

Before Qazi Faez Isa, C.J. and Abdul Qadir Mengal, J

**CHAMBER OF COMMERCE AND INDUSTRY QUETTA BALOCHISTAN through
Deputy Secretary---Petitioner**

Versus

**DIRECTOR-GENERAL QUETTA DEVELOPMENT AUTHORITY and others---
Respondents**

C.Ps. Nos. 790 of 2010 and 164 of 2011, decided on 15th December, 2011.

(a) Constitution of Pakistan---

---Art. 199---Constitutional petition---Public interest litigation---Violation of Fundamental Rights---Concept of 'aggrieved person' or locus standi---Scope---Public interest litigation does not envisage the strict concept of the aggrieved person or locus standi.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Shehla Zia v. WAPDA PLD 1994 SC 693; General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v The Director, Industries and Mineral Development, Punjab, 1994 SCMR 2061 and Sindh Institute of Urology and Transplantation v. Nestle Milkpak Limited 2005 CLC 424 **ref.**

(b) Constitution of Pakistan---

----Art. 199---Constitutional petition---Maintainability---Proposal of building of shops of considerable height around public park---Public trust, doctrine of---Scope---National resources like air, sea, waters and forests are like 'public trust' and should be made freely

available to everyone irrespective of status---Constitutional petition relating to such resources was maintainable.

(c) Constitution of Pakistan---

---Arts. 9, 14, 26, 34, 35, 38 & 199---West Pakistan Municipal Committee (Street) Rules, 1962, R.9---Constitutional petition---Public Park proposed to be surrounded by shops of considerable height and no distance between such shops and the park, giving outsiders unrestricted vantage access thereto and naming the Park after a living person in government or occupying any position---Effect---Held, Fundamental Right of dignity (Art.14) would be violated when the users of the Park were holed in within the pit of the Park---Whilst privacy of the home was specifically recognized as a Fundamental Right (Art.14), people in public spaces were also entitled to limited personal space and privacy given the exigencies of the situation and to the extent that same could be ensured---Couples, families or for that matter any person would be deterred from venturing into the Park if every movement of theirs could be monitored, they, in circumstances effectively would be discriminated against, in respect of access to a public place which was yet another Fundamental Right (Art.26) infringed---Provision of Art.34 stipulated that every effort should be made to "ensure full participation of women in all spheres of national life" and another Art.35 call for the "protection of family life"; vantage viewing into the Park might dissuade women and families from visiting the same---"Promotion of social and economic well-being of the people" and provision of "basic necessities of life" was yet another principle (Art.38) to aspire to---Unemployed have time at their disposal and were therefore expected to make more use of a Park, so too the poor who do not have access to private gardens or clubs; thus when impediments were placed to fully enjoy the Park it was the said weaker and vulnerable members of society who would suffer the most---Availability of Parks for enjoyment, recreation, walking, jogging and exercise constituted a basic necessity---If the park was permitted to be enclosed and walled in same would also make it difficult if not possible for trees and plants, which required sunlight to grow, due to obstruction of sunlight and the shadows cast by the building surrounding it---Benefits of trees in urban areas and Parks for health detail with reference to research done on the subject---High Court, in circumstances, declared that no land could be allotted, leased, sold and/or otherwise alienated or shops constructed around the three roads surrounding the Park; that the Park could not be named after a living person and issued directions to the Development Authority to refund the money received by Development Authority pursuant to the offer letters issued by the Development Authority; the ground breaking ceremony plate erected in the Park that shows the name of the person in whose name the Park had been named and that of the political party mentioned thereon be removed; that to remove all references from its records about the previous name of the Park and not to mention the same on any plan or map; and to maintain the Park for the benefit of the people as a place of recreation and not change its use in the future; and the Director General of the Development Authority to submit compliance report about directions through the Registrar of High Court within thirty days.

(d) West Pakistan Municipal Committee (Street) Rules, 1962---

----R. 9---General Financial Rules of the Federal Government, Vol. I & II---National Accountability Ordinance (XVIII of 1999), S.9(vi)---Constitution of Pakistan, Art. 199---Constitutional petition---Public Park named after a living person in government or occupying any position is illegal and ultra vires exercise of power if persons vested with power are permitted to use their power for the wrong purpose, self projection, putting oneself or another person, directly or indirectly, in position of advantage or to gain benefit---Principles.

Baz Muhammad Kakar for Petitioners (in C.P. No.790 of 2010)

Kamran Murtaza for Respondent No.1 (in C.P. No.790 of 2010)

Hadi Shakeel Ahmed and Malik Sher Shah Kasi for Respondents Nos. 1 to 55 (in C.P. No.790 of 2010)

Malik Sikandar Khan Deputy Attorney General for Federation of Pakistan on Court Notice (in C.P. No.790 of 2010)..

Abdul Aziz Khilji, Additional Advocate-General and Rauf Atta, Standing Counsel, Government of Balochistan on Court Notice (in C.P. No.790 of 2010).

Muhammad Qahir Shah for Petitioners (in C.P. No.164 of 2011)

Kamran Murtaza for Respondent No.1 (in C.P. No.164 of 2011)

Tariq Ali Tahir, Additional A.-G for Respondent No.2 (in C.P. No.164 of 2011)

Dates of hearing: 17th, 30th November, and 1st December, 2011.

