

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.3272-2016

Maemona Azhar etc.

Vs.

Capital Development Authority through its Chairman etc.

Petitioners by : Ms. Natalya Kamal, Dr. G.M. Chaudhry, Raja Muhammad Shafait Abbasi, Awais Haider Malik, Mir Afzal Malik, Zohaib Hassan Gondal, Syed Kazim Raza Naqvi, Mr. Safraz Hussain, Mr. Rashid Hafeez, Mr. Shafiq-ur-Rehman Dab, Malik Huzaifa, Mr. Zia ul Haq, Mr. Khurram Ibrahim Baig, Advocates for petitioners in their respective writ petitions.

Respondents by : M/s Shaharyar Tariq, Ch. Haseeb Muhammad (L.A.), CDA, Muhammad Taimoor Khan, Mushtaq Ahmed Awan, Muhammad Akram Shaheen, Syed Ghulam Mustafa, G. Shabbir Akbar, Jam Mati Ullah Bobra, Uzma Aslam Mughal, Zafar Hussain Ahmed, Khurram Mehmood Qureshi, Faisal Bin Khurshid, Ch. Muhammad Asif Khan, Ch. Aziz ur Rehman Zia, Surriya Marriam Khaleeq, Amir Latif Gill, Wasim Abid, Husnain Haider Thaheem, Ms. Mahnoor, Sajida Khanum, Babar Saeed Butt, Sajid Mehmood Abbasi, Naveed Akhtar Joiya and Kalsoom Rafique, Ms. Hadiya Tayyaba, Syed Masood Hussain, Muhammad Anwar Dar, Samar Anwar Dar, Mian Haseeb Ali Bhatti, Usman Ahmad Ranjha, M. Naeem Siddique Bhatti, Muhammad Akhtar Awan, Ms. Mehwish Riffat, Faisal Nawaz Advocates for respondents.
Nisar Ali Shah, D.D. (BCS), CDA

Assisted by: Ms. Maheen Zeeshan (Law Clerk)

Date of hearing : 24.11.2023

AAMER FAROOQ C.J. Through this judgment, the petitions mentioned in Schedules-A and B, shall be decided as common questions of law and facts are involved.

2. The facts, in brief, are that the Petitioners in most of the petitions are running hostels/shared student accommodations in the residential areas of

Islamabad which are controlled and regulated by the Respondent Authority i.e. Capital Development Authority (CDA). In some of the petitions, the Petitioners are requesting for directions from this Court to the Respondent Authority to take action against owners/operators of such hostels/shared student accommodations in residential areas of Islamabad. In the other set of cases, the Respondent Authority has either served notices for discontinuation of the non-conforming use by the Petitioners, or has initiated action by imposition of penalties including imposing fine and even sealing of the premises. The Petitioners being aggrieved of the actions of CDA have challenged the notices issued, and have challenged the *vires* of Islamabad Residential Sectors Zoning (Building Controlled Regulations), 2005 (“the 2005 Regulations”) (as listed in Schedule-A) and the Islamabad Capital Territory Residential Sectors Zoning (Building Control) Regulations, 2020 (“the 2020 Regulations”) (as listed in Schedule-B).

3. The Petitioners submit that they are providing shared student accommodation/hostels facilities and as such the students are using these premises as places of residence as shared households. The Petitioners argue that they are not engaging in any commercial activity and are only using the premises for residential purposes. It has also been argued that their rights to life, liberty, freedom of trade and right to hold property are being violated and as such the rights guaranteed under Articles 18, 10A, 23, and 24 of the Constitution are being infringed. The Petitioners have also claimed that there is no specific prohibition in law against operating hostels in residential areas. They argue that “non-conforming use” has not been defined by the CDA Ordinance, 1960, while the term “building” as defined under section 2(d) of the Ordinance has been given too wide a definition which cannot be whittled down through Regulations. The Petitioners point out the difference between “commercial activity” and “commercial use”, and have argued that using a residential building as shared accommodation/hostel is different from using the same as a school, hospital, restaurant, office, etc. The Petitioners claim that using residential buildings as hostels does not change the residential character of the building and thus does not fall under the definition of “non-conforming use”. Furthermore, the Petitioners have challenged the 2005 Regulations as well as the 2020 Regulations for being *ultra vires* the Constitution,

specifically Articles 18, 23 and 24. They state that classification of use of premises can only be created by the legislature and that in this case there is no parent legislation permitting such classification. The Petitioners have also called into question the competence of CDA to create a prohibition through Regulations.

4. The Respondent Authority (CDA) submits that in all the connected petitions, the plots in question are in the nature of ‘Residential Houses’ and as such can only be used for residential purposes. The use of residential houses as shared accommodation/hostels is non-conforming use under the relevant Regulations and as such the Petitioners are liable to the penalty provided under law. The Respondent Authority has placed reliance on, *inter alia*, *Col.(R) Javed Agha and 31 others vs. Arshad Mahmud and 4 others*[2017 MLD 627 Islamabad], *Mrs. Shamshad Butt vs. Deputy Commissioner CDA, Islamabad and 3 others*[2023 CLC 304 Islamabad].

5. Arguments by all parties have been heard at length and record perused.

6. At this juncture, it is important to note that the petitions challenging the *vires* of the 2005 Regulations, as listed in Schedule-A, have become infructuous for two reasons; firstly, this Court has already decided the question of *vires* of the 2005 Regulations in its judgment in the case of *Col.(R) Javed Agha and 31 others vs. Arshad Mahmud and 4 others* dated 22.09.2016, reported as 2017 MLD 627 Islamabad, and, secondly, the 2005 Regulations stand repealed by virtue of clause 5.8(i) of the 2020 Regulations which reads as follows:

“5.8 REPEAL AND SAVINGS

Following Regulation is hereby repealed:

i. Islamabad Residential Sectors Zoning (Building Control) Regulation 2005 is hereby repealed”

7. In the petitions listed in Schedule-B, the Petitioners have challenged the actions taken under, and the *vires* of, the 2020 Regulations; and, have also questioned competence of CDA to classify use of property. Each of these challenges will be discussed in sequence.

8. Under section 49C of the CDA Ordinance, if any premises are being used in contravention of the Ordinance or Regulations, the Authority is empowered to require the user of such premises to desist from unauthorized use by an order in writing. If such order is not complied with, the Authority may, after providing an opportunity to be heard to such user, remove, demolish or alter the premises, or alternatively, may stop the use of the land and may use such force including police force as is necessary. The Authority is also entitled to recover the cost thereof from the person responsible for such use. The said provision is reproduced hereunder:

“49C. Removal of building, etc., erected or used in contravention of this Ordinance. -

(1)If any building, structure, work or land is erected, constructed or used in contravention of the provisions of this Ordinance or of any rule, regulation or order made thereunder, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, by order in writing, require the owner, occupier, user or person in control of such building, structure, work or land to remove, demolish or so alter the building, structure or work, or to desist from using or to so use the land, as to be in accordance with the said provisions.

(2)If an order under sub-section(1) in respect of any building, structure, work or land is not complied with within such time as maybe specified therein, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, after giving the person affected by the order an opportunity of being heard, remove, demolish or alter the building, structure or work, or stop the use of the land and, in so doing, may use such force including police force as may be necessary and may also recover the cost therefor from the person responsible for the erection, construction or use of the building, structure, work or land in contravention of the provisions as aforesaid.”

