drive-II was launched in Apr-2015 on "**Age-Wise Seniority**" basis with the approval of the then Prime Minister of Pakistan. Out of the 135,000 members who got registered, 8,363 members were allocated plots in F-14/15 and Park Road. 126,637 members, who have deposited membership fee, are waiting for allotments.

WAY FORWARD FOR REMAINING MEMBERS OF MEMBERSHIP DRIVE-I

3. To clear backlog/liability cases, FGEHA shall allocate plots to registered members who have deposited down payments of Membership Drive-I, in F-12 and G-12 according to approved percentage of Quota distribution of each Group/Category. 11182 members of Membership Drive-I deposited down payments and out of which 3300 (approx.) members shall be accommodated in G-12/F-12, whereas remaining 7982 members shall be accommodated through merit list already maintained in forthcoming schemes within 90 days, for which EOI has already been launched through Joint Venture (JV).

PROPOSED ALLOTMENT & QUOTA POLICY OF FGEHA

1) The Primary policy for allotment will be **Age-wise Seniority** instead of earlier principle of "First Come First Serve."
2) FG Retiree Quota will be 20% on Age-wise Seniority basis in lieu of the earlier principle of 10% Old Retiree (OR) & 10 % New Retiree (NR) quotas, on age wise seniority. In case of retirees only those retirees are considered who retired on normal superannuation/Medical Board/Completion of Qualifying mandatory service of 25 years.
3) FGEHA shall execute schemes under approved JV Policy, Land Sharing and Land Purchasing. No Land Acquisition under section-4 of LAA-1894 or any other law, will be exercised by FGEHA, other Govt departments, or Authorities for Housing Schemes

i. Cabinet may consider passing an Executive order restraining acquisition of land for housing schemes under Section 4 and other relevant sections

OR

i. FGEHA Act 2020, Section 12 and CDA Ordinance 1960 section 2 (k), be amended to exclude housing as a public purpose

ii. Article 24 (3) titled "Protection of Property Rights" of Constitution of Pakistan 1973 to be amended

4) Registration in Membership Drive is mandatory

- Member should be a regular appointee of the Federal Government servant and in the grade/ scale for which he/she has applied. Selection Grade/Move-Over/time scale/up-gradation not applicable. Contractual/Daily Wages/Work Charge/ Contingent employees are not eligible
- Category in which applied would be considered for allotment. Member can upgrade his/her category after depositing differential amount of Membership Fee on promotion to higher scale. Date of Membership/up gradation will be the Cut-off-date to determine the status of member.
- Confirmation of service particulars from the parent office/ department will be a pre-condition
- Recommendation by the authorized Medical Board in allotment against Disable quota
- If it is found that allotment has been secured by giving false information, the same will be cancelled and deposited amount may be forfeited by FGEHA

5) Member will not be eligible if there has been an earlier allotment of plot/ house in Islamabad by FGEHA/ CDA/PHAF, whereas Cooperative Housing Societies of Departments and Provincial Govt. schemes are not covered under this policy

CRITERIA FOR ALLOTMENT

i. All allotments of plots will be made through FGEHA as per laid down approved policy and criterion formulated by the Executive Board till the New Allotment Policy is approved

ii. No discretionary quota/power will be exercised regarding allotment of plot/apartment/grey structure

iii. Minimum 10 years service will be basic eligibility criteria for allotment

iv. Allotment of second plot to BS-22 Officers & Superior Judiciary to be discontinued under the PM Package as FGEHA Executive Board is empowered to devise eligibility criteria & approve the policy in the light of FGEHA Act-2020. However, Establishment Division would continue to forward nominations, on Age-wise seniority basis

v. Nominations of Supreme Court Judges/employees will be provided by Registrar SCP after approval and allotment shall be made as per approved laid down criteria of FGEHA, on Age-wise seniority basis

vi. Nominations of Islamabad High Court (IHC) Judges/employees and lower judiciary will be provided by Registrar IHC after approval and allotment shall be made as per approved laid down criteria of FGEHA, on Age-wise seniority basis

vii. Federal government employees serving, retired, widow/widower, disabled and other specified groups will obtain direct membership from FGEHA and will be considered as per Age-wise seniority basis

viii. All allotments to registered members of Autonomous, Constitutional bodies and other similar groups under Federal Govt. will be made through recommendations received from their respective departments, on Age-wise seniority basis

ix. The referring department will intimate any disciplinary proceeding against any individuals with directions of cancellation of plot/apartment to FGEHA, thereafter, action will be initiated accordingly

x. The member/allottee is ineligible against whom Disciplinary proceedings have been taken by the respective department. This action will be in accordance with the laid down procedure of Establishment Division

WAY FORWARD

4. Federal Cabinet may approve the policy as stated above and consider the way forward as below:

- Federal Cabinet may constitute committee comprising the representatives of the following ministries to devise a uniform/integrated policy of allotment throughout Pakistan for Federal Government Employees:
  - M/o Housing & Works
  - M/o Finance
  - Establishment Division
- The above committee may devise a policy as per Army/Defence model
- The Committee may recommend allotment of Plot/Apartment/Grey Structure to Fed. Govt. Employees as part of a well thought-out structured compensation package of remuneration & other benefits
- FGEHA shall continue to execute as per existing policy and criterion till the New Allotment Policy is approved in accordance with the recommendations of the above mentioned committee.

x-x-x-x-x-x-x-x-x