JUDGMENT

QAZI FAEZ ISA, C.J.---Constitutional Petition No.790 of 2010 has been filed by the Chamber of Commerce and Industry Quetta and Constitutional Petition No.164 of 2011 by 29 shopkeepers. Both petitions assail the decision of the Quetta Development Authority ("QDA") to allot land for the construction of shops around the area previously occupied by the 'General Bus Stand' also known as the 'Old Bus Adda' situated in Satellite Town, Quetta (hereinafter referred to as "the Park"). Since the issues in both the petitions are the same they were heard together and decided through this common judgment.

2. The facts that emerged were that, under the Chairmanship of Mr. Muhammad Ismail Gujjar, Minister Urban Planning and Development the Governing Body of QDA met a number of times and decisions concerning the Park were taken. In view of the fact that the impugned action was taken pursuant to such decisions it would be appropriate to reproduce the agenda items and the decisions taken thereon, as under:--

Governing Body meeting dated June 14, 2010:

"26. Opening shops on outer sides of Syed Yousaf Raza Gilani Park.

The Governing Body was shown the computerized design and layout plan of the Syed Yousaf Raza Gilani Park. It was also informed that certain shops (of 12 x 10 ft) are being established on three sides of the park to accommodate the affected business men of the area and to secure the area of the Park. The same however will not change any component of the major scheme approved by the PDWP.

Decision: The Governing Body directed that the originality of the Park may not be changed. The DG was also directed to come up with the proposals for discovering better opportunities for revenue generation from the commercial venture so proposed in next meeting of Governing Body."

Governing Body meeting dated August 19, 2010:

"20. Auction of Cabins/Shops around Syed Yousaf Raza Gillani Park at Stellite Town

Quetta

Decision: After adjustment of two affected allottees of plots i.e. Mr. Gohar Khan Mengal and Muhammad Yousaf Shahwani, all the shops/cabins (of 12 x 15) be auctioned openly as per procedure of QDA starting from the base price of Rs.2500/- per sit."

Governing Body meeting dated September 27, 2010:

"3. Adjustment/Allotment of plots to Anjuman Kapra Faroshan Anjuman Tajran and other affected shopkeepers in Bus Truck Adda Satellite Town.

3.1 In the previous meeting of Governing Body dated 19-8-2010, the base price for commercial plots around the Syed Yousaf Raza Gillani Park and Truck Adda Satellite Town Quetta was fixed Rs.2,750 per sq ft. Accordingly, a publication was issued in Daily Jang and Mashriq Quetta for open auction of those plots on 28, 29 and 30th September 2010. In the meanwhile several applications received from the above mention groups who have been visiting the office of the Chairman DG QDA insisting for allotment of the plots to them at suitable price instead of open [auction] as they have been badly affected on shifting of Bus Adda to Hazarganji whereas in case of open auction they would be deprive of any shops. As such the auction proceeding was stopped.

3.2 As per record sufficient No. of plot have been provided to their reps during shifting of Bus Adda to Hazarganji. But these individual applicants have not been provided with plots by their representatives. The majority is very low income businessmen. Their business has been affected and price of the properties has been reduced as a result of shifting of the Bus Adda to Hazarganji.

3.3 To resolve the issue and minimize the pressure of general public/unions it will be better to allot these plots to affected persons at a fixed rate of Rs.3,000 per sq ft through respective Unions/Associations, whereas the remaining Kapra Faroshan of Old Bus Adda may be accommodated in cabins planned in Kapra Market of old Truck Adda land.

Decision: The shops of three side of the park may be allotted to the Kapra Faroshan (as noted by QDA administration during execution of the park) and other shopkeepers/business men affected as a result of shifting of Bus Adda to Hazarganji at the rates of auction comes from old Truck Adda in same area. Other 65 members of Kapra Faroshan may be adjusted in the

Truck Adda by inserting 10 x 12 ft cabins in the plan."

3. That we were told by the learned counsel for QDA that pursuant to the abovementioned decisions of the Governing Body of QDA plots on the three sides of the Park were offered for allotment by QDA to respondents Nos.1 to 55 through 'Offer Letters.' The Offer Letters have been addressed to the allottees but all have been dispatched to the care of "Salahuddin Achkzai, President Kapra Feroshan."

One such letter dated October 28, 2010 issued to Zareen Khan, which is similar to the ones issued to others, is reproduced hereunder:

"SUBJECT: OFFER LETTER.

With the prior approval of competent authority your request for allotment of commercial plot has been acceded to. You are accordingly offered Plot No. 52-BA(ST) measuring 120 sq ft situated in Eastern side of Syed Yousaf Raza Gillani park Bus Adda Satellite Town, Quetta @, Rs. 3,600 per sq ft.

- | | | |
|-----|---|--------------------------------------|
| 3 | You are advised: | Authorized Bank |
| (a) | To purchase an application form from authorized Bank and submit the same to QDA duly completed in all respect and also attested. | National Bank Satellite Town Branch. |
| (b) | To deposit Rs.4,32,000 as full cost of plot in authorized Bank. | As above |
| (c) | To deposit Rs.21,500 as security in authorized Bank. | As above |
| (d) | To sign the enclosed sale/purchase Agreement with 2 witnesses and Return to the QDA along with non-judicial stamp paper worth Rs.100 for execution. | |
| (e) | To supply attested photo copy of National Identity card. | |
| (f) | To deposit Rs.17280 as Capital Value Tax | NBP OR State Bank any Branch. |

(2) You should complete the construction work over your allotted plot within two months from the date of issue of this offer letter.