9. The 2020 Regulations provide a comprehensive mechanism to be followed by CDA while exercising its powers to regulate use of property, to determine any use to be non-conforming and to seal subject premises on basis of non-conforming use. Before discussing the procedure provided, it is worthwhile to note the relevant definitions under the 2020 Regulations. Clause 1.2 sub-clause (9) defines “Authority” as the Capital Development Authority as defined under the CDA Ordinance; sub-clause (10) defines “Authorized Use” as use of the building as authorized by the Authority except otherwise specifically prescribed or permitted; sub-clause (35) defines “Competent Authority” as Chairman CDA, concerned Member, or any other officer empowered by the Authority to approve plans and to control the building activity; sub-clause (52) defines “Family” as a group of persons related by blood or marriage, and if not so related, of not more than five persons living together and maintaining a common household; sub-clause (72) defines “House” as a building to be used for residential occupancy of one or more families as prescribed under these Regulations; sub-clause (92) defines “Non-

conforming Use” as the use of a plot or structure thereon not conforming to the purpose authorized or permitted under these regulations or the conditions of allotment; sub-clause (121) defines “Residential Building” as a building authorized for residential occupancy by one or more families but does not include hostels or lodging houses or guest houses; sub-clause (122) defines “Residential Plot” as a plot allotted exclusively for residential purpose; sub-clause (123) defines “Residential Use” as a building or part of it authorized for residential occupancy by one or more families; sub-clause (146) defines “Use” as the purpose for which a plot or building thereon is authorized or permitted under these regulations. Clause 2 of the Regulations provides for authorized uses of buildings and clause 2.17 specifically prohibits non-conforming uses. Clause 2.17.1 bans non-conforming use of any land or building or part of a building; clause 2.17.2 provides that any building or structure designed for an intended use which is not authorized under these regulations or conditions of allotment shall either be removed or converted into a building or structure designed for a use which is authorized under these regulations or conditions of allotment. Clause 2.17.3 provides fines to be imposed on first conviction of non-conforming use and, in case of re-occurrence, provides that the fine to be paid on second conviction will be twice the amount payable upon first conviction, and that the user/occupier shall be evicted and the Authority shall take control of the premises. Clause 2.17.4 provides that only the Director Building Control, CDA may impose the fines. Clause 2.17.5 provides that where non-conforming use exists, show cause notice of 07 days is to be issued by the Building Control Directorate, after which 15 day notice may be issued to cease non-conforming use. After expiry of the 15 days notice period then, Director Building Control, CDA, or any other officer so empowered, may issue an order to seal the premises and in pursuance of such order the premises shall be sealed by Director Enforcement CDA, or any person empowered by the Authority in this regard, in the presence of Magistrate, CDA. The relevant provisions are reproduced as follows:

“2.17 BAN ON NON-CONFORMING USES

2.17.1 No land or building or part of the building shall be put to a nonconforming use.

2.17.2 Any building or structure or part of the building designed or intended for a use, not authorized or permitted under these Regulations or conditions of allotment, shall either be removed or

converted into a building or structure designed or intended for a use authorized or permitted under these Regulations or conditions of allotment.

2.17.3 A non-conforming use of a residential building may render the owner and the occupant of the building liable, on first conviction to pay a fine mentioned below:—

Residential	Rs. 500,000/-
Class-III Shopping Centre & I&T Centre, F&V, Industrial building	Rs. 750,000/-
Marakiz	Rs.1,000,000/-
Blue Area	Rs.1,500,000/-
Mauve area, H-Series& all other types	Rs.1,000,000/-

and in the case of re-occurrence, on 2nd conviction to pay a fine double as mentioned above and the owner or as the case may be the occupant shall be liable to be evicted from the building summarily and the allotment / conveyance deed of the plot shall also be cancelled and possession of the building will be taken over by the Authority.

2.17.4 The penalty mentioned above in this regard shall be imposed by Director Building Control, CDA only.

2.17.5 With a view to maintain sanctity of Building Regulations, without prejudice to any proceedings pending under these regulations, premises, where non conforming use exists may be sealed by Director Enforcement CDA or any person empowered by the Authority in the presence of Magistrate, CDA. Sealing may be done after issuance of order for sealing of said premises by Director Building Control, CDA or any person empowered by the Authority and after expiry of notice of 15 days & show cause notice of 07 days, issued by Building Control Directorate.

Premises may be de-sealed by the order of the next higher authority i.e. Member (Planning & Design), CDA or any person empowered by the Authority on submission of fine / dues and application along with affidavit (from the owner) that, the said premises shall never be put in non-conforming use again. The case will be processed after confirmation of ownership / dues/ litigation from Directorate of Estate Management, CDA.”

10. In case titled *Mrs. Shamshad Butt vs. Deputy Commissioner CDA, Islamabad and 3 others* cited as [2023 CLC 304 Islamabad] this Court provided comprehensive guidelines regarding the procedure to be followed by the Authority in cases of non-conforming use. The relevant extract is reproduced hereunder:

“20.In view of the above discussion, this Court comes to an irresistible conclusion that the CDA authorities including the Deputy Commissioner and Officers of Building Control Section are to follow certain important guidelines for future purpose while dealing with the cases of non-conforming use in Islamabad Capital Territory, which are as under:

- i. The Building Control Inspector who visit the building / office / house, which was under non-conforming use has to submit a written report clearly stating therein the name, date, time when the building was visited as well as the reasons on the basis of which he reaches to the conclusion that building is under non-conforming use.
- ii. The report must contain the timeline of non-conforming use tentatively to assess the quantum of fine by the Deputy Commissioner, CDA till the removal of non-conforming use.
- iii. Any visiting card, sign board, pictures, video evidences, letter head correspondence, which could be made basis of opinion of non-conforming use of the building may also be made part of the report including but not limited to the statement of individual who are occupant in the building, if any.
- iv. The Deputy Commissioner CDA on the basis of such report may initiate the proceedings in terms of Section 49-C of CDA Ordinance, 1960 read with the relevant clauses of Islamabad Residential Sector Zoning (Building Control) Regulations-2005, shall issue notice to the occupant/allottee/owner accordingly.
- v. The Deputy Commissioner after issuing notice to the occupant at the first instance, if comes to conclusion that building is continuously under non-conforming use and he has given due opportunity of hearing to the occupant, who whether joins the proceedings or otherwise, may pass an interim order of sealing of the premises by all means without the final verdict.
- vi. In case, the occupant undertakes to remove subject non-conforming use within reasonable time, the Deputy Commissioner may on the undertaking give such opportunity for removal of the non-conforming use for a limited period, which could be verified after the specified time line. In case, the occupant has not removed the property from non conforming use, Deputy Commissioner may pass a final order of imposing penalty and sealing of the premises.
- vii. The Deputy Commissioner shall issue notice to the allottee along with the report of Building Control Inspector conveying him non-conforming use of the property.
- viii. The Deputy Commissioner shall ensure the proper service of notice to the occupant by way of Registered Post and also by Special Messenger and may even affix the notice upon the subject premises before taking the action.
- ix. The Deputy Commissioner shall take the report of Building Control Section, CDA and may put the same or confront to the occupant or the allottee for his input or rebuttal by way of affidavit and may also extend an opportunity to the occupant/landlord/allottee to rebut the same.
- x. The Estate Management Section of the CDA can only cancel the allotment or conveyance deed of such premises under non conforming use, if the Deputy Commissioner reaches to the conclusion that the owner is guilty/liable for non-conforming use under the law and even persistently using the building in a similar manner, despite passing of the order.
- xi. The Estate Management Section, CDA shall independently issue a notice to the allottee before cancellation of allotment on the basis of order of the Deputy Commissioner if no plausible explanation has been rendered by the allottee within prescribed time referred in the notice.
- xii. In terms of clause 2.17.5 of Islamabad Sector Zoning Building Regulation 2005, the building under non-conforming use may be sealed after expiry of 15 days of first notice issued by Building Control Directorate by Director Enforcement, CDA or any person empowered by the Authority in presence of Magistrate of CDA upon issuance of order for sealing of said premises by Director Building Control CDA.
- xiii. The Deputy Commissioner, CDA while imposing fine upon the occupant shall pass speaking order justifying his penal action against the occupant/allottee.”

