

**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**W.P. No. 263 of 2018**

Shoukat Jamshaid Tanoli, etc.

**Versus**

Federation of Pakistan through its Secretary M/o Housing and Works and two others.

**Petitioners By : M/S Khawaja Shahid Rasool & Asim  
Shahbaz Malik, Advocates.  
Ch. Imtiaz Ahmed, Advocate in CM  
No. 404/2018.**

**Respondents By : M/S. Shams Iqbal Khattak, Syeda  
Rida-e-Batool & Malik Najama Khan,  
Advocates.  
Syed Nazar Hussain Shah, Assistant  
Attorney General.**

**Date of Decision : 09.10.2019**

**AAMER FAROOQ, J. -** This judgment shall decide the instant petition as well as Civil Revision No. 21 of 2018 as common questions of law and facts are involved.

2. The petitioners, in both the petitions, are the resident and owners in possession of various apartments of Pakistan Housing Authority Scheme, G-11/4, Islamabad. They are aggrieved of the construction work being carried out by respondent No.2 for raising construction in the green and open areas.

3. Learned counsel for the petitioner, *inter alia*, contended that the apartments were purchased by the petitioners on the specific representation; that the scheme shall have open and green areas including above 80% open space. It was submitted that however, the respondents in violation of the same representation proposes to raise construction and has started excavation. Learned counsel for the petitioner in Civil Revision submitted that Courts below have erroneously held that since the green area is not in ownership of the petitioners they cannot challenge the construction.

4. Learned counsel for respondent No.2, *inter alia*, contended that the construction is being raised on the land owned by the respondent No.2, the petitioners have no locus standi to challenge the construction. During the course of arguments when it was confronted whether any permission has been sought from Capital Development Authority by respondent No.2 for raising construction and alternation of the layout plan, the learned counsel for Capital Development Authority very candidly submitted that the application for change in the layout plan was made and has been regretted vide letter dated 27.04.2018. Learned counsel for respondent No.2 submitted that approval of amendment in the layout plan was turned down because of pendency of the writ petition; that the said fact was controverted by the learned counsel for the Capital Development Authority.

5. During the course of proceedings an application (CM No. 404 of 2018) was filed seeking impleadment as a respondent. The said application was filed by the contractor, who is carrying out the work at site. Learned counsel for the applicant contended that the contractor is a sufferer inasmuch as due to the dispute between the residents of PHA, the work has been stopped and he is not being paid his dues without any justification or basis. It was submitted that the amount is in the sum of Rs. 12.4 million.

6. Arguments advanced by the learned counsel for the parties have been heard and documents placed on record examined with their able assistance.

7. Admittedly, the construction of the additional apartments was not part of the original layout plan and at present, there is no approval from Capital Development Authority regarding the construction rather the application for amendment has been turned down by the Capital Development Authority vide the aforementioned letter. In this view of the matter no construction can be raised in the open space by respondent No.2, however, it may avail its remedy against the refusal of amendment in the layout plan. In so far as, applicant in CM No. 404 of 2018 is concerned no relief or remedy can be granted to it, however,

in case of nonpayment by respondent No.2, the applicant may avail an appropriate remedy before the competent forum.

8. In view of the foregoing reasons, the instant petition as well as Civil Revision No. 21 of 2018 are allowed. Consequently, the respondents shall not raise construction in the park or open area in violation of the layout plan of the apartments situated at Sector G-11/4, Islamabad. It is expected that respondent No.2 shall revert the open space to its original position to avoid any accident as the Court was informed that deep excavation was made. In so far as, Civil Revision is concerned the orders passed by the Courts below are set aside and the application for interim relief is accepted.

**(AAMER FAROOQ)**  
**JUDGE**

Shakeel Afzal/.