(3) If the cost of plot is not deposited in due date and time a surcharge @ Rs. 20% [sic] will be charged and in case of non-completion of construction work within stipulated period non-utilization fee @ Rs.25% [sic] will also be levied. In case of failure the offer will be withdrawn on your risk and cost.

Note: This offer letter is valid for one month from the date of its issue."

4. The Park covers an area of 5.47 acres (238,414 square feet) and is to be constructed at an estimated cost of Rs.49,612,000 (Rupees forty nine million, six hundred and twelve thousand only) which amount we were informed was paid by the Federal Government and QDA would not have to incur any amount on the same. We were further informed that an amount of Rs.56,160,000 (Rupees fifty six million and one hundred and sixty thousand) would be earned from the land surrounding the Park on three sides when it is sold and on which 130 shops would be constructed. However, neither the possession of the land had been handed over to any allottee nor had construction of the any shop commenced when we had passed restraining orders regarding the same, which continued unabated till the decision of these petitions.

5. That according to the plan of the Park 130 shops would be constructed on the three sides of the Park and the rear side of the said shops would be raised upon the boundary wall of the Park. There are roads running around the Park and there already exist shops (whose owners have filed C.P. No.1164 of 2011) positioned opposite to the proposed shops. The dimensions of the proposed shops are each 12 feet by 10 feet, having a total area of 120 square feet. The width of the roads surrounding the Park, on which the shops would be constructed, was stated to be, "40 feet including 5 feet pavement on either side." Therefore, after the said 130 shops have been constructed there would be shops on both sides of the roads running around the Park. If a 5 foot pavement is left on either side of the roads the width of such roads would stand reduced to only 28 feet.

6. The learned counsel for the respondents have objected to the maintainability of the petitions on the ground that QDA is empowered under the Quetta Development Authority Ordinance, 1978 ("**the QDA Ordinance**") to decide and determine the manner in which its land can be used and the petitioners are not aggrieved persons. It would therefore be appropriate to decide the said legal objections first. These petitions can be categorized as public interest litigation and thus do not envisage the strict concept of the aggrieved person or locus standi. "Where there are violations of Fundamental Rights of a class or a group of persons who belong to the category ... then the traditional rule of locus standi can be

dispensed with, and the procedure available in public interest litigation can be made use of (Benazir Bhutto v. Federation of Pakistan, PLD 1988 Supreme Court 416 at page 491). The Supreme Court also came to the rescue of a group of petitioners who had challenged the construction of a high voltage grid station in a residential area (Shehla Zia v. WAPDA 1994 Supreme Court 693). The Hon'ble Supreme Court held that the right to life and the right to lead a life of dignity, respectively guaranteed in the Constitution under Articles 9 and 14, was not limited to, "mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities or facilities which a person in a free country is entitled to enjoy with dignity, legally and constitutionally" (at page 712). In General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v The Director, Industries and Mineral Development, Punjab, 1994 SCMR 2061, the Supreme Court stated that, "The right to have unpolluted water is the right of every person wherever he lives" (at page 2070). In the case of Sindh Institute of Urology and Transplantation v. Nestle Milkpak Limited, 2005 CLC 424, the Sindh High Court held, that:

"It is well-settled that natural resources like air, sea, waters, and forests are like Public Trust. The said resources being a gift of nature, they should be made freely available to everyone irrespective of status. "Doctrine of Public trust" as developed during the days of ancient Roman Empire, enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Even under Islamic law certain water resources are to be protected from misuse and over exploitation" (at page 440).

Consequently, there is no substance in the objections taken with regard to the maintainability of the petitions and we hold that the same are maintainable.

7. The Offer Letters do not stipulate any restriction or impose any condition with regard to the proposed shops, including not placing any height restriction: however, according to the Director General's statement the height "would be up to 23 feet consisting of ground plus first floor." The Park is of an elongated shape, with its length greater than its width. Therefore, even if it be accepted that all 130 shops abide by the non-stipulated height restriction of 23 feet, the result would be that a wall like structure of a height of 23 feet would surround the Park on three sides. The Park would thus be walled in from three sides. The height of such 'walls' would be about twice the height of prison walls and more than twice the height of the infamous Berlin Wall, that had been constructed by an invading army to keep the people of one nation apart. In view of the fact that the comments filed by QDA did not provide any insight into the architectural and town planning principles considered whilst designing the Park we called upon Mr. Zahid Hussain, Director Town Planning and Mr. Khudai Raheem Esbani, Director General, QDA to address this aspect. Mr. Zahid Hussain, Director Town Planning, stated that he had not been consulted and Mr. Khudai Raheem Esbani, Director General, frankly conceded that the same had not been considered and he was simply implementing the decisions of the Governing Body of QDA. We also gave them an opportunity to cite any example from Pakistan or from any other country in the world where a city park was constructed with 23 feet high walls surrounding, it, but were met with an

awkward and embarrassed silence.