In light of the above, it is abundantly clear that the Authority is required to follow the Regulations in letter and spirit before sealing any premises on the basis of non-conforming use and where the procedure and mechanism as provided in the Regulations has been properly followed, there can be no exception to the sealing of premises. From bare reading of the 2020 Regulations, it is clear that Residential Plots are authorized to be used for residential occupancy by one or more families. Renting out individual rooms to students on shared accommodation basis, as is being done in the instant cases, does not fulfill the criteria for residential use. It must also be noted that under the definition of “Residential Building” the use of the same as hostels or lodging houses or guest houses has been clearly and specifically excluded. This Court is, therefore, of the view that when the Authority has followed proper procedure, has issued the notices as mandated, the action of sealing of premises cannot be said to have been done *ultra vires*.

11. The next challenge to be considered is that of *vires* of the Regulations in reference to constitutional rights and provisions. It must be noted that Fundamental Rights, specifically under Articles 18, 10A, 23, and 24 of the Constitution, invoked by the Petitioners are not absolute and are subject to restrictions and limitations which may be imposed by law. CDA has been created and empowered under the CDA Ordinance as the regulator to, *inter alia*, regulate use of land and to make Regulations as necessary for such regulation of land. There has been no specific attack on CDA’s power to frame Regulations, however, in some of the connected petitions, it has been argued that CDA cannot determine or classify use of land to be non-conforming. In this regard, it must be noted that similar questions had arisen, and have been answered by this Court, in previously decided petitions *vide* consolidated judgement in case titled ***Col.(R) Javed Agha and 31 others vs. Arshad Mahmud and 4 others*** dated 22.09.2016, reported as **2017 MLD 627 Islamabad**. The main point of contention in these petitions was whether the use of residential properties as guest houses in residential areas of Islamabad was permissible, and whether the respondent (CDA) was legally competent to take action against violations of the relevant law and regulations on the basis of ‘non-conforming use’ of residential properties. The main questions arising in the said case were of *vires* of the provisions of the CDA Ordinance as well

as the 2005 Regulations framed there-under; and the competence of the Authority to classify and prohibit types of uses of residential properties. While answering the question of vires, this Court in its previous judgement analyzed the relevant precedents as follows:

“10. The petitioners have made a challenge to various provisions of the Ordinance which provide framework for exercising functions and powers by CDA and Rules and Regulations framed under the Ordinance. Since challenge has been made to the parent legislation i.e. Ordinance as well as the Regulations framed thereunder, therefore, it is worthwhile to discuss the law on the basis of which the vires of a legislative instrument can be examined. In this behalf the Hon'ble Supreme Court of Pakistan in case titled Lahore Development Authority through D.V. and others v. Imrana Tiwana and others (2015 SCMR 1739) laid down the principles to be applied and considered by the Court when striking down or declaring a legislative enactment as void or unconstitutional; the august Apex Court observed as follows:-

"Following are the principles which must be applied and considered by the court when striking down or declaring a legislative enactment as void or unconstitutional.

- (i) There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;*
- (ii) Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favoured validity;*
- (iii) A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;*
- (iv) Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;*
- (v) Court should not decide a larger Constitutional question than was necessary for the determination of the case;*
- (vi) Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;*
- (vii) Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality;*
- (viii) Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and*
- (ix) Mala fides should not be attributed to the Legislature.”*

While placing reliance upon the Supreme Court dicta in **Lahore Development Authority through D.V. and others v. Imrana Tiwana and others**[2015 SCMR 1739], this Court held the 2005 Regulations to be intra vires and not in conflict with any constitutional rights or provisions. The same principles shall be applied while answering the question of vires of the 2020 Regulations. It must also be noted that there is no material change in the provisions regarding non-conforming use under the 2020 Regulations.

12. The overall scheme of CDA Laws, including the Ordinance and the Regulations framed there-under, was discussed in detail by this Court in its previous judgement cited 2017 MLD 627(ibid) and the scheme and purpose of the said provisions was summarized as follows:

“12. The bare reading of the referred provisions shows that CDA was required to prepare a Master Plan and phased Master-Programme for the development of Capital Site as well as specified areas. In this behalf plan and programme so prepared were required to be approved by the Federal Government. The petitioners have vehemently argued that there is no Master Plan for Islamabad Capital Territory as no approval was accorded to the plan and programme by Federal Government. During the course of arguments learned counsel for the respondents and representative of the Cabinet Division appeared in person and placed on record Minutes of Meeting of the Cabinet held on 26.10.1960 for approval of the Master Plan and Master-Programme of Islamabad. The minutes placed on record are reproduced below and are as follows:

Copy No. SECRET MEETING OF THE CABINET HELD ON
WEDNESDAY, THE 26TH OCTOBER, 1960 AT 4:30 P.M. PRESENTThe
 President. The Minister for Health, Labour and Social Welfare. The Minister for Foreign
 Affairs and Commonwealth Relations. The Minister for Law. The Minister for Food and
 Agriculture, Rehabilitation and Works. States and F.R. and Finance. The Minister for
 Industries. The Minister for Railways and Communications. The Minister for Education. The
 Minister for Fuel, Power and Natural Resources. The Minister for Commerce. The Minister
 for National Reconstruction and Information, Kashmir Affairs and Minority Affairs. The
 Minister for the Interior. The Cabinet Secretary. The Deputy Secretary to the Cabinet. ----
BY SPECIAL INVITATIONThe Chairman, Capital Development Authority. ---- Case
 No.796/55/60 ---- Master Plan of Islamabad DECISIONCabinet approved the
 master plan and master programme of Islamabad. ----

13. The bare reading of the minutes shows that the Cabinet approved the Master Plan and Master-Programme of Islamabad, therefore, the Master Plan and phased Master-Programme duly approved by the Federal Government exists as required under section 11 of the Ordinance. Under sections 12 and 13 of the Ordinance, CDA in pursuance of the Master Plan and phased Master-Programme can develop a scheme or schemes through local bodies or agencies or itself pertaining to the matters provided in subsection (2) of section 12 ibid. Under clause-a of the referred subsection a scheme may relate to land use, zoning and land reservation. In order to develop the scheme and execute the same, a comprehensive procedure for land acquisition is provided under the Ordinance which for the present purposes is not relevant. Under section 46 of the Ordinance penalty for contravention of the provisions of the Ordinance, Rules or Regulations or scheme sanctioned is provided by way of punishment for a maximum period of six months or fine or both. In this behalf the trial is summary in nature and is to be conducted by a Magistrate and the cognizance of an offence punishable under the Ordinance can only be made on a complaint in writing by the CDA or any officer authorized by the CDA for the said purpose. In case any building, structure work or land is erected, constructed or used in contravention of the provisions of the Ordinance, Rules or Regulations made thereunder is prohibited under section 49(C), of the Ordinance and the Deputy Commission may order inter alia a person to desist from using the land in violation of the prohibition. Finally section 51 of the Ordinance empowers CDA to make Regulations with respect to matters which are necessary or expedient and the same are

to be published in the official gazette. Exercising powers under section 51 the CDA from time to time has framed Regulations and the ones relevant for the present purposes are the Islamabad Land Disposal Regulations, 2005 and Islamabad Residential Sectors Zoning (Building Controlled Regulations), 2005. In ILDR plots have been classified into different categories (Regulation 3) viz (i) Residential plots (ii) Commercial and Business Plots. (iii) Community Buildings and Facilities Plots. (iv) Administrative and Public Sector Plots. (v) Industrial Plots. (vi) Diplomatic Plots. (vii) Public Parks, Playing Fields, Graveyards and Incidental Open Spaces. (viii) Agro-Farming and Agro-Industry Plots. (ix) Plots in Model Villages and Sub-Urban Centers. Similarly, IRSZR were framed spelling out the various concepts regarding building use and definitions involved with respect thereto. In this behalf under Regulation 2.1.3 no land or building is to be put to a non-conforming use. Under Regulation 2.1.4 the nonconforming use of a building would render the owner and occupant of the building liable to penalty and eviction and even cancellation of the allotment of the plot. Under Regulation 2.1.5 CDA may change the land use provided the same is permissible under the layout plan and the functional plan. Regulation 2.17 restricts non-conforming use by way of imposition of penalty. The most relevant Regulation for the ease of convenience is reproduced below and is as follows:--

"2.17. Ban on non-conforming uses

2.17.1. No land or building shall be put to a non-conforming use.

2.17.2. Any building or structure designed or intended for a use not authorized or permitted under these Regulations or conditions of allotment, shall either be removed or converted into a building or structure designed or intended for a use authorized or permitted under these Regulations or conditions of allotment.

2.17.3. A non-conforming use of a residential building may render the owner and the occupant of the building liable, on first conviction to pay a fine of [Rs. 0.5 million] and in the case of failure to discontinue the non-conforming use within 15 days of the conviction, to an additional fine which may extend to [five thousand rupees (Rs.5000)] for every day during which he has persisted in the failure. After a persistent nonconforming use for a period of three months, the owner or as the case may be the occupant shall be liable to be evicted from the building summarily and the allotment /conveyance deed of the plot may also be cancelled.

2.17.4. The penalty mentioned above in this regard, shall be imposed by the Deputy Commission only."

14. The bare examination of the Regulations shows that no land or building is to be used for non-conforming and the violation of the same renders the occupant and the owner of the building liable to fine to the tune of Rs.500,000/- and in case of continuous violation 15 days of additional fine to the extent of Rs.5000/- every day and subsequently eviction and or cancellation of the allotment. By virtue of a recent amendment CDA also has the power to seal the premises. Under Regulation 4.1.23 CDA can by a general order or special order exempt any land or building from the operation of any one or all Regulation.

15. As can be discerned from the provisions of the Ordinance that CDA is a regulator i.e. its functions inter alia includes to regulate the affairs of the Capital City. The way it has been exercising its powers or functions is not exemplary and there are lapses on its part in performance of functions. The Ordinance is a legislative enactment prior to the present Constitution and under Article 268(6) of the Constitution all such enactments are to be interpreted in a way so as to adapt the same according to the provisions of the Constitution."

13. This Court also discussed at length the principle of constitutionality with reference to the CDA Ordinance, and competence of the Authority to make Regulations there-under as follows:

“17. In light of the recent judgements by the Hon'ble Peshawar High Court as well as august Apex Court it is evident that distinction is drawn between the executive functions and judicial/quasi judicial powers exercised by the same authority, however, the fact that within the administrative/executive regime judicial powers are being exercised does not violate the trichotomy of powers as enshrined in the Constitution. It was also argued that CDA does not have the authority to determine whether non-conforming use has in fact occurred. The petitioners placed reliance on the case titled *Muhammad Jamil Asghar v. Improvement Trust* (PLD 1965 SC 698). The Magistrate under section 46 of the Ordinance is empowered to impose fine or even order imprisonment. Under section 46 (D) the Magistrate is to try the offence in a summary way as provided in section 260, Cr.P.C. on a complaint to be filed in writing by the CDA. This clearly shows that the Magistrate under the Ordinance exercises judicial functions independent of CDA who is a complainant in the matter, therefore, acts independent of the authority. The trial is conducted in a summary way as provided in Criminal Procedure Code, 1898 wherein due regard to the principles of natural justice as well as fair trial is to be given.

18. The Ordinance provides that CDA can make Regulations where it is necessary and expedient and the same is to be published in the official gazette. The powers given under section 51 *ibid* to CDA is valid and when Regulations are made in compliance with the provisions of the Ordinance they are law. Reliance is placed on the case titled *M.D. Tahir Advocate v. Federal Government through Secretary Cabinet Division Islamabad and others* (1996 CLC 1987). The petitioners argued that by delegating legislative functions to an executive authority i.e. CDA vast unfettered powers of creating offence and imposing of penalties have been given to the executive which is not sustainable and is in violation of the Constitution. In case titled *Haji Ghulam Zamin and another v. A.B. Khondkar and others* (PLD 1965 Dacca 156) it was observed as follows:-

"37. It is also undeniable that legislation must also be adapted to the complex conditions involving a host of details with which the Legislature cannot deal directly. The Legislature, therefore, having formulated the norms of its main legislative policy, must, of necessity, leave the working of details, with which it cannot deal directly, to other agencies, in the proper fulfillment of its legislative duty, that is, to perform its essential law-making function. In this background, the Constitution has never been regarded as denying, to the Legislature the necessary resources of flexibility and feasibility in laying down policies and establishing standards, while leaving it to selected functionaries the making of incidental and auxiliary provisions, within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. Without such power of assignment the Legislature would face the anomaly of being called upon to exercise a legislative power, which, under various circumstances, would be but a futility. The Legislature is not allowed to become impotent, but the necessity and validity of such delegated legislation, and the wide range of administrative authority which has been developed thereby, cannot obscure the limitations of authority to delegate.

38. Delegation by the Legislature is permitted within prescribed limits in order to execute the legislative norms and provisions that have been enacted. Thus a restricted delegation in aid of the proper functioning of legislative power has not been regarded as unconstitutional. There are innumerable decisions to support the aforesaid proposition and before we discuss some of them, we would like to observe that the principles we have discussed above resolve themselves thus:

(1) Legislation being the exclusive function of the Legislature, it cannot abdicate such function.

(2) The Legislature, after having enunciated the essential legislative principles and standards, is, however, entitled to delegate to outside agencies such functions which are

essential to an effective exercise of the legislative power with which it has been endowed by the Constitution.

(3) The Legislature, however, cannot efface itself and delegate all its functions to an extraneous agency.

39. The justification for such a delegation is that the Legislature, being the exclusive machinery for legislation, cannot be allowed to be paralysed if and when an ancillary delegation becomes a physical necessity for its proper function. In the United States of America, under the Constitution itself the power is specifically provided, but in the context of our Constitution such a power is implied in the exclusive legislative function with which the Legislature is vested.