8. It does not require architectural or town planning qualifications to be able to state that the Park would present the look of a high-security prison. The effect of the 23 feet high 'walls' confining and enclosing the Park on three sides will be claustrophobic. The shops surrounding the Park on its three sides would have a vantage and unobstructed view into the Park making it uncomfortable for families and other users of the Park and they would not be able to relax and enjoy themselves. The surrounding shops and their customers also enabled to throw rubbish into the Park. Thus, the Park rather than providing peace, relaxation, tranquility or an opportunity to walk, jog or exercise would be rendered an unmitigated disaster. And the good that QDA sought to achieve at considerable public expenditure go to waste.

9. The Fundamental Rights enshrined in the Constitution, which the superior courts of Pakistan are required to safeguard and enforce, provide for security of persons (Article 9), and security may be compromised if the Park is surrounded by 130 shops that are at a considerable height and there is no distance between such shops and the Park, giving outsiders unrestricted vantage access thereto. The Fundamental Right to 'dignity' (Article 14) will also be violated when the users of the Park are holed in within the pit of the Park. Whilst 'privacy of the home' is specifically recognized as a Fundamental Right (Article 14) people in public spaces are also entitled to limited personal space and privacy given the exigencies of the situation and to the extent that it can be ensured. Couples, families or for that matter any person would be deterred from venturing into the Park if every movement of theirs can be monitored. They would thus effectively be discriminated against in respect of access to a public place; yet another Fundamental Right (Article 26) infringed.

10. We are cognizant of the fact that an action cannot be called in question on the ground that it is not in accordance with the Principles of Policy stipulated in Chapter 2 of the Constitution; however, one can be guided from the same. One such Principle (Article 34) stipulates that every effort should be made to ensure full participation of women in all spheres of national life, and another (Article 35) calls for the protection of family life; needless to state that vantage viewing into the Park may dissuade women and families from visiting it. The promotion of social and economic well-being of the people and provision of basic necessities of life is yet another Principle (Article 38) to aspire to. The unemployed have time at their disposal and are therefore expected to make more use of a park, so too the poor who do not have access to private gardens or clubs; thus, when impediments are placed to fully enjoy the Park it is these weaker and vulnerable members of society who would suffer the most. Moreover, availability of parks for enjoyment, recreation, walking, jogging and exercise constitute a basic necessity.

11. That if the Park is permitted to be enclosed and walled-in it would also make it difficult if not impossible for trees and plants, which require sunlight, to grow, due to the obstruction of

sunlight and the shadows cast by the buildings surrounding it. It is by now irrefutably and scientifically established that trees play very important and beneficial roles. The United States Department of Agriculture (Forest Service pamphlet # FS-363, cited in Benefits of Trees in Urban Areas. Colorado Tree Coalition <http://www.coloradotrees.org>), found that, "Trees in New York City removed an estimated 1,821 metric tons of air pollution in 1994. "In an area with 100% tree cover (such as forest groves within parks), trees can remove as much as 15% of the ozone, 14% of the sulfur dioxide, 13% of particulate matter, 8% of the nitrogen oxide, and .05% of the carbon monoxide" (Sherer PM 2003. Parks for people: Why America needs more city parks and open space. San Francisco: The Trust for Public Land, <http://www.tpl.org/>). "Trees and the soil under them filter water pollution by removing polluted particulate matter from water before it reaches storm sewers and absorbing nutrients created by human activity such as nitrogen, phosphorus and potassium, which otherwise pollute streams and lakes" (Nowak DJ. The effects of urban trees on air quality U.S. Dept of Agriculture Forest Service Washington DC., <http://www.fs.fed.us/ne/syracuse/gi.f/trees/pdf>). "Increased vegetation dampens sound and mitigates noise pollution" (Beattie J. Kollin C, Moll G. 2000. Trees help cities meet clean water regulations. American Forests, <<http://www.americanforests.org/downloads/graytogreen/treeshelpcities>> "The leafy canopy of trees reduces surrounding temperatures, provides natural shade, and reduces ultraviolet radiation (UV) and the risk of skin cancer" (Grant R, Heisler G, Gao W. Estimation of Pedestrian Level UV exposure under trees. Photochemistry and Photobiology. 2002;75(4):369-376). "Trees and vegetation more effectively and less expensively manage the flow of stormwater runoff than do concrete sewers and drainage ditches. Trees intercept rainfall, and unpaved areas absorb water, slowing the rate at which it reaches stormwater facilities. This alleviates pressures on storm water management and flood control efforts" (Trust for Public Land. The Benefits of Parks: why America needs more city parks and open space. 2005.) "In one urban park, tree cover was found to remove 48 pounds of particulates, 9 pounds nitrogen dioxide, 6 pounds sulfur dioxide, 2 pounds carbon monoxide, and 100 lbs of carbon on a daily basis" (Coder, Dr. Kim D., "Identified Benefits of Community Trees and Forests", University of Georgia, October, 1996). "Trees remove gaseous air pollution primarily by uptake via leaf stomata, though some gases are removed by the plant surface" (Nowak, David J., "Urban Trees and Air Quality." USDA Forest Service, Syracuse, NY, November, 1995). "Shade from trees can reduce air temperature. Reduced air temperature due to trees can improve air quality because the emission of many pollutants and/or ozone-forming chemicals are temperature-dependent" (Nowak, David J, "Urban Trees and Air Quality." USDA Forest Service, Syracuse, NY, November, 1995).

12. The Principles of Policy envisage provision of basic necessities which includes medical relief (clause (d) of Article 38) and the Fundamental Right to life (Article 9), which as interpreted by the Hon'ble Supreme Court, "does not mean nor can it be restricted only to the vegetative or animal life or mere existence" and therefore by necessary implication includes the right to lead a healthy life. Parks and open spaces and the trees that they contain also have many health benefits. Parks encourage and provide a space for physical activity, which can effectively combat obesity and chronic disease. "Parks facilitate physically active lifestyles by providing relatively low cost choices for recreation" (Transportation Research Board Institute of Medicine of the National Academies. 2005. Does the built environment influence physical activity? Examining the evidence. National Academies of Science). "In a study about Los Angeles, active people who live within two miles of a park are more likely to exercise in a park (34%) than at home (21%), at private clubs (6%), or at other locations

(4%), although many people (35%) reported exercising in more than one location. The study also revealed that most (81%) park users live within one mile of a park, and that people living within one mile of a park are four times as likely to visit the park once per week or more" (Cohen, D. et al. Park Use and Physical Activity in a Sample of Public Parks in the City of Los Angeles. 2006, RAND Corporation). "A review article in American Journal of Preventative Medicine showed that access to a place to exercise results in a 5.1 percent median increase in aerobic capacity, along with a reduction in body fat, weight loss, improvements in flexibility, and an increase in perceived energy" (Trust for Public Land. The Benefits of Parks: why America needs more city parks and open space. 2005). "Increases in physical activity has been linked to numerous health benefits: reductions in premature mortality: prevention of chronic diseases such as diabetes, obesity, and hypertension; and improvements in psychological well-being" (Transportation Research Board Institute of Medicine of the National Academies. 2005. Does the built environment influence physical activity? Examining the evidence. National Academies of Science). "A 1% increase in park space can increase physical activity in youth by 1.4%" (Roemmich JN, Epstein LH, Raja S, Robinson J, Winiewicz D. 2006 Association of access to parks and recreational facilities with the physical activity of young children. Preventive Medicine 43(6):437-441). "Access to places for physical activity combined with outreach and education can produce a 48% increase in frequency of physical activity" (Kahn EB. 2002. The effectiveness of interventions to increase physical activity. American Journal of Preventative Medicine 22:87-88). "A Dutch study evaluating links between green space and physical activity found that the association was strongest for people aged under 25 and for elderly, lower educated people and people with low incomes. This may be due to children, elderly and lower socio-economic groups spending more time in the vicinity of their homes and thus being more affected by the design of their direct living environment" (Maas, J, Verheij, RA, Spreeuwenberg P, Groenewegen PP. Physical activity as a possible mechanism behind the relationship between green space and health: A multilevel analysis. BMC Public Health 2008, 8:206).

13. It is also now generally considered as true that access to parks and open spaces has a positive impact on stress, depression, and mental functioning. "Parks and open spaces provide needed reprieve from everyday stressors, acting as 'escape facilities'. Being able to escape fast-paced urban environments improves the health by reducing stress and depression and improving the ability to focus, pay attention, be productive, and recover from illness" (Maller C. Townsend M, Pryor A, Brown P, St. Leger L 2005. Healthy nature healthy people: 'contact with nature' as an upstream health promotion intervention for populations. Health Promotion International 21(1):45-53). "A study in Chicago showed that people living in a housing project who had some green space near them scored higher on the ability to manage major life issues, they procrastinated less, found their issues to be less difficult, and reported them to be less severe and long-standing than those who lived in barren surroundings" (Kuo FE. 2001. Coping with poverty impacts of environment and attention in the inner city. Environment and Behavior 33(1):5- 34). "People dissatisfied with their available green spaces have 2.4 times higher risk for mental health issues" (Guite HF, Clark C, Ackrill G. 2006. The impact of physical and urban environment on mental well-being. Public Health 120.-1117-1126). Access to parks and open space leads to positive general health and wellbeing and improves healing. "A classic study demonstrated that patients with views of trees v. views of a brick wall had shorter hospitalizations, less need for painkillers, and fewer negative comments in the nurses' notes" (Ulrich RS. 1984. View through a window may influence recovery from surgery. Science 224:421). "All types of green space were found to

be effective at improving health status in a study conducted in the Netherlands. The study found the same benefit from living near city parks, agricultural areas, and forests" (Trust for Public Land. The Benefits of Parks: why America needs more city parks and open space. 2005). "Research has shown that a natural environment and green space have a positive effect on health and wellbeing by reducing stress and fatigue and improving mental health and longevity" (Groenewegen, PP, van den Berg, AE, de Vries, S, Verheij. R. Vitamin G: effects of green space on health, well-being, and .social safety .RMC Public Health 2006, 6:149).

14. We must also not lose sight of those in whose little hands lies the future, and it is our collective responsibility and duty to ensure that our children's health is not jeopardized and that they can attain their full potential. "Without outdoor places to play, children are less likely to exercise regularly and may face elevated risks for diabetes, obesity, and asthma" (Trust for Public Land. No Place to Play: a comparative analysis of park access in seven major cities. November 2004). "Children performing activities in green settings have shown reduced symptoms of Attention Deficit Hyperactivity Disorder. Furthermore, the "greener" a child's play area, the less severe his or her attention deficit symptoms" (Faber Tyler A, Kuo FE, Sullivan WC. 2001. Coping with ADD: The surprising connection to green play settings. Environment and Behavior. 33(1): 54-).