40. It is not, however, permissible for a Legislature to substitute in its place any other authority. It cannot ask anybody else to perform its function. There is a positive embargo upon self-effacement and a total abdication of legislative function."

19. The legislature under section 51 authorized CDA to make Regulations where it is necessary and expedient. CDA in exercise of powers framed Regulations from time to time and also framed Regulations mentioned above. As mentioned above, in the referred Regulations plots have been divided into different categories. The referred division or categorization of plots under the ILDR 2005 is in pursuance of section 12(2)(a) as well as 49(C) of the Ordinance which permits that a scheme or schemes to be developed by CDA can have zones and the land or building is to be used with respect to the referred zones or use provided either in the Ordinance or Rules or Regulations, in this behalf, hence it cannot be said that under section 51 *ibid* legislature has given vague or wide powers and/or CDA by framing 2005 Regulations have exceeded its authority or acted in violation of or contrary to the provisions of the Ordinance. The judgement relied upon by the learned counsel for the petitioners in support of their contentions with respect to the referred arguments are in consonance with the principles mentioned above. In past as well various attacks were made on the zoning Regulations/categorization by Capital Development Authority. In *Seeds High School through Project Director v. Government of Pakistan through Secretary of Ministry of Law and Justice, Islamabad and 2 others* (PLD 2004 Lahore 305) wherein CDA acted against establishment of School in a residential area and the same was assailed before the Hon'ble Lahore High Court in the referred case observed as follows:--

"2. The impugned act of the C.D.A. has also been challenged upon the touchstone of various fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973,

6. As regards the violation of fundamental rights, it submitted that the freedom of trade and profession is subject to its regulation under the law. Regarding discrimination, it is submitted that a perpetrator of an illegal act cannot claim protection on the ground that similar action has not been taken against other violators.

12. No case can be built by the petitioner on the basis of Article 18 of the Constitution of Islamic Republic of Pakistan, 1973. Article 18 is reproduced as under:--

Art. 18.--Freedom of trade business or profession.--Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent--

(a) the regulation of any trade or profession by licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial of other persons. "

The freedom of trade, business or profession is controlled by the said Article itself. The word lawful trade, business or profession is sufficient to qualify such right. A profession, trade or business can be hedged to the extent of a lawful prohibition imposed upon it by law whereafter such trade or business becomes unlawful.

13. The claim of the petitioner that the act of C.D.A. amounts to discrimination and is in violation of Articles 4 and 25 of the Constitution is also devoid of force. Article 4 guarantees every citizen the right to enjoy protection of law and to be treated in accordance with law. According to Article 4(2)(b), no person shall be prevented from or be hindered in doing that which is not prohibited by law. The law in this context does not refer to Statute Law only. According to Salmond, "the body of principles recognized and applied by the State in the administration of justice" would equally be recognized as law as contemplated by this Article. The Islamabad Capital Territory Zoning Regulations have the intent and force of law as indeed is possessed by the C.D.A. lay out plans and instruments such as the C.D.A. Master Plan under the C.D.A. Ordinance. The submission of the learned counsel for the petitioner that the Zoning Regulations are ultra vires of the C.D.A. Ordinance has not overly impressed this Court.

15. From the argument addressed on behalf of the respondents, it appears that the C.D.A. is serious in its efforts to curb/ eliminate non-conformist use of the particular Sectors and in this it is earnestly acting to attain the objective. That no action has yet been taken against some schools shall give no right to the petitioner to operate in a residential Sector if the same is otherwise prohibited."

20. Similarly this Court in case titled *Faisal Zafar Malik v. Ajmal Bukhari Deputy Commissioner CDA and 3 others* (PLD 2011 Islamabad 36) while examining Regulation 2.17.3 of IRSZR, 2005 upheld the same.

21. It is case of the petitioners that since there is no prohibition in any law on establishment and running of guest houses, therefore, the same can be done from any building. It has also been argued that by putting a restriction of carrying on the activity of running a guest house is not a restriction but amounts to prohibition and is also in violation of Articles 18, 23 and 24 of the Constitution. The Hon'ble Supreme Court of Pakistan in case titled *Arshad Mehmood and others v. Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others* (PLD 2005 Supreme Court 193) laid down the guidelines regarding the restrictions which are to be imposed and their scope and observed that the word reasonable restriction did not say that it would mean prohibition or prevention completely except under certain circumstances. Similarly the Hon'ble Supreme Court of Pakistan in case titled *Pakistan Muslim League (N) through Khawaja Muhammad Asif MNA and others v. Federation of Pakistan through Secretary Ministry of Interior and others* (PLD 2007 Supreme Court 642) observed as follows:

"28. The Fundamental Rights can neither be treated lightly nor interpreted in a casual or cursory manner but while "interpreting Fundamental rights guaranteed by the Constitution, a cardinal principle has always to be borne in mind that these guarantees to individuals are subject to the overriding necessity or interest of community. A balance has to be struck between these rights of individuals and the interests of the community. If in serving the interests of the community, an individual or number of individuals have to be put to some inconvenience and loss by placing restrictions on some of their rights guaranteed by the Constitution, the restrictions can never be considered to be unreasonable." (*Nasirabad Properties Ltd. v. Chittagong Development Authority* PLD 1966 Dacca 472).

22. Capital Development Authority by categorization of plots and restricting the land use according to the said categorization does not prohibit the petitioners from carrying on or establishing the guest houses rather, a restriction has been imposed whereby such a business/activity can only be carried out from commercial plots/land. Such a restriction does not

violate the fundamental rights of the petitioners as observed by the august Apex Court hereinabove; the fundamental rights do not have an overriding effect but balance has to be struck between the rights of an individual and interest of the community.

23. Similar interpretation was made in case titled *Pakcom Limited and others v. Federation of Pakistan and others* (PLD 2011 Supreme Court 44) wherein the Hon'ble Supreme Court of Pakistan observed as follows:--

"52. The interpretation of Article 18 has been made variously and the judicial consensus seems to be that the "right of freedom of trade, business or professions guaranteed by Art. 18 of the Constitution is not absolute, as it can be subjected to reasonable restrictions and regulations as may be prescribed by law. Such right is therefore not unfettered. The regulation of any trade or profession by a system of licensing empowers the Legislature as well as the authorities concerned to impose restrictions on the exercise of the right. They must, however be reasonable and bear true relation to 'trade' or profession and for purposes of promoting general welfare. Even in those countries where the right to enter upon a trade or profession is not expressly subjected to conditions similar to this Article, it was eventually found that the State has, in the exercise of its police power, the authority to subject the right to a system of licensing, i.e., to permit a citizen to carry on the trade or profession only if he satisfies the terms and conditions imposed by the prescribed authority for the purposes of protecting and promoting general welfare" (PLD 1989 Kar. 219, *Govt. of Pakistan v. Akhlaque Hussain* PLD 1965 SC 527)."

24. Similarly in case titled *Higher Education Commission through Project Manager v. Sajid Anwar and others* (2012 SCMR 186) the Hon'ble Supreme Court of Pakistan observed that fundamental rights are subject to law and reasonable restriction imposed by law. In case titled *Pakistan Broadcasters Association and 10 others v. Pakistan Electronic Media Regulatory Authority through Chairman and another* (PLD 2014 Sindh 630). The Division Bench of Hon'ble Sindh High Court observed that provisions of Article 18 of the Constitution provides that the right of a citizen and freedom of trade business or profession has been organized as a fundamental right of every citizen which can be enforced by law, however, such right is not absolute and is subject to such qualifications as prescribed by law. In case titled *Muhammad Iqbal Qureshi and others v. Mayor, Hyderabad Municipal Corporation, Hyderabad and another* (1992 SCMR 857) the august Apex Court observed that right to acquire land and dispose of property under Article 23 of the Constitution is subject to reasonable restriction. In case titled *D.G. Khan Cement Company Ltd. through Chief Financial Officer v. Federation of Pakistan through Secretary Ministry of Law and 3 others* (PLD 2013 Lahore 693) the Hon'ble Lahore High Court observed as follows:--

"17. Fundamental rights and their protection is essential to a modern democracy. "Take human rights out of democracy, and democracy has lost its soul. Human rights are the crown jewels of democracy. A democracy without human rights is like an empty vessel" However, even in a democracy fundamental rights have limitations, this is because "in a democratic society, a human right may be limited to ensure the very existence of the state; to ensure its continued existence as a democracy; to ensure public health; to ensure public education; as well as several other national causes. These are the purposes for which a democratic society may limit the rights of its members ... This demonstrates the special nature of democracy, which is based on the idea that the state protects the rights of the individual, and the individual protects the State - its safety and peaceful existence."

18. In the context of this case, constitutional limitations are embedded in Articles 23 and 24 of the Constitution. The right to acquire, hold and dispose of property under Article 23 of the Constitution is subject to "reasonable restrictions". While the right to property

under Article 24 states that no person shall be deprived of his property save in accordance with law. It is essential to understand the meaning and scope of "law" and "reasonable restrictions" under the Constitution.

19. "Laws could restrict human rights, but only in order to make conflicting rights compatible or to protect the rights of other persons or important community interests. Any restriction of human rights not only needs a constitutionally valid reason but also to be proportional to the rank and importance of the right at stake" "Reasonable restriction" or any sub-constitutional limitation ('law') on a constitutional fundamental right must also flow from the Constitution to protect lawful rights and interests of the others or the society at large. The "law" or "reasonable restrictions" in pith and substance must promote and advance fundamental rights of the community at large in order to qualify as a limitation to override the fundamental rights guaranteed to an individual under the Constitution. The "law" or the "reasonable restrictions" must be fashioned to uphold the constitutional themes of democracy, freedom, equality, tolerance, social justice and advance the principles of policy under the Constitution. The roots of sub-constitutional limitation ("law" or "reasonable restrictions") must be grounded in the Constitution itself only then can they possess the constitutional character and strength to take away the fundamental rights of an individual."

25. Insofar as the levy of penalty or fine through Regulations is concerned, the same was dealt with in detail by the Hon'ble Supreme Court of Pakistan through Pakistan Telecommunication Authority (PTA) Islamabad through Chairman v. Pakistan Telecommunication Company Limited, Headquarters, G-8 Markaz, Islamabad (2016 SCMR 69) wherein the august Apex Court observed as follows:--

"22. Perhaps the Regulation 18(2) of the Regulations of 2005 may not be happily worded and could have been constructed with a greater care and accuracy. It is an ancient and consistently applied principle of Interpretation of Statutes that where "object and intention of statute is clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance" (The Interpretation of Statutes 7th Edition by Sir Peter Mexwer).

23. Even otherwise, it is a settled law that the Courts should always lean in favour of validity of a Statutory Instrument and should be slow to strike it down and an interpretation, which saves the law, should be adopted rather than holding a law to be invalid, unconstitutional or ultra vires. Reference, in this behalf may be made to the judgments reported as (1) Mehreen Zaibun Nisa and others v. Land Commissioner, Multan and others (PLD 1975 SC 397), (2) Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423), (3) Messrs Elahi Cotton Mills Ltd and others v. Federation of Pakistan through Secretary, M/o Finance, Islamabad and 6 others (PLD 1997 SC 582), (4) Federation of Pakistan through Secretary, Ministry of Finance and others v. Haji Muhammad Sadiq and others (PLD 2007 SC 133), (5) Syed Aizad Hussain and others v. Motor Registration Authority and others (PLD 2010 SC 983), and (6) Dr. Tariq Nawaz and another v. Government of Pakistan through the Secretary, Ministry of Health, Government of Pakistan, Islamabad and another (2000 SCMR 1956).

24. A perusal of Section 23 of the Act of 1996 reveals that it deals with contravention of any provision of the Act of 1996 or the Rules framed there-under for any term or condition of a License and in terms of Section 23(3)(c)(i) of the Act of 1996, a fine may be imposed in this behalf to a maximum of Rs.350 million. Regulation 18(2) of the Regulations of 2005 deals only with one of such contravention i.e. Regulation 18(1) of the Regulations of 2005 for which a penalty/fine @ 10% per annum is provided. Obviously, the quantum of fine, if imposed, would be subject to a maximum limit mentioned in Section 23 of the Act of 1996. In the instant case, the fine sought to be imposed is less than the amount mentioned in section 23(3)(c)(i) of the Act of 1996. In view of the above, it is difficult to hold that Regulation 18(2) of Regulations, 2005 is ultra vires the

parent statute i.e. the Act of 1996 and the findings to the contrary by way of the impugned judgment are not sustainable."

26. In light of the above judgment of the Hon'ble Supreme Court of Pakistan it is clear that fine or penalty can be imposed through Rules or Regulations if it remains within the object and scope of the parent statute. The Ordinance provides for levy of penalty and punishment of imprisonment under section 46 *ibid* and Regulation 2.17 prescribes precise amount of fine that can be imposed for non-conforming use, therefore, the same is within the ambit and scope of the Ordinance.

27. It was also argued on behalf of the petitioners that under Regulation 2.17 of IRSZR a house, apartment or flat in a residential building may be used by its resident professional such as a Lawyer, Doctor and Engineer etc. for Home occupation with prior permission of CDA provided that over all residential character of the building does not change and not more than 25% of covered area is used for professional work. Through the referred Regulation CDA has made reasonable classification by providing a category whereby professionals with permission of CDA can use their properties for professional work provided the area used for such work is not more than 25% of the covered area and there is no complaint by neighbours of nuisance, hence the Regulation in question is not discriminatory in any way or is in violation of the parent statute.

28. The key question that calls for adjudication in the instant case is whether use of a residential property for establishment and running of a guest house is in violation of the zoning Regulations inasmuch as whether the same amounts to a commercial activity. IRSZR, 2005 as well as ILDR, 2005 categorize/classify plots into different categories. The relevant classifications for the purposes of the instant cases are into residential and commercial and business. In this behalf in Regulation 3(2) of ILDR running of guest houses has been classified as a commercial and business activity and residential plots have been defined as plots meant only for houses. The word house is defined in Regulation 2(l)(k) as a separate dwelling for human habitation for a family. Similarly, the restriction on any use of residential building which is non-conforming renders the owner and occupant to fine under Regulation 2.17.3 of IRSZR, 2005. In this behalf nonconforming use is defined in Regulation 1.2.92 as use of a plot or structure thereon not conforming to the purpose authorized or permitted under the Regulation or the condition of allotment. Similarly, residential building is defined in Regulation 1.2.121 as a building authorized for residential occupancy by one or more families but does not include hotel or lodging house. Finally a house is defined in Regulation 1.2.72 of IRSZR as a building to be used for residential occupancy of one or more families as prescribed under the Regulations. The bare perusal of Regulation 2.17.3 and the definitions of residential building, house and non-conforming use shows that residential use of a property is meant for habitation by a family or families. Similarly Regulation 3 classifies guest houses as commercial activities and takes it beyond the scope of residential house. The Division Bench of Hon'ble Peshawar High Court in case titled Muhammad Sayyad Din v. Director General Peshawar Development Authority and 2 others (2015 CLC 84) while dealing with the matter under similar facts and circumstances wherein Peshawar Development Authority had initiated action against guest houses observed that use of residential property for a guest house is a commercial activity and further observed that they cannot be allowed to carry on commercial activities from the said building. The learned counsel for the petitioners during the course of arguments submitted that renting out a residential building for a specified term is permissible and is not in violation of zoning Regulations. Likewise establishing a guest house and taking guest for a short period of time should be allowed and does not amount to a commercial activity. Admittedly, the guest houses have been given commercial meters for electricity and when guests are accepted for consideration the use does not fall within the definition of residential use as provided in IRSZR, hence the use does not remain residential whereas where the property is let out for residence its use as residential building or a house within the meaning of the concepts as provided in the definition clause of Regulations remain intact. In view of above though the establishing and running of guest houses is not Prohibited