15. What modern science and scientific knowledge has now learnt was known to traditional and religious societies. The Holy Quran emphasizes the importance and significance of trees and plants. "Trees bow down in adoration" (to Allah) (surah Ar-Rahman (55) verse 6). And the Prophet of Islam Muhammad (peace and blessings be upon him) said: "Whoever plants a tree and it matures, Allah plants a tree in Paradise for that person," and "If a Muslim plants a tree or grow grains and a bird, a person or animal eats from it will be counted as charity from him." It is never considered too late or futile to plant trees for he said, "If any of you have a sapling on Doomsday he should plant it."

16. The health of the people must be considered whilst making decisions and the decision-makers should understand the health impacts of their decisions before they are implemented. Decisions taken about the manner in which public land is to be utilized have demonstrable direct impacts on health. It is noted that Quetta city planners are not considering the health consequences their decisions will have on peoples' lives. They ought to have carefully considered the manner in which the land around the Park should be utilized.

17. According to QDA the land surrounding the Park on three sides is to be demarcated into 300 plots and to be given to those people who had illegally occupied the General Bus Stand land after its removal to the Hazarganji area of Quetta, lying at the City's periphery. However other than a list prepared by the `Anjuman Kapra Feroshan' itself, containing a list of names, nothing was brought on record, despite giving repeated opportunities. There is thus nothing, not even inadequate or insufficient evidence, to establish that any person was in occupation of any part of the said area. Moreover, the actual area in possession of such persons is not

mentioned in the said list nor how the same was being utilized or what was constructed thereon by the persons named in the list. It appears that QDA officials had struck a mutually beneficial deal with the members of the said Anjuman and sacrificed the interest of the general public to the vested interest of land grabbers.

18. Thus, the QDA violated its underlying principle, "for the development and improvement of certain areas in Quetta District by opening up congested areas, laying out or altering streets, providing public amenities like parks, gardens and playgrounds" (preamble of the QDA Ordinance). Incidentally the Quetta Master Plan commissioned by QUA, and which was prepared at considerable cost, also recommended that the "Bus/Truck Stands" land that is vacated should "be allocated for parks, playgrounds and open spaces." And that, "Due to the shortage of properly maintained parks and public open spaces, there is need to develop at least 500 acres of such land use to improve urban quality and environments" (page 14 of the Quetta Master Plan). It appears that the Master Plan gathers dust whilst QDA finds novel ways to destroy the peace and tranquility of the citizens and the environment.

19. The Master Plan also had required the widening of roads, and stipulated that there was dire need, "to improve the traffic circulation system in the city area" by undertaking "road improvement/widening schemes" (page 14 of the Quetta Master Plan). The Master Plan noted with concern that, "Traffic congestion has already placed in jeopardy the well being of many people in Quetta. ... The increase in vehicles, coupled with decreased availability of usable road widths, has worsened traffic and environmental conditions to such an extent that unless something is done now the conditions are bound to become extremely serious within a few years" (page 47 of the Quetta Master Plan). The warning was sounded 21 years ago. However, in derogation of the principles governing QDA and the Master Plan QDA has decided to construct shops on designated roads and the pavements running alongside the same, thereby reducing the width of roads and creating congestion. Such conduct can at best be labeled as criminal disdain.

20. Mr. Kamran Murtaza the learned counsel for QDA had sought to canvas an omnipotent role to the QDA's Governing Body and that its decisions could not be assailed. Learned counsel's contention runs counter to the powers granted to the Governing Body in the QDA Ordinance itself, which stipulates that, "The Governing Body in discharging its functions shall act on sound principles of development, town planning... (subsection (2) of section 4 of the QDA Ordinance). Even if the law had not placed the said caveat the same would have been read into the statute and QDA's actions could always be tested on the touchstone of Fundamental Rights that may be infringed or it be shown that QDA was acting in contradiction to the public interest.

21. That another matter that was taken notice of was regarding naming the Park after the serving Prime Minister of Pakistan, as "Syed Yousaf Raza Gilani Park." The operative part of Order dated April 11, 2011 passed in C.P. No.790 of 2010 is reproduced hereunder:--

"Mr. Kamran Murtaza, learned counsel for QDA files progress report, which is taken on record. It is noted from the said report that the proposed park is to be named as "Yousqf Raza Gilani Park". Let notice be issued to learned DAG and AG to assist the court whether any place, which is constructed out of public revenues, can be named after a living person. In this regard the DAG and AG may also inform us about the practices prevailing in other civilized countries of the world."

In response Malik Sikandar Khan, learned Deputy Attorney General, filed `written arguments' wherein it was stated that, "no rules, regulations or byelaws have been made... for the manner in which a park managed out of public funds could be named only procedure for naming streets has been given." He also referred to Section 9 of the West Pakistan Municipal Committee (Street) Rules, 1962, reproduced hereunder:--

"Name of Roads and Streets:

(1) Every proposal for the assignment of a name to a new street or a change in the name of an existing street shall be published for inviting objections and suggestions in such manner as the Municipal Committee may determine, and the final proposal shall be made after taking such objections and suggestions, if any into consideration.

(2) No road or street shall be named after a person unless--

(a) he is well-know character of history; or

(b) he has rendered distinguished service in the cause of the Nation or the Municipality.

(3) No road or street shall be named after a person if he is a sitting member of the Municipal Committee, the Provincial Assembly or the National Assembly, or he holds any office under the Municipal Committee, the Federal Government or Provincial Government or any local council or public authority.

(4) The name of a road or street once assigned shall not be changed before the expiry of a

period of twenty-five years."

It was further stated that there were a number of places named after living persons, including Ghulam Ishaq Khan Institute for Science and Technology so named when he was President of Pakistan, Dr. Qadeer Khan Research Laboratories, Mian Nawaz Sharif Park at Islamabad and Lahore. Nawaz Sharif Social Security Hospital situated at Multan Road Lahore, Nawaz Sharif College at Choona Mandi Lahore, Fazle Haq College Khyber Pakhtunkhwa, Ch. Pervez Elahi Institute of Cardiology at Multan. It was further stated that many places were named after rulers and dignitaries of other countries, including Qaddafi Stadium Lahore, Sheikh Zayed Hospitals at Lahore and Rahimyar Khan, Sheikh Zayed Islamic Centres at Lahore, Peshawar and Karachi and Sheikh Khalifa Bin Zayed Federal Hospital at Quetta.

22. Mr. Baz Muhammad Kakar, Mr. Muhammad Qahir Shah and Mr. Hadi Shakeel Ahmed, Advocates were opposed to the Park being named after a living person who was holding an important position in Pakistan and contended that the money for the construction of the Park was paid by the Federal Government from the public exchequer and not personally paid for by Syed Yousaf Raza Gilani. Therefore, there was no justification for naming the Park after him and it was against the norms of good governance. They further stated that if anyone pays the money himself or raises money for a public purpose he may be honoured by naming the place after him, but not otherwise. Mr. Kamran Murtaza, learned counsel for the QDA stated that there was no harm if the Park was named after the Prime Minister of Pakistan.

23. On June 21, 2011 the 'Asifa Bhutto Zardari Dental College' was named after the President of Pakistan's daughter. And on June 27, 2011 the following comment appeared in DAWN, one the leading newspapers of the country:--

"Earlier, a postal stamp with Asifa's image was issued by the postal department in connection with the polio eradication programme. Now naming a public sector dental college after her name is quite inappropriate.

We have an elected government and a democratic constitution.

As such the names of our state-funded projects and institutions must not be personalised or named after family members of the ruling party chief"

24. That since the matter of naming a place constructed out of public funds had not to our knowledge been determined by any court in Pakistan we appointed Mr. Athar Minallah, Senior Advocate as amicus curiae to render assistance in this regard. Mr. Minallah submitted

a comprehensive 14 page written note on the matter. It would be useful to reproduce the following excerpts from it:

"That during the course of hearing, this Hon'ble Court directed the counsel for assistance on the question; 'Whether a public park planned, developed, managed and administered out of public funds could be named after a living person, particularly a person holding a public office at the relevant time.

That in order to answer the above question it is submitted as follows:

The proposition includes consideration of certain factors in order to come to a conclusion i.e (a) park is a public park, (b) The park is planned, developed, managed and administered out of public money, (c) The park planned, developed, managed and administered out of public funds has the sole purpose of providing a benefit or essential facility to general public. ... (d) will naming such a park after a living person, particularly person holding public office, be in violation of law, ultra vires, beyond the purpose for which the park is established, illegal, unreasonable, abuse of powers vested under the law as the same will [be] for wrong purposes and therefore, without lawful authority and jurisdiction, (e) in the event the proposed name is after a person who has exercised powers vested in him by virtue of holding a public office."

"It is apparent from the Rules, 1962 that the criterion laid down therein addresses the general principles i.e. transparency, avoiding names of living persons, making holders of public offices ineligible for the purposes of naming a street or road."

"General Financial rules of the Federal Government Volume I & II.

Under the heading Standards of Financial Propriety, Chapter II, the degree of standard of financial propriety expected from and prescribed for a holder of public office or person entrusted with public funds is as follows:--

'10. Every officer incurring or authorizing expenditure from public funds should be guided by high standards of financial propriety. Among the principles on which emphasis is generally laid are the following:--

Every Public office is expected to exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his own money.

The expenditure should not be prima facie more than the occasion demands.

No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.

Public moneys should not be utilized for the benefit of a particular person or section of the community...'

"The rules contained in GFR are executive orders of the President. However, having been practiced, observed and strictly followed for decades have attained the status of law. It also provides an effective guideline in the context of meeting certain basic standards of financial propriety. It is obvious that any act or omission which amounts to, or may be seen as, directly or indirectly, extending benefit or advantage to a particular person, would be in violation of the prescribed standards of financial propriety will render any such act as illegal, without lawful authority and jurisdiction."

"In the context of the proposition, it would be a flagrant violation of the standards of financial propriety prescribed under the GFR in case a project, funded, planned, developed or managed from public funds is named after a living person, particularly a person holding public office. It is pertinent to note that the standards of financial propriety gain a much higher degree of importance in case of such offices for which the sole eligibility is the ballot."

"In a democratic process the use of public funds in a manner which has the effect of putting a person in a position of advantage vis-a-vis the competing political forces will be in violation of the standards of financial propriety and, therefore, illegal and ultra vires."