Under the law, however, the petitioners are to abide by the zoning Regulations and land use in accordance with the Regulations of 2005 as well as the Ordinance: Any use which does not conform with the classifications made by CDA or as prescribed under the Regulations would tantamount to a non-conforming use within the meaning of the concept as provided in 2005 Regulations and would render the owner and occupant liable for action under the law. In view of above findings there is no justification or basis for striking down any provision of the Ordinance, the Islamabad Land Disposal Regulation, 2005 or the Islamabad Residential Sector (Building Control) Zoning Regulations, 2005.”

14. In light of the above discussion, it is clear that the Respondent Authority was formed under the CDA Ordinance for the purpose of regulating the use of land and development in the Capital Territory. The legislative intent in this regard is clear and leaves no room for doubt that it is the purview of the Authority, as the prescribed regulator, to regulate the use of land and to make rules and regulations as required for such regulation. The powers conferred upon the Authority by the legislature in the CDA Ordinance are justified by the purpose for which they have been conferred, and thus there is no question of competence of CDA or of vires of Regulations where the Authority has exercised its powers in accordance with law and has only done so in furtherance of its mandate as the prescribed regulator.

15. With regards to the petitions challenging notices issued by the Respondent Authority pertaining to non-conforming use, it must be noted that notices issued in pursuance of proper procedure while complying with all requirements as prescribed by law as discussed hereinabove cannot be challenged by invoking constitutional jurisdiction of the High Courts under Article 199 of the Constitution for the reason that issuance of such notices has been mandated by law for the purpose of providing sufficient opportunity to the recipient of such notice to either cease the non-conforming use or state his/her case before the Authority. If the mandated procedure is followed in letter and spirit by the Authority, the accused person has ample opportunity to state their case and defend their stance in those very proceedings. In case cited 2023 CLC 304 Islamabad (ibid), this Court, has explained in detail the procedure to be followed by the Authority in cases of non-conforming use before issuing notices in the following manner:

“11. Learned counsel for CDA contends that the petitioner herself acknowledges in the lease agreement that building in question was leased out to the National Rural Support Programme (NRSP) which itself is a commercial entity and using the said building for commercial purposes,

that might be true but as far as lease agreement is concerned, there is not a single acknowledgment by the petitioner that she extended permission to use the building for commercial purposes or for establishing an office, nor it could be demonstrated through any other document of National Rural Support Programme (NRSP), that subject premises is the office, though the notices appended in this case refer that occupants have opened / established an office in residential premises. In such scenario this court is of the view that before taking such action under the law, the Inspector of Building Control Section, CDA shall bring on record the following measures:-

- i. The Building Control Section through notified Inspector shall visit the premises and collect any incriminating material, i.e. office card, letter head, any correspondence in which the building address has been used for commercial purposes.*
- ii. The Building Inspector may prepare a concise report of visit / inspection of the residential building and record those particulars through which it could be prima facie established that building has been used for non-Conforming use.*
- iii. The Building Inspector may take photographs or a video evidence to establish the non-conforming use or may record any statement of the official / occupant of the building qua its usage.*

If the above referred evidence are not available as a minimum standard to take action for non-Conforming use before the Deputy Commissioner CDA, then there is no need to issue notice to the other side in terms of section 49-C of CDA Ordinance 1960. The plain language of said provision of law casts duty upon the Deputy Commissioner, to satisfy himself before issuance of notice that minimum requirements have been demonstrated by the Building Control Section CDA, which is not the case in hand to the extent of petitioner, therefore, the only evidence which is available on record is the lease agreement of petitioner, which has not been filed by the respondents / CDA, hence, the primary onus to prove the commercial use of building / house as per the lease agreement has been shifted upon the respondents / CDA as per Article-122 of Qanun-e-Shahadat Order, 1984, which has not been discharged before passing of the impugned orders.”

It therefore follows that, notices issued in compliance with said procedure cannot be challenged in writ jurisdiction as there is no adverse action being taken or order being issued whereby the questions of *vires* and infringement of rights may arise, instead it is merely a procedural requirement to provide time and an opportunity of being heard. The Petitioners should have responded to the notices of non-conforming use and should have stated their case before the Authority instead of skipping the prescribed procedure and directly invoking the constitutional jurisdiction of the High Court. It is therefore re-iterated that notices issued in compliance with prescribed procedure are *intra vires* and thus cannot be challenged through writ petitions.

16. The crux of the preceding discussion is that the 2020 Regulations are *parimateria* to the 2005 Regulations, the *vires* of which has already been deliberated upon and decided therefore no fresh discussion is warranted. Even

otherwise, on the touchstone of the *Tiwana* (ibid) principles, the 2020 Regulations do not flout any constitutional provisions in so far as the use and enjoyment of property is to be regulated by law and the subject enactments, i.e. CDA Ordinance and Regulations framed there-under, are law.

17. In light of the above discussion, this Court is of the view that firstly, the 2020 Regulations are *intra vires* the Constitution and do not infringe fundamental rights; secondly where the Authority has followed the prescribed procedure in letter and spirit, the action of sealing premises cannot be challenged on grounds of *vires*; and, thirdly, the Authority is well within its powers while determining a certain use of a premises to be non-conforming under the Regulations.

18. In view of foregoing, writ petitions mentioned in Schedule-A & B are dismissed.

(CHIEF JUSTICE)

Announced in Open Court on 17th day of May, 2024.

(CHIEF JUSTICE)

Approved for reporting

Schedule A

Serial No.	CASE NO./YEAR	TITLE
1.	W.P. No.1562-2020	Dr. Muhammad Shakeel Anjum versus Capital Development Authority, etc..
2.	W.P. No.644-2017	Amir Imtiaz versus Capital Development Authority, etc.
3.	W.P. No.3549-2016	Shais Khan etc. versus Capital Development Authority, etc.
4.	W.P. No.3732-2016	Shoaib Ayaz etc. Versus Capital Development Authority, etc.
5.	W.P. No.683-2017	Arslan Ismail Versus Capital Development Authority, etc.
6.	W.P. No.4339-2016	Uzma Batool etc. Versus Capital Development Authority, etc.
7.	W.P. No.4509-2016	Mst. Jameela Khatoon. Versus Capital Development Authority, etc.
8.	W.P. No.4626-2016	Khadim Hussain Versus Capital Development Authority, etc.
9.	W.P. No.4644-2016	Shoaib Nazir versus Capital Development Authority, etc.
10.	W.P. No.265-2017	Farah Iftikhar etc. versus Capital Development Authority, etc.
11.	W.P. No.2898-2017	Amir Imtiaz Versus Capital Development Authority, etc.
12.	W.P. No.3314-2017	Amir Imtiaz Versus Capital Development Authority, etc.
13.	W.P. No.3690-2017	Muhammad Bin Nazir Versis Capital Development Authority, etc.
14.	W.P. No.3810-2017	Mazhar Iqbal & Another Versis Capital Development Authority, etc.
15.	W.P. No.3816-2016	Sudheer Ahmed etc. Versus Capital Development Authority, etc.
16.	W.P. No.1581-2019	Muhammad Usman Abbassi Versus Capital Development Authority, etc.
17.	W.P. No.1604-2019	Aamer Imtiaz Versus Capital Development Authority, etc.
18.	W.P. No.3664-2019	Aamer Imtiaz Versus Capital Development Authority, etc.

W.P. No.3272-2016 etc.

19.	W.P. No.3665-2019	Aamer Imtiaz Versus Capital Development Authority, etc.
20.	W.P.No.3729-2019	Aziz Khan Versus Capital Development Authority, etc.
21.	W.P. No.3415/2022	Adeel Naseer Versus Capital Development Authority, etc.
22.	W.P. No.3417/2022	Mushtaq Ahmad Versus Capital Development Authority, etc.
23.	W.P. No.3418/2022	Adil Naseer Versus Capital Development Authority, etc.
24.	W.P. No.1828/2022	Atif Imtiaz Versus Capital Development Authority, etc.
25.	W.P. No.842/2022	Atif Imtiaz Versus Capital Development Authority, etc.
26.	W.P. No.554/2022	Adeel Naseer Versus Capital Development Authority, etc.
27.	W.P. No.4472/2021	Adeel Naseer Versus Capital Development Authority, etc.
28.	W.P. No.4459/2021	Muhammad Raza Versus Capital Development Authority, etc.
29.	W.P. No.4338/2021	Abid Hussain Versus Capital Development Authority, etc.
30.	W.P. No.4280/2021	Atif Imtiaz Versus Capital Development Authority, etc.
31.	W.P. No.4234/2021	Muhammad Yawar Ali Versus Capital Development Authority, etc.
32.	W.P. No.1772/2023	Umar Awan Versus Capital Development Authority, etc.
33.	W.P. No.1773/2023	Akhtar Zaman Versus Capital Development Authority, etc.
34.	W.P. No.662/2023	Naveed Aslam Versus Capital Development Authority, etc.
35.	W.P. No.386/2023	Tasneem Zahra Versus Capital Development Authority, etc.
36.	W.P. No.4298/2022	Muhammad Bilal Versus Capital Development Authority, etc.
37.	W.P. No.3494/2022	Mst. Urooj Ali Versus Capital Development Authority, etc.
38.	W.P. No.786/2023	Atif Imtiaz Versus Capital Development Authority, etc.

W.P. No.3272-2016 etc.

39.	W.P. No.777/2023	Muhammad Abdullah Versus Capital Development Authority, etc.
40.	W.P. No.666/2023	Abdul Basit Raza Versus Capital Development Authority, etc.
41.	W.P. No.459/2023	Abdul Aziz, etc. Versus Capital Development Authority, etc.
42.	W.P. No.2375/2023	Tahir Muhmood Versus The Deputy Commissioner, CDA, etc.
43.	W.P. No.2780/2023	Bashir Ahmed Versus The Deputy Commissioner, CDA, etc.
44.	W.P.No.2402/2023	Atif Imtiaz Versus Capital Development Authority, etc.
45.	W.P.No.3480/2023	Bilal Imtiaz Versus Capital Development Authority, etc.
46.	W.P.No.3157/2023	Owais Ahmed Qureshi Versus Capital Development Authority, etc.
47.	W.P.No.2879/2023	Atif Imtiaz Versus Capital Development Authority, etc.
48.	W.P.No.2875/2023	Habib Ullah Versus Capital Development Authority, etc.
49.	W.P.No.2732/2021	Saad Zia Abbasi Versus Capital Development Authority, etc.
50.	W.P.No.710/2021	Abdul Aziz Versus Capital Development Authority, etc.
51.	W.P.No.119/2021	Muhammad Altaf Versus Capital Development Authority, etc.
52.	W.P.No.112/2021	Muhammad Altaf Versus Capital Development Authority, etc.
53.	W.P.No.4070/2020	Yasir Mahmood Versus Capital Development Authority, etc.
54.	W.P.No.4071/2020	Mohsin Abbas Versus Capital Development Authority, etc.
55.	W.P.No.4072/2020	Muhammad Abdullah Versus Capital Development Authority, etc.
56.	W.P.No.2748/2020	Abdul Majid Versus Capital Development Authority, etc.
57.	W.P.No.2708/2020	Owais Ahmed Qureshi Versus Capital Development Authority, etc.
58.	W.P.No.2219/2020	Muhammad Altaf Versus Capital Development Authority, etc.
59.	W.P.No.3986/2021	Shahid Pervaiz Khan Versus

W.P. No.3272-2016 etc.

		Capital Development Authority, etc.
60.	W.P.No.3967/2021	Awais Ahmad Qureshi Versus Capital Development Authority, etc.
61.	W.P.No.3852/2021	Akif Bashir Versus Capital Development Authority, etc.
62.	W.P.No.3630/2021	Yasir Mehmood Versus Capital Development Authority, etc.
63.	W.P.No.3498/2021	Kreative Kinder Haus Versus Capital Development Authority, etc.
64.	W.P.No.3149/2021	Abid Hussain Versus Capital Development Authority, etc.
65.	W.P.No.3062/2021	Awais Ehsan Versus Capital Development Authority, etc.
66.	W.P.No.3097/2021	Abid Hussain Versus Capital Development Authority, etc.
67.	W.P.No.2469/2021	Atif Imtiaz Versus Capital Development Authority, etc.
68.	W.P.No.2205/2021	Muhammad Altaf Versus Capital Development Authority, etc.
69.	W.P.No.1985/2021	Atif Imtiaz Versus Capital Development Authority, etc.
70.	W.P.No.1767/2021	Saad Zia Abbasi Versus Capital Development Authority, etc.
71.	W.P.No.1700/2021	Aamer Imtaiz, etc. Versus Capital Development Authority, etc.
72.	W.P.No.1646/2021	Aamer Imtaiz Versus Capital Development Authority, etc.
73.	W.P.No.1594/2021	Awais Ahmed Qureshi Versus Capital Development Authority, etc.
74.	W.P.No.1565/2021	Aamer Imtaiz Versus Capital Development Authority, etc.
75.	W.P.No.1275/2021	Aamer Imtaiz Versus Capital Development Authority, etc.
76.	W.P.No.864/2021	Sarmad Iftikhar Versus Capital Development Authority, etc.

Schedule B

Serial No.	CASE NO./YEAR	TITLE
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W.P. No.3272-2016 etc.

1.	W.P. No.3470-2023	Sarmad Iftikhar versus Capital Development Authority, etc.
2.	W.P.No.3365/2023	Sarmad Iftikhar Versus Capital Development Authority, etc.
3.	W.P.No.3690/2023	Sara Khattak, etc. Versus Capital Development Authority, etc.