"Definition of corruption and corrupt practices in NAO, 1999

In order to eradicate corruption and corrupt practices and hold accountable all such persons accused of such practices, the National Accountability Ordinance 1999 (Ordinance No.XVIII

of 1999) (**NAO, 1999**) was promulgated on November 16, 1999. The said Ordinance defines a holder of public office under section 5 (m), whereas corruption and corrupt practices are defined in section 9 *ibid*. It is important to note that the definition of 'corruption and corrupt practices' is not limited to mere pecuniary advantage rather it extends to gaining any benefits for oneself, or any other persons. In this regard it is pertinent to reproduce clauses (vi) and (x) of section 9:--

'Section 9(vi)

(if he) misuses his authority so as to gain any benefit or favour for himself or any other person, or (renders or attempts to render) (or wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority);'

"If the standards of financial propriety, more fully discussed above, are read with the provisions of NAO, 1999, it leaves no doubt that while dealing with public funds, persons holding public offices are under obligation not to act in a manner which amounts to gaining benefit, advantage or favour either for himself or for any other person."

"The classic case of more recent times is that of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948)... . Lord Greene MR. alluded to the many grounds of attack which could be made against a decision, citing unreasonableness, bad faith, dishonesty, paying attention to irrelevant circumstances, disregard of the proper decision making procedure and held that each of these could be encompassed within the umbrella term 'unreasonableness'.

".....a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority... ."

"The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account and once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless

come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere.' (P.229)

"Law in Pakistan

The Hon'ble Supreme Court of Pakistan in the case of *SS Miranda Limited v. The Chief Commissioner Karachi* (PLD 1959 SC 134), accepted and applied the test known as the *Wednesbury* unreasonableness (pages 144 to 145)."

"Justice (R) Fazal Karim in his book, titled *Judicial Review of Public Actions*, has dealt with the concept of unreasonableness in the context of *ultra vires* (pages 1372 to 1374). In the cases of *Government of Pakistan versus Dada Amir Haider Khan* (PLD 1987 SC 504), *Gaddon Textile Mills v. WAPDA* (1997 SCMR 641) has struck down subordinate legislation on the grounds of unreasonableness. The Hon'ble Saleem Akhtar J. while referring (1997 SCMR 641) to the test of reasonable exercise of discretion observed as follows:--

"The rule of reasonableness is so embedded in the jurisprudence that even where statute confers arbitrary powers on any authority, it is to be read in such statutes that the authority while exercising its discretion shall act reasonably.' "

"The Hon'ble Supreme Court in the case of *KBC Authority v. Hashwani S & S Limited* (PLD 1993 SC 210) held regulations as unreasonable and hence *ultra vires*. It has been aptly stated by Justice (R) Fazal Karim in his book, *Judicial Review of Public Actions*, that the law in established judicial enunciation of unreasonableness as a ground for judicial review has received legislative confirmation through assertion of section 24-A of the *General Clauses Act, 1897*."

"Conclusions

It appears that no rules, regulations or bye-laws have been made which provide for a criterion or procedure for naming parks in particular. Nevertheless, in the light of the above discussion, particularly the standards prescribed for financial propriety, a high duty of care which persons in public offices owe to the people, the same being in the nature of fiduciary duty, the doctrine of *ultra vires* and particularly on the touchstone of the test of reasonableness, the inevitable conclusion would be to answer the proposition in the negative."

"Naming a park, or for that matter any monument, road, street, building or project, planned, developed and managed from public funds, after persons holding public offices is ultra vires, illegal, without lawful authority, unreasonable and for wrong purposes. Not only that public funds should be used in the most transparent manner by observing the prescribed standards of financial propriety, but it should be seen that no advantage or benefit, directly or indirectly, has accrued or taken by or for any person."

"The above principles would also apply to naming projects planned, developed or managed after living persons on the ground that reputation may change. Naming a project, established through public funds, after living persons and particularly persons holding elected offices is something so absurd that no sensible person could ever dream that it lay within the powers of the authority to do so. It essentially would encourage person vested with powers under the law to use the powers for wrong purpose, self projection, putting oneself or another person, directly or indirectly, in position of advantage or to gain benefit at the expense of public funds, is undoubtedly illegal and ultra vires exercise of powers."

"Keeping in view the sanctity of public funds, degree of duty of care legitimately expected from and imposed on persons dealing with public funds, standards of financial propriety and observing the embedded and established grounds of judicial review, it may be concluded that the process of naming would be in accordance with law if the following is taken into consideration;

(a) Observance of complete transparency while proposing names for projects established, planned, developed or managed out of public funds. This would essentially include, inter alia, inviting proposals and suggestions from general public through publication of public notices.

(b) Avoiding names of living persons keeping in view that subsequently reputations may change during life time.

(c) Only such persons having made a significant positive contribution to the community and well known character of history ought to be considered and all such decisions be made in a transparent manner.

(d) Naming parks, monument, buildings, streets or roads or any other project established, planned or managed out of public funds after persons holding public office, particularly an elected office is most obviously in flagrant violation of law as such persons, directly or

indirectly, gain an advantage or benefit. Moreover, self projection or self advancement at the expense of public money is an ultra vires exercise of power vested in a public office. Any collateral, ancillary or onerous conditions attached to expenditure made from public funds will also be unreasonable and against public